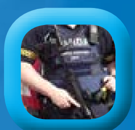
Lonely Banna Strand
The background to the famous Lavery painting of Roger Casement's appeal

Whistling Dixie
Guidance for public bodies on the making of protected disclosures

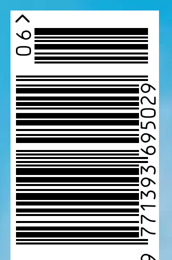


Emergency response
The circumstances in which gardaí may seek compensation for injury

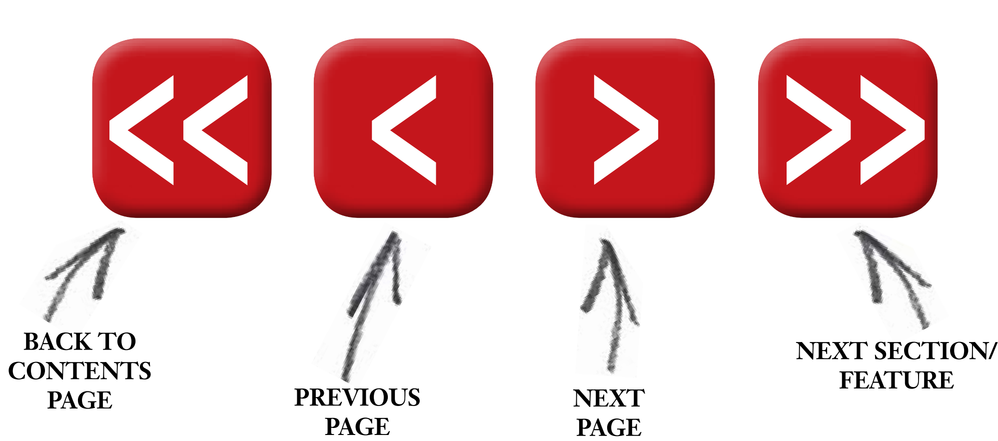
gazette
LAW SOCIETY
€4.00 JUNE 2016

HOLIDAYS IN THE SUN

Package tour operators' obligations to customers



navigating your interactive



... enjoy

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CORPORATE LAWYER – ASSOCIATE LEVEL

Top tier private practice firm require corporate lawyer to join their team at associate level. With their leading market position this firm is offering the right candidate a fantastic opportunity to grow their career among Ireland's best corporate team. The ideal candidate will have experience from a top Dublin or London firm

TAX DIRECTOR

Our client, a highly regarded private practice firm based in Dublin City Centre seeks to appoint a Tax Director. The ideal candidate will be dual qualified, a member of the Law Society and of the Irish Taxation Institute. The candidate must have excellent technical knowledge of current tax legislation.

BANKING LAWYER – ASSOCIATE LEVEL

Top tier private practice firm require banking lawyer to join their team at associate level. This role will offer the right candidate an excellent opportunity to join a very highly regarded team. The ideal candidate will have experience from a top Dublin, Cork or London firm

COMMERCIAL PROPERTY – ASSOCIATE SOLICITOR

Commercial Property Solicitor required for our client, a Top Tier Dublin Law Firm. This is an excellent opportunity for an ambitious Solicitor to join an internationally renowned team. The right candidate will gain exposure to domestic and international property transactions.

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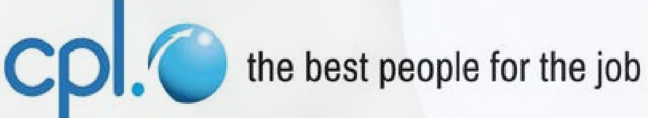
International private practice firm in Dublin seeks an experienced Aviation Finance Lawyer to join their team. The ideal candidate will have gained Aviation Asset Finance experience within a top tier law firm or as in-house counsel to an airline or aircraft leasing company.

BANKING LAWYER – ASSOCIATE LEVEL

Top tier private practice firm require banking lawyer to join their team at associate level. This role will offer the right candidate an excellent opportunity to join a very highly regarded team. The ideal candidate will have experience from a top Dublin, Cork or London firm.



To apply for any of the above vacancies or for a strictly confidential discussion, please contact Sean Fitzpatrick on 01-5005916, Cora Smith B.Corp Law on +353 1 5005925 or cora.smith@cpl.ie

A VIEW TO THE FUTURE

Finally we have a government, and the knock-on effect of this for the solicitors' profession and our colleagues at the Bar will, no doubt, be the commencement of the provisions of the *Legal Services Regulation Act 2015* over the coming months.

This will start with the establishment of the Legal Services Regulatory Authority, which will comprise 11 members, in respect of which the Law Society has two nominees.

We have nominated James MacGuill and Geraldine Clarke – both former presidents of the Law Society – who will ably represent us on the new authority.

Other recently passed legislation, such as the *Assisted Decision Making (Capacity) Act 2015*, is also expected to commence shortly.

Cluster events

Both of these pieces of legislation will, of course, be dealt with in the Law Society's cluster events for solicitors around the country, the most recent of which took place in Carrick-on-Shannon and was attended by over 220 practitioners.

These cluster events have proved to be a great success in recent years, regularly attracting over 200 colleagues at each outing. For those who have yet to attend such an event, I would encourage you to do so. They are useful forums for updating members on important new legislation and matters of significance to them in running their practices, while also providing six very useful CPD points at low cost.

I experienced their success first-hand last year, when I had the privilege of chairing cluster events in both Cork and Dublin, and I plan, as president, to chair several more in the coming months in Donegal, Limerick and Kerry.

A presidential first

I have continued with my visits to the bar associations in recent months, including a trip to Wicklow, which I enjoyed immensely. In mid May, the director general and I visited the members of the Carlow Bar Association, where I understand I was the first Law Society president to visit for many years.

It is a small bar association, and I estimated that over half of its membership attended the CPD event and dinner that we enjoyed afterwards. I was presented with a road sign to Carlow – which is now hanging in the President's Office in Blackhall Place – to remind my successors to go there and enjoy their great hospitality in the years to come.

Calcutta Run

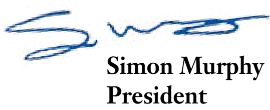
Finally, the Calcutta Run took place on 21 May at Blackhall Place. A record number of 1,550 participants took part. It was a superb day, and while the weather could have been a little kinder, everybody who participated (including the hangers-on such as myself) enjoyed it thoroughly.

I can only hope that the target of €200,000 will be reached this year, the proceeds of which will be divided equally between the two nominated charities – the Peter McVerry Trust and GOAL.

The huge number of colleagues who took part in this charity run reflects magnificently on the profession as a whole. Well done to everyone who took part, including all of you who participated in the event and its organisation. Your efforts will help to ease the plight of the homeless in Dublin and India.

Finally, one of the irritations for me, and I know for most solicitors, is the relentless propaganda campaign from the insurance industry, which seeks to blame legal costs and court awards as significant factors justifying their massive hikes in motor insurance premiums. These contentions bear no serious scrutiny, and I am glad to see the Society lashing back to robustly rebut these falsehoods and correct the record, as recorded in the article on p12 of this *Gazette*.

"I am glad to see the Society lashing back to robustly rebut these falsehoods and correct the record"



Simon Murphy
President

gazette
LAW SOCIETY

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The *Package Holidays and Travel Trade Act 1995* has its 21st birthday this year. Several recent cases contain comprehensive considerations of the duty imposed on tour operators when there is non-performance of the contract. John McCarthy slathers on the sun cream

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Injured members of the gardaí may claim compensation for their injuries in certain circumstances. James Kane reviews some recent relevant case law

law society gazette

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… as well as lots of other useful information

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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

DUBLIN

DSBA tees off in the castle

Hard-working DSBA president Eamonn Shannon is busy organising the annual golf outing. The next one takes place on Thursday 23 June in the Castle Golf Club, Rathfarnham.

The DSBA ventures into the countryside for their second event on Thursday 15 September, which will see the association visit the Palmer Ryder Cup course in the K Club, Co Kildare.

MEATH

New president for Meath

PIC: SEAMUS FARRELLY, MEATH CHRONICLE

Carla Bannon, Patricia T Rickard Clarke (speaker), Elaine Byrne (outgoing honorary secretary/treasurer, MSBA) and Nick Reilly (speaker)

Outgoing secretary of Meath Solicitors' Bar Association (MSBA) Elaine Byrne tells 'Nationwide' that outgoing president Peter D Higgins (Regan McEntee & Partners) handed over the reins of power to newly elected president and fellow Trim solicitor Paul Moore (Malone & Martin) at the association's AGM on 20 April.

Highlights of Peter's term included a number of well-attended and useful CPD lectures, social outings, and charitable donations. Peter thanked outgoing secretary Elaine Byrne and all on the committee for their work during the year. A special word of thanks was paid to Regan McEntee & Partners for their support of the association over the last number of years.

The 2016/17 committee is composed of Paul Moore (president), Teresa Coyle (secretary, Coyle & Company, Trim), Declan Brooks (Oliver Shanley & Co, Navan), Carla Bannon, Stephen Murphy (Regan McEntee & Partners), Michael Keaveny (Keaveny Walsh & Co, Kells) and Maurice Regan (Oliver Shanley & Co, Navan).

Over 45 solicitors attended the CPD course that preceded the AGM. Nick Reilly BL spoke on the 'Fair Deal Scheme', while Patricia Rickard Clarke (retired Law Reform Commissioner) updated all on the provisions of the new *Capacity Act*.

DUBLIN

Duty-free pests plan protest at DSBA Law Book Awards

Although officially banned from most British functions, the underground movement that is 'Bring Back the Duty-Free (on Dublin/London Flights)' is rumoured to be planning a covert raid on the hotel wine cellar during the British Ambassador's speech at the DSBA Law Book Awards.

This group of Anglo-Irish ruffians have mounted a patchy campaign for Britain to leave the EU so that duty-free prices can be restored on flights across the Irish Sea. Their efforts at protest to date have involved sitting towards the front of planes and insisting on drinking the entire contents of drinks trolleys when flying from London to Dublin, to the great annoyance of other customers. Sources close to the group have told 'Nationwide' that it is difficult to distinguish the protesting behaviour from the pests' normal behaviour on flights, and we suspect the same will be true of the protest at the DSBA bean feast. We hope that no DSBA members will be tempted to join this dastardly movement.

Let us hope that the DSBA can foil their protest, so that no unnecessary messing will disturb the address of the British Ambassador Dominick John Chilcott. Eamonn Shannon tells me that, although the event is oversubscribed, they will be taking more bookings, as the venue has increased capacity. He has also confirmed that, due to the duty-free threat, increased security will be in evidence, but no trouble is expected and the wine cellar has been secured and fortified with additional capacity.

The British ambassador will present the 'law book of the year award', the 'DSBA practical law book of the year award' and the 'outstanding contribution to legal scholarship award'. He will be joined onstage by the winners and the sponsors (Stephen Fitzpatrick of Peter Fitzpatrick & Company Legal Cost Accountants, Catherine Guy of ByrneWallace, and Brendan Twomey of Law Society Skillnets).

Last minute tickets for the DSBA annual dinner on Friday 17 June are available from the DSBA offices (see www.dsba.ie for full details).

representation News from the Law Society's committees and task forces

Carrick's collaborative cluster crammed

Representatives of the bar associations along with speakers and Law Society staff at the cluster event

LAW SOCIETY OF IRELAND

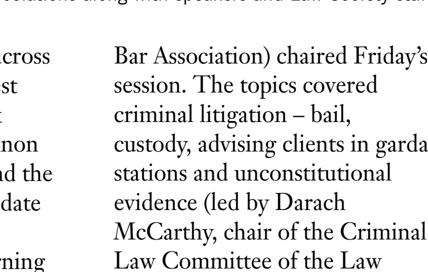
Over 200 solicitors from across the midlands and northwest gathered in the Landmark Hotel in Carrick-on-Shannon on 12 and 13 May to attend the 'Essential Practitioner Update 2016' cluster event.

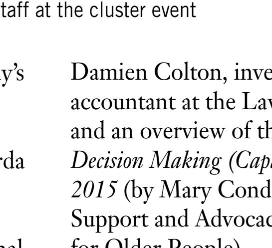
It provided an ideal learning and networking opportunity and was designed to meet the needs of local practitioners. The event is part of a nationwide programme of similar cluster events that will take place throughout the country this year.

The Leitrim-based seminar was hosted by Law Society Skillnet, in partnership with Leitrim Bar Association, Longford Bar Association, Midland Bar Association, Roscommon Bar Association and Sligo Bar Association.

Teri Kelly (director of member services and representation) commented: "Experts in topics such as employment law, the *Legal Services Regulation Act*, conveyancing and probate delivered the very latest updates and developments in these areas of law, which were identified by local solicitors as being of key importance in the region."

Michele O'Boyle (junior vice-president of the Law Society) chaired Thursday's session, while Kieran Ryan (president, Leitrim Bar Association) chaired Friday's session. The topics covered criminal litigation – bail, custody, advising clients in garda stations and unconstitutional evidence (led by Darach McCarthy, chair of the Criminal Law Committee of the Law Society); practice regulation – financial compliance (with Damien Colton, investigating accountant at the Law Society); and an overview of the *Assisted Decision Making (Capacity) Act 2015* (by Mary Condell of the Support and Advocacy Service for Older People).





Teri Kelly concluded: "In designing this seminar, we have been guided strongly by what the people of this region need from their solicitors. It is important for the Law Society to reach out to our members around the country. These cluster events allow us to tailor our seminars around the particular needs of local solicitors and the local communities they serve."

CONVEYANCING COMMITTEE

Feedback on PRA rejections

The Conveyancing Committee is trying to find out what the most common reasons are for rejection of Land Registry dealings, so that it can consider what practice recommendations it can make to address any common problems that give rise to such rejections.

As part of this review, the committee proposes examining PRA statistics on rejections. In addition, the committee considers it an important part of its review that it would also have practitioners' perspectives on such rejections. The committee is therefore seeking feedback from solicitors as to the reasons given by the PRA for rejection of dealings over the past year or so. You can submit your feedback to registrationrejections@lawsociety.ie up to 15 July 2016.

The committee is interested in arriving at a breakdown of rejections, whether by:

- **Category of application – to see, for example, how many transfers of part of a folio are rejected, how many section 49A applications, how many Form1 or 2 first registration applications, how many Form 3 first registration applications and so on,**
- **Stage of rejection – how many are being rejected at an early stage (for example, on a preliminary check when initially lodged), how many when the dealing is first inspected, how many after the application has been fully examined, and so on,**
- **Reason for rejection – how many for mapping, how many for incorrect fees, how many for issues with the transfer or mortgage documentation lodged, how many for the reason that the incorrect application has been made, and so on.**

When submitting examples, you might give a broad indication of which of the above (or any other) categories your case(s) falls into. You may redact any confidential details from examples submitted where they are not necessary to explain the reason given for rejection.

The committee thanks you in advance in anticipation of your cooperation with this review.

OVERCOMING OBSTACLES

Johnson Hana International is a unique and innovative Legal Process Outsourcing company and the only one of its kind in Ireland. We aim to drive efficiency into legal services to save our clients time, energy and money by outsourcing their legal process work to our teams of specialist lawyers.

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If you would like to find out more about Johnson Hana International contact :

Dan Fox BL, CEO of Johnson Hana International,
Directly on: (01) 514 3613 or email dan@johnsonhana.com

30, Kildare St, Dublin 2.

Family litigation challenges – the judicial perspective

Sir James Munby (president of the Family Law Division of the High Court of England and Wales) and a number of other English High Court judges will travel to Ireland on 13 July to share their views at a conference that will address current challenges in family-law litigation.

The conference will open with a dinner in the King's Inns on the evening of Wednesday 13 July.

Following closed judicial sessions on the morning of 14 July, the programme will continue with a buffet lunch at the King's Inns at 12.30pm, followed by three open sessions. Each open session will involve a presentation by an English judge and a brief response by an Irish judge. Among the Irish contributors will be Mrs Justice Finlay Geoghegan. There will also be a Q&A session. Attendance at these open sessions will attract three CPD points.

The conference is organised by the Family Lawyers' Association of Ireland and is sponsored by the Irish Judicial Studies Institute, the Bar Council, the Law Society, and the Dublin Solicitors' Bar Association.

Further details concerning registration and booking for dinner will be available at www.familylawyers.ie in the coming weeks.

'Outstanding contribution to legal profession' award

The head of the employment law practice at Arthur Cox, Séamus Given, has received the 'outstanding contribution to the legal profession' award at the Chambers Europe Awards. Chambers presents the award to one European lawyer each year.

Given has 30 years' experience advising employers on employment law and industrial relations. The award citation states: "Séamus Given of Arthur Cox is a clear star in the field of employment law. He is praised for his deep experience and knowledge of all aspects of Ireland's employment law and issues surrounding industrial relations. His clients have described him as 'the best in the business' due to his level of expertise, practical insights, speed of response and outstanding professionalism."

Originally from Kerry, Séamus is a LLM and BCL graduate from UCC.

Malawi by the sea

Irish Rule of Law International will be hosting the annual 'Malawi by the Sea' fundraising dinner in the beautiful National Yacht Club, Dun Laoghaire, on Friday 24 June to raise much-needed funds for the Access to Justice Programme in Malawi. The programme is undertaken by volunteer Irish lawyers who aim to address the issue of overcrowding and illegal detention in Malawi's prisons by providing direct legal assistance as well as building capacity in the criminal justice sector.

The dinner is always a wonderful evening and is an important event in the calendar each year to raise much-needed funds to support the work of this programme.

Tickets are €70 and should be purchased or reserved through IRLI from Vanina Trojan prior to the event. You can contact Vanina at vtrojan@irishruleoflaw.ie or tel: 01 817 5331. You can read more about the programme on www.irishruleoflaw.ie.

Keane McDonald helps Jack and Jill

Legal recruitment firm Keane McDonald held its annual cocktail evening in aid of the Jack and Jill Children's Foundation at the Merrion Hotel recently. Pictured are Vicki Weinmann, Yvonne Kelly, Jonathan Irwin, Alison O'Sullivan and Carrie Richmond

A picture speaks a thousand words

The Law Society is now on Instagram. Its new account highlights the best photographs from Blackhall Place and beyond, including Society events and initiatives around Ireland.

You can find it at www.instagram.com/lawsocietyireland, or search for 'lawsocietyireland' in the Instagram app.

Updates from the Law Society can also be found on LinkedIn, Twitter, Facebook and Google+.

FOCUS ON MEMBER SERVICES

A problem shared...

Solicitors dealing with a work-related issue can find themselves in a stressful and, indeed, lonely place. 'Consult a Colleague' is a free, confidential, nationwide helpline to assist solicitors with professional and personal issues. All of the helpline volunteers are experienced solicitors. Callers to the helpline can choose to remain anonymous for the duration of the call.

The Consult a Colleague helpline is a Dublin Solicitors' Bar Association initiative, which is funded by the Law Society but completely independent of it. It has over 35 volunteers.

How can the helpline assist?

Typical professional issues that the helpline can assist with include:

- Running a practice,
- Finance and accounts,
- Staff and HR issues,
- Legal situations, and
- Compliance issues.

Consult a Colleague volunteers can assist with personal issues, such as bullying, harassment, and inability to cope with work.

Contact the helpline

Callers to the helpline (01 284 8484) will hear a recorded message with the contact details of the volunteers on call for that week. There are two solicitors on call at all times.

Alternatively, you can contact any of the volunteers on the panel. A list of volunteers and their contact details are available on the Consult a Colleague website at www.consultacolleague.ie.

New graphic for use by solicitors proposed

The Law Society's AGM last November passed a motion to investigate the design of a graphic for use by solicitors on marketing and promotional materials. The motion was proposed by Council member Sonia McEntee and seconded by Richard Grogan.

A working group was convened to complete the investigation and report back to members at the 2016 AGM. The members of the working group include Keith Walsh (chair), Sonia McEntee, Richard Grogan, Martin Crotty, Greg Ryan, Ken Murphy, John Elliot, Teri Kelly and Kathy McKenna (secretary).

The designer of the Law Society's own logo, Red Dog, developed three potential graphics for use by members. The working group now wants to hear from members about their preferred design from among these options.

If a graphic for members is adopted at the November 2016 AGM, members holding a current practising cert will be able to use this image on their future letterhead, website, and/or marketing material. They will need to adhere to the minimum size requirements (specified below).

To indicate your preferred option, complete the poll at www.lawsociety.ie/membergraphic. The poll is also being sent to the profession by email on 7 June.

20mm

LAW SOCIETY OF IRELAND
PRACTISING SOLICITOR

52mm

Option 2

48mm

37mm

Option 3

LAW SOCIETY OF IRELAND
PRACTISING SOLICITOR

40mm

Shown minimum usable size

Lakes County choral surprise strikes right note

The Faculty of Notaries Public in Ireland recently held its AGM, CPD course and dinner in the beautiful Farnham Radisson Hotel and Spa in Cavan. The event was well attended by notaries from Malin to Mizen. Kevin Neary (current president of the College of Notaries in Northern Ireland) attended as a special guest.

Lectures were delivered by member notaries, including Dr Eamonn G Hall, who addressed the subject of 'The status and significance of the notarial act and public document in law and issues concerning the Department of Foreign Affairs in the notarial process', David Walsh, who spoke on 'Risk management – the sequel', and Ross McMahon on 'The future: eNotarisation and the eApostille'.

Surprise after-dinner entertainment was provided by the all-male Cavan Rugby Club Male Voice Choir, who participated a few days later in the St Patrick's Day Parade in New York. Those who stayed over and made a weekend of it were treated on Saturday morning to a very enjoyable walk on the grounds of the Farnham Estate, with expert discourse on the flora and fauna provided by a local.

Avery case attorney a major draw at EYBA's spring conference in Belfast

A delegation from the Law Society's Younger Members Committee attended the very successful European Young Bar Association's spring conference, hosted by the Northern Ireland Younger Solicitors' Association in Belfast on 8 April 2016. The committee shared experiences and ideas with colleagues from across Europe.

The conference highlight was undoubtedly the contribution of keynote speaker Jerry Buting – the defence attorney in the *Steven Avery* case, as covered by the Netflix documentary *Making a Murderer*. Mr Buting provided an excellent insight into the *Avery* case and shared his detailed knowledge on the use of expert witnesses and DNA evidence.

Conference delegates also discussed the legal sector's contribution to the economy, business networking, social media law and the International Criminal Court.

Lunch at the Inn of Court was followed by an informative tour of the Royal Courts of Justice, while Crumlin Road Gaol was the rather unusual setting for the gala dinner.

At the European Young Bar Association's spring conference in Belfast were Carol Eager (chairperson, Law Society Younger Members Committee), Jerry Buting, Emer O'Connor (vice-chairperson, Younger Members Committee), Sinead Travers (secretary, Younger Members Committee)

THERE'S AN APP FOR THAT

Healthy option for PI lawyers

APP: HEALTHVAULT PRICE: FREE

HealthVault is a *Windows* and web-based programme available in app form for iPad, *writes Dorothy Walsh*. What *HealthVault* does is create an online filing and recording system for all of a person's or family's health matters, appointments, medical conditions, treatments, prescriptions, and allergies, among others.

It got me thinking in terms of personal injuries actions and whether it could add any value to the management of a personal injuries file. I tested the scenario with a willing client and the findings have been interesting.

I asked the client in question to create an account at healthvault.com and then to download the app to their iPad. The next step was to set my office up as a contact on the app and also as an email recipient of data from my client.

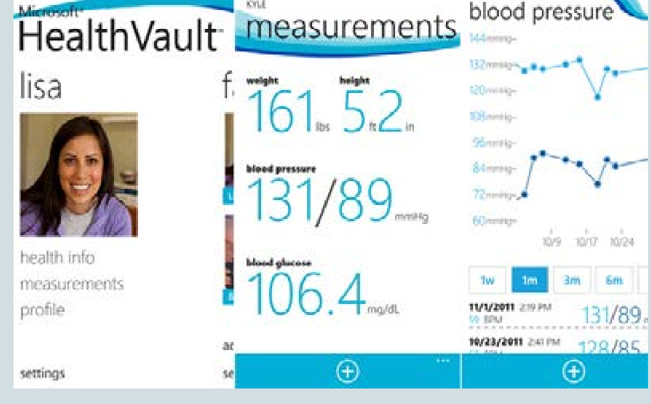
My client then added in all of the details about the accident he was asking me to represent him on, and added details of the medical practitioners he had attended, medications, copies of receipts for medications, medical appointments, travel expenses arising, symptoms, advices received from medical practitioners, and so on.

When my client attended with me a number of weeks (and medical appointments) later, we were able to have a well-constructed meeting, at which I was able to go through the various appointments and vouching with him. There was no "I forgot to tell you…" at the end of our consultation.

I was able to print out the data and attach it to my file attendance and update my 'booklet of special damages'. After that consultation, I got thinking about the issue of fees, and was delighted to be able to attach the actual subject matter of the meeting to my detailed attendance note.

The benefit of this app and the ability to record valuable information is in the palm of a client's hand at any time – while at medical appointments, or in the throes of experiencing a particular symptom, following a treatment, or while incurring an expense. It is a great tool for any client to have in order to keep their end of a file as accurate and up to date as possible.

I am still in the early 'trying-and-testing' stage but, so far, have found it to be a great asset. There is some front-loading of information, as one would expect, but it is an absolutely excellent resource in both family and professional senses, and it could prove to be an incredibly useful tool for PI file management.



Professional practice course plucks juicy Apple award

Apple has awarded the Law School's Professional Practice Course the designation of 'Apple Distinguished Program 2015-2017' for its one-to-one iPad programme for trainee solicitors.

The designation is reserved for educational programmes that meet criteria for innovation, leadership, and educational excellence, and it recognises the Law School as an exemplary learning environment.

Director of education TP Kennedy says: "As the Law Society is the sole provider of solicitor training in Ireland, our vision is to train 21st century solicitors who can meet the exacting requirements of their clients and their firms. Modern solicitors not only need to possess an acute understanding of the law and its application, but also need to possess the digital skills necessary to serve their clients in a globalised Ireland. Our iPad programme helps achieve that."

In 2013, three PPC pilot modules were redesigned as blended-learning courses, allowing for an 'anytime, anyplace, anywhere' approach. Now, all Law School trainees receive an iPad and are introduced to the educational apps necessary to complete the pilot modules, including *iTunes U* and *iBooks*. Course material is provided through *iTunes U* – Apple's educational platform.

PIC: JASON CLARKE PHOTOGRAPHY

The Law Society has been presented with the Apple Distinguished Program award – the first professional educator in Europe to receive the accreditation. At the award ceremony on 26 May were *(l to r)*: Caroline Kennedy (IT coordinator for education, Law Society), TP Kennedy (director of education) and Éanna Ó Brádaigh (Apple's business development manager – education)

iPads are used in lectures and tutorials to facilitate a more interactive approach to learning and are incorporated across all PPC modules. This has led to more interactive small-group sessions.

The introduction of Apple technology has fundamentally changed how trainee solicitors are learning – and how they are taught. Aside from providing trainees with a one-stop shop for all their course materials, iPads give trainees the opportunity to continue their learning outside of the formal classroom setting, for example, through e-lectures.

Similarly, associate faculty have access to useful online resources when preparing their teaching. Lecturers have been released from the confines of the podium, allowing them to engage more freely with trainees and encouraging greater discussion.

In the past three years, nearly 2,000 trainee solicitors have received iPads. All 32 compulsory and optional PPC modules incorporate the iPad into their design or delivery. Over 1,000 associate faculty members, themselves practising solicitors or barristers, have been involved in teaching with the iPad since 2013.

On top of that, 20 staff members have received comprehensive training to maximise the potential of the iPad and other Apple technology in the classroom. For instance, over 60 interactive, multi-touch e-books have been created by Law Society staff as educational aids for trainees. These e-books contain video, audio, diagrams and other multimedia to assist students with different learning styles.

To make the learning experience even more effective, Apple TV – a digital media receiver that displays iPad content – has been installed in 21 teaching spaces throughout the Law Society.

The full story of the Law Society's journey to delivering a 21st century curriculum can be explored in a multi-touch e-book, created by director of education TP Kennedy. It is available on Apple's iBookstore at https://itun.es/ie/XvOYbb.l.

Any issues with section 117 of the *Succession Act*?

The Law Reform Commission is currently reviewing a range of issues concerning section 117 of the *Succession Act 1965* as part of its Fourth Programme of Law Reform.

Section 117 empowers the court to order that proper provision shall be made for a child of a testator, where the testator has failed in his moral duty to make proper provision for the child in accordance with his means.

The commission hopes to obtain the views of legal professionals and others who are likely to have a particular interest or specialist knowledge in the area. It has published on its website an *Issues Paper on Section 117 of the Succession Act 1965* (LRC IP 9-2016), which outlines the commission's work on the project to date. The commission is asking practitioners to consider the questions raised in the issues paper.

Practitioners should be aware that submissions may be disclosed by the commission in response to requests under the *Freedom of Information Act 2014*. Any material contained in submissions that one wishes *not* to be made public in this way should be clearly identified as confidential in the submission. Any information that is regarded as commercially sensitive should be clearly identified in submissions – and the reason for its sensitivity stated. In the event of a request under the *Freedom of Information Act*, the commission will consult with respondents about information identified as confidential or commercially sensitive before making a decision on a freedom-of-information request.

Details of how to engage with the commission on this project paper are contained in the issues paper itself. Please feel free to respond using the online comment boxes on the issues paper or, if you prefer, respond separately by email to successionsection117@lawreform.ie or by post to 35-39 Shelbourne Rd, Ballsbridge, Dublin 4, Ireland; D04 A4EO.

Closing date is Monday 27 June 2016.

Conferring ceremony for Irish language solicitors

PIC: CIAN REDMOND PHOTOGRAPHY

Graduates of the Advanced Legal Practice Irish course 2010-15 on 16 March. Also attending were *(front row, l to r)* Maura Butler (course manager), Joe McHugh (Minister of State for Gaeltacht Affairs), Simon Murphy (president, Law Society), Micheál Ó Cearúil (Irish Legal Terms Advisory Committee), Ken Murphy (director general), Valerie Peart (chair, Education Committee), Dr Geoffrey Shannon (deputy director of education) and Robert Lowney (course administrator)

The Law Society marked *Seachtain na Gaeilge 2016* with a bilingual conferring ceremony for graduates of the Law School's Advanced Legal Practice Irish (*Ardchúrsa Cleachtadh Dlí as Gaeilge*) course in the Presidents' Hall on 16 March.

Joe McHugh (Minister of State for Gaeltacht Affairs) was the keynote speaker on the evening, and Law Society President Simon Murphy awarded each graduate their certificate.

In the context of the Advanced Irish language Skills Initiative, the minister encouraged graduates to consider a career in one of the European institutions. He congratulated the Society on its Legal Practice Irish courses being awarded the European Language Label in 2012 in its pursuit of obligations to the provision of solicitor training in Irish.

Course manager Maura Butler thanked the multidisciplinary team that had been convened to develop and deliver annual Legal Practice Irish courses since 2008. The team includes practising solicitors and barristers, Irish language professionals, university lecturers, course administrator Robert Lowney, and Law School IT colleagues.

Advanced Legal Practice Irish is unique among the Law Society's courses, as it is a PPC2 elective that is open also to members of the profession to take as a CPD course. In total, 107 people have successfully passed the course since 2010. As prescribed by section 40 2(D) of the *Solicitors Act 1954* (as amended), those who successfully pass the course and who are on the Roll of Solicitors are placed on the Society's Irish Language Register and *Clár na Gaeilge* as solicitors who practise through Irish. To find the details of these solicitors, visit www.lawsociety.ie/Find-a-Solicitor/Clar-na-Gaeilge.

The course runs annually during PPC2 (usually from April to June). Details of the course can be found at www.lawsociety.ie/Find-a-Solicitor/Clar-na-Gaeilge/Ardchursa-Cleachtadh-Dli-as-Gaeilge.

FLA conference goes Leeside on 18 June

Séan Ó hUallacháin SC (chair of the Family Lawyers' Association of Ireland) has announced details of the association's annual conference and AGM on 18 June in Maryborough House Hotel and Spa, Douglas, Cork.

Chaired by Mrs Justice Marie Baker, the top-class line-up will include:

- **Dr Louise Crowley of UCC (solicitor and nominee in the 2014 DSBA Law Book Awards), who will deliver a paper on the *Children and Family Relations Act 2015*,**
- **Ciara Matthews (solicitor, Gallagher Shatter), who will address the 2015 act with her paper 'Hearing the views of the child – a practical consideration', which will explore the issue from the viewpoint of an experienced practitioner,**
- **Paul McCarthy BL, who will speak on challenges posed by family law practice, and**
- **Mark O'Riordan BL, who will address the subject of 'Succession law: aspects of the modern family'.**

The conference begins at 11.30am. The pre-dinner drinks reception is being sponsored by the Cork branch of the association. Dinner will follow at 8pm in the conservatory-style Orangerie, which adjoins the hotel's 300-year-old gardens. Entertainment and dancing will follow.

The full price for attending the conference and the dinner is €130. Practitioners qualified for five years or less can benefit from a reduced full-delegate rate of €70. The cost for day delegates attending the conference and lunch is €70, while a similar rate applies for partners accompanying delegates to the drinks reception and dinner. Early booking is advised.

Accommodation should be arranged directly with the hotel (tel: 021 436 5555). The standard deluxe rooms rate is €105 per night (single occupancy) or €150 per night (double). A limited number of executive rooms with balconies are available at €135 (single) and €180 (double).

Conference fees are payable to the Family Lawyer's Association and should be sent to treasurer Sarah Pierce (Reidy Stafford); DX 50001; Newbridge, Co Kildare, or to Ferga McGloughlin BL; DX 810257.

Society slams insurance industry costs smokescreen

The insurance industry has engaged in a programme of propaganda, distortion, and deflection. In the last few months, as insurance premiums have climbed ever-higher, the Law Society has been hitting back by correcting misinformation and clearing the smokescreen.

On 8 May, the *Sunday Independent* reported that Law Society director general Ken Murphy accused the insurance industry of operating a "huge propaganda machine". He said: "The insurers slashed premiums, undercharged, under-reserved and, as a result, drove competitors from the market (for example, Quinn, Royal Sun Alliance and Setanta) and now – with far less competition – are massively increasing premiums on the back of the long-suffering motorist.

"It is outrageous that they are unjustifiably seeking to blame lawyers and claims costs. This is a complete red herring. In no way do any changes in costs justify premium hikes of 20%, 30%, or more in annual premiums.

Murphy: 'Legal costs play practically no role'

Gilhooly: 'Insurers – not as unprofitable as they would have you believe'

"Legal costs play practically no role," he continued. "The vast majority of claims are handled by the Injuries Board or are settled directly by insurers. The tiny proportion where proceedings are issued are subject to ever-decreasing levels of costs by the stringent taxing regime.

"The insurance companies are constantly blaming everybody but themselves. They have no explanation but to blame someone else," Murphy said.

A Department of Transport memo released under the *Freedom of Information Act* has provided accurate and authoritative observations about the true cause of the recent massive hikes in motor insurance premiums.

The memo states: "Motor insurers are now imposing higher premium rates to return to profitability or to boost profitability after a number of years of insurers competing for market share, with prices driven down."

The memo further questions the 'party line' of the insurance industry to justify soaring premiums, such as high Irish court awards, the level of Injuries Board awards, legal costs and the 2014 increase in maximum Circuit Court awards from €38,000 to €60,000.

Injuries Board CEO Conor O'Brien has criticised the almost total lack of information published by the insurance industry, including the number of claims, average settlement, costs of settlement and time to settle – all of which are published by the insurance industry in Britain.

Law Society senior vice-president Stuart Gilhooly also wrote an opinion piece in the *Sunday Independent* in which he questioned whether the insurance business was as unprofitable as the industry would have consumers believe. "The largest insurer, Aviva Ireland, has produced its best profits for five years, up 32% to €91.2 million, while continuing to put on the poor mouth," he wrote.

Lawyers who feature in the make-up of the 32nd Dáil

The recent general election threw up some major surprises, and the results have certainly made for interesting times ahead for the 32nd Dáil.

Of the 158 TDs elected, two are solicitors and five are barristers. The solicitor members are Charlie Flanagan and Josepha Madigan.

Flanagan retained his post as Minister for Foreign Affairs and Trade, being reappointed on 6 May 2016. He has served in the position since July 2014 and was previously Minister for Children and Youth Affairs. A qualified solicitor, he practised law for many years. He was first elected to represent Laois-Offaly (now the constituency of Laois and South Kildare) in Dáil Éireann in 1987.

First-time general election candidate Josepha Madigan (FG, Dublin Rathdown) was the second candidate to be elected in her constituency. Shane Ross topped the poll.

Charlie Flanagan TD

Josepha Madigan TD

Barristers in the Dáil

- **Jim O'Callaghan (FF, Dublin Bay South) – served on Dublin City Council's joint policing committee,**
- **Catherine Connolly (Ind, Galway West) – former Labour councillor and a practising barrister,**
- **James Lawless (FF, Kildare North) – studied maths and finance in TCD and later trained as a barrister,**
- **Lisa Chambers (FF, Mayo) – ran in the 2011 general election but failed to win a seat on that occasion,**
- **James Browne (FF, Wexford) – barrister and previously worked in the hotel industry.**

Madigan has practised as a solicitor for the past 17 years and is head of the family law and civil litigation department at her firm, which is based on Lower Kimmage Road, Dublin 6. Her main area of expertise is divorce and separation. She is a member of the Law Society's Family and Child Law Committee.

Several solicitors were not re-elected to the Dáil on 26 February 2016. It is not all that long since there were as many as nine solicitors who were members of Dáil Éireann. Solicitors used to substantially outnumber barristers in the lower house, but not on this occasion. This is just one of the many swings that has occurred as a result of the recent election.

New chieftain elected for Royal County

At the AGM of Meath Solicitors' Bar Association (MSBA) held on 20 April were *(l to r)* Elaine Byrne (outgoing secretary, MSBA), John Lacy, John Murchan and Catherine O'Flaherty (speaker, Law Society)

Mr President – Paul Moore (Malone & Martin Solicitors) heads up the MSBA for 2016

ALL PICS: SEAMUS FARRELLY, MEATH CHRONICLE

Barry Lysaght, Sarah Lysaght and Jim Martin

Tadgh Boyle, Oliver Shanley, Michael Finnegan, Brian Coady and Dermot Byron

William O'Reilly and Ronan O'Reilly

Caitriona McMahon and Mary Smyth

Patricia T Rickard Clarke (speaker) and Carla Bannon

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Society team takes bronze at environmental moot

In April, Ruth Hughes (McCann FitzGerald), Peter Crawford (Philip Lee) and Arthur Cullinan (Ronan Daly Jermyn) travelled to Gulfport, Florida, as members of the Law Society's team for the 20th International Environmental Law Moot Court competition.

The theme of this year's fictional case before the International Court of Justice was cultural property and the protection of elephants. Teams considered the difficulties of enforcing international legislation governing the trade of endangered species, and the perceived merits of prosecution in deterring illegal wildlife trade over alternative approaches, such as the crushing of confiscated ivory.

The team won all its preliminary rounds against representatives from China, India, South Korea and the United States before defeating West Bengal National University of Juridical Sciences, India, in the quarter-finals.

PIC: JASON CLARKE PHOTOGRAPHY

Ruth Hughes, Peter Crawford, TP Kennedy (team coach, Law Society) and Arthur Cullinan

The Law Society team narrowly missed out on a place in the final after a tough semi-final against the University of Philippines School of Law, but was delighted to finish in third place. At the awards ceremony, Ruth Hughes was named second-best oralist in the preliminary rounds.

The team wishes to extend its thanks to TP Kennedy (director of education) for his generous help and patience throughout all stages of the competition.

President visits Garden County

On 21 April, Richard Joyce (president of the Wicklow Solicitors' Bar Association) welcomed Law Society President Simon Murphy and director general Ken Murphy to a conference in the Glenview Hotel, Wicklow. The president and director general made an informative presentation to WSBA members. Particular focus was put on the *Legal Services Regulation Act* and how it will have a significant bearing on all practitioners.

(Front row, l to r): Josephine Dutton, Ken Murphy (director general), Simon Murphy (president, Law Society), Richard Joyce (president, WSBA), Barbara Lydon (committee member, WSBA), Catriona Murray (treasurer, WSBA) and Damien Conroy (honorary secretary, WSBA); *(second row, l to r)*: Patrick Jones, Simon Earls, Mark Felton, Michael Moran, Bernadette Goff, Brendan Moloney, Dermot Hickey, Brian Robinson and Aine Hogan; *(third row, l to r)*: Dervla Mulcahy, Josephine Sullivan, Patrick Egan, Patrick McNeice, Karl Carney and Donal O'Sullivan; *(back row, l to r)*: Marie Hynes, Bernard O'Beirne, Maria Byrne, June Green, Denis Hipwell, Ian Bracken, Andrew Tarrant and Fergus Kinsella

Viking venue for Waterford Law Society's annual seminar

PIC: GARRETT FITZGERALD PHOTOGRAPHY

Attending Waterford Law Society's annual seminar at the Viking Hotel, Waterford, on 16 February 2016 were *(front, l to r)*: Gerard O'Connor, Fiona Grogan, Rosie Flynn, Gerard O'Herlihy, Ken Murphy (director general, Law Society), Simon Murphy (president, Law Society), Nicholas Walsh (president, Waterford Law Society), Frank Heffernan, Frank Halley (secretary, Waterford Law Society), Richard Hammond (speaker) and Neil Twomey; *(back, l to r)*: Della Power, Morette Kinsella, Valerie Lyons, Helen O'Brien, Bernadette Cahill (Council member) and Danny Morrissey

TSBA launches new website for members and public

PIC: JOHN KENNY PHOTO GRAPHICS

The Tipperary Solicitors Bar Association (TSBA) launched its new website – www.tipperarybarassociation.ie – at its recent meeting with Law Society President Simon Murphy and director general Ken Murphy.

TSBA president Mariea Flanagan said: "The website will provide a useful resource tool for practitioners, allowing them to keep abreast of recent changes in training courses, while also allowing the public to have a direct insight into legal topics and developments and providing a human face to the legal profession in Tipperary."

Simon Murphy addressed over 70 TSBA members on the *Legal Services Regulation Act 2015*. The Courts Service report on legal services in Tipperary was also discussed.

Murphy and the director general assured those present that the Law Society, with the TSBA, would continue with their efforts to maintain the current level of legal services and court sittings in Tipperary, including the retention of Nenagh Courthouse, and that it would do all it could to help in re-establishing the Probate Office in Clonmel.

Prime Time's Miriam shares her solicitor stories

PIC: LENSMEN

RTÉ *Prime Time* presenter Miriam O'Callaghan (who is a qualified solicitor) was the guest speaker at the Law Society's parchment ceremony for newly qualified solicitors on 28 April 2016. Attending the dinner held in her honour were *(front, l to r)*: Miriam O'Callaghan, Simon Murphy (Law Society president) and Mr Justice Kevin Cross; *(back, l to r)*: Geraldine Clarke (past-president), Judge Gerard F Griffin (past-president), Teri Kelly (director of representation and member services), Stuart Gilhooly (senior vice-president), James MacGuill (past-president), Mary Keane (deputy director general), Kevin O'Higgins (past-president) and Ken Murphy (director general)

Doing it the Kerry way or the highway

Kerry Law Society held an all-day CPD event on 29 April 2016 at the Rose Hotel in Tralee, with more than 100 solicitors attending. The speakers included John Elliot (director of regulation, Law Society), Aine Gleeson (O'Mara Geraghty McCourt) who dealt with requisitions on title, Marian Lee (Grant Thornton) who discussed VAT on property, and John Costello (Orpen Franks) who spoke on the *Assisted Decision Making (Capacity) Act 2015*. Kerry Law Society will be organising further CPD events in the coming months. The Law Society will be hosting a cluster event in Tralee on 8 September. All are welcome.

PIC: JOE HANLEY

Guest speakers at the Kerry Law Society CPD event on 29 April included *(l to r)* Donal J Browne, Aine Gleeson, John Galvin (president, Kerry Law Society), Deirdre Quinn and John Elliot

Calcutta Run – help us to cross the €200k finish line

The Calcutta Run broke numerous records on 21 May 2016, seeing the highest number of participants ever, including runners/walkers, burgers eaten and beverages consumed! And despite monsoon-like rain, the Finish Line Festival rocked on until 5pm.

We're not quite across the finish line yet, however, and need your help to get across the funding target line. The aim this year is to give the Peter McVerry Trust and GOAL's orphanages in Calcutta €100,000 each. If you haven't donated yet, you can still do so. It takes one minute and any amount is welcome. Go to www.idonate.ie, enter 'Calcutta Run' in the 'find a charity' section, click on 'Calcutta Run 2016' or the 'read more' link and select the yellow 'donate now' button.

The homeless in Dublin and the kids in Calcutta need all the help they can get!

5k winners in the Calcutta Run *(l to r)*: Fintan Kerins (Arthur Cox), Philip Mason (Mason Hayes & Curran) and Will Greensmyth (Walkers)

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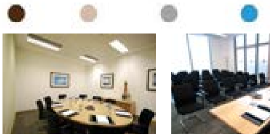
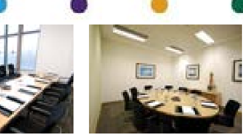
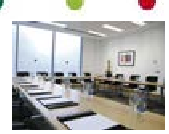

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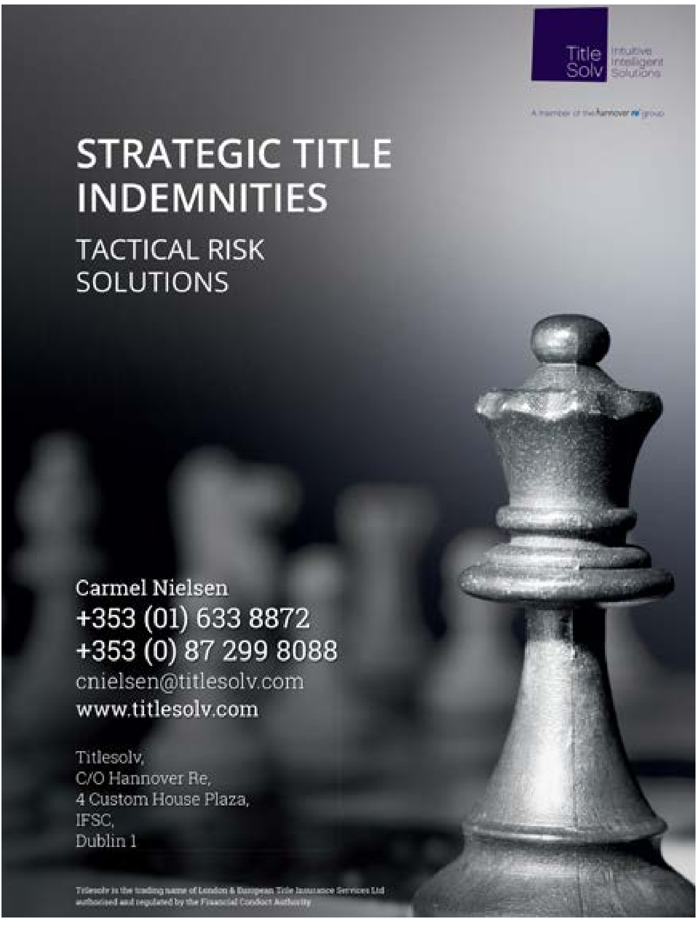

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Sandra Murphy, Solicitor and Partner at Gilmartin and Murphy Solicitors, Co. Mayo.

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FOR MORE INFORMATION VISIT: **http://www.nuigalway.ie/courses/**

Job Shadow Day shines light on world of work

PIC: DAVID MURPHY

Grainne Drumgoole, Cormac Ó Cúlain, David Byrne and Max Johnson

'Job Shadow Day' – the national day of awareness to promote equal employment opportunities for people with disabilities – took place on 27 April. The Law Society welcomed Roslyn Park College students David Byrne, Grainne Drumgoole and Max Johnson to Blackhall Place. All three are level 5 business, administration and finance students and were given the opportunity to visit the Society's different departments.

David, Grainne and Max 'shadowed' various Law Society staff members throughout the course of their working day, providing them with a better understanding of the world of work.

The aim of Job Shadow Day is to highlight the valuable contribution that people with disabilities make at work. Roslyn Park College is part of the National Learning Network – the training wing of the Rehab Group. Since it was officially opened in Sandymount in 1983, the college has helped thousands of people at a disadvantage in the labour market to learn the skills they need to build careers in jobs that reflect their interests and abilities.

It's 'Goodnight Vienna' at Vis arbitration moot

Seán O'Halloran, Clodagh Gill and Niall Hayes at the international rounds of the 23rd Willem C Vis International Commercial Arbitration Moot last March

The Law Society was recently represented by Clodagh Gill (Smyth and Son, Drogheda), Niall Hayes (McDowell Purcell) and Seán O'Halloran (James Riordan and Partners, Cork) at the international rounds of the 23rd Willem C Vis International Commercial Arbitration Moot, which took place from 17-25 March 2016 in Vienna. The team was coached by Rachael Hession.

The Willem C Vis Moot is the largest and the most prestigious international commercial law competition, with around 310 participating teams from more than 50 countries. It is also the only worldwide moot court competition held by the United Nations.

The goal of the moot is to foster the study of international commercial law and arbitration among students of different countries, and to train participants in methods of alternative dispute resolution.

Participants drafted memoranda for claimants and respondents (based on the moot problem) and presented oral arguments – both of which were settled by arbitral experts. Despite not qualifying for the final round, the team presented excellent arguments and were given very complimentary feedback from the various arbitral tribunals.

LEGAL EZINE FOR MEMBERS

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

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letters

Swearing an oath on a digital Bible?

From: Andrew Cody, Reidy Stafford, Solicitors, Newbridge, Co Kildare.

I read Colette Reid's excellent article 'Nothing but the truth' in the May *Gazette* (p37). But is it really necessary to swear on a physical religious text?

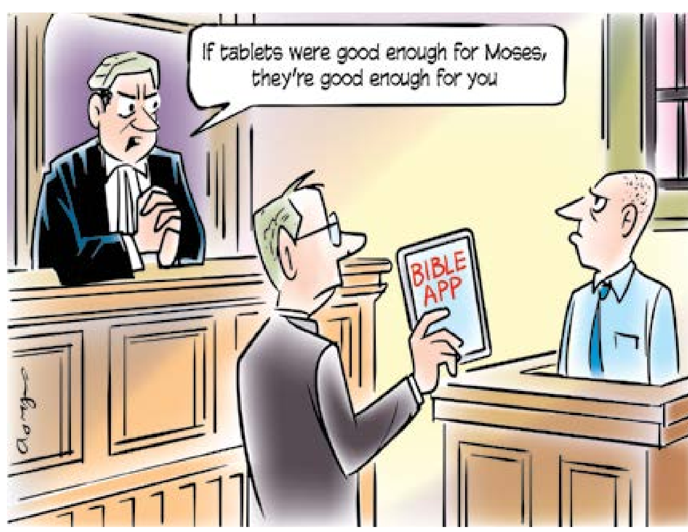
Suzi LeVine was sworn in as the new American ambassador to Switzerland and Liechtenstein in 2014 by taking the oath of office on an electronic copy of the US Constitution. The former Microsoft executive solemnly swore her oath of office with her hand on a Kindle. She had opened the US Constitution at the 19th Amendment, which states that "no citizen should be prevented from voting on account of their sex".

LeVine explained her reasons as follows: "As cool as a copy of the Constitution from the 18th century would have been, I wanted to use a copy that is from the 21st century and that reflects my passion for technology and my hope for the future."

LeVine was not the first American official to take the oath of office using an electronic device. In 2013, a group of firefighters from Atlantic City used a Bible app downloaded onto an iPad and, in early 2014, a Long Island county executive took his oath in the same way.

In both cases, the use of the iPad was impromptu, as no one had remembered to bring a printed copy of the Bible – and an iPad happened to be at hand.

Under section 9 of Ireland's *Electronic Commerce Act 2000*, "information shall not be denied legal effect, validity or enforceability solely on the grounds that it is wholly or partly in electronic form, whether it has an electronic communication or otherwise". Section 10 provides that sections 12 to 13 are without prejudice to the law governing the making



of an affidavit. Sections 12 to 23 deal with the requirements for documents to be signed and witnessed. As section 9 was not excluded, it appears to me that the use of a digital Bible is permitted in the swearing of an oath.

Bibles and other holy books demonstrate our beliefs and virtues, and bring a physical aspect to the taking of an oath, which would otherwise be only verbal. Bibles are sacred documents and, very often, handed down through generations and historically recorded the significant milestones of each of those generations. By contrast, the Kindle, iPad or iPhone are nothing special and are much like any other electronic device.

Some will say that digital versions are not as holy, but is an LCD screen any less holy than paper and ink? On the other hand, the common definition of 'holy' is that of being set aside for religious purposes. An app digitally mixed with Facebook, Twitter, RBS 6 Nations and dozens of other apps and programmes is hardly set aside for religious purposes.

One thing, however, is true – digital versions of the Bible symbolise a modern commonality, namely the amount of time all of us spend looking at a screen.

Purists will be horrified at the sight of a deponent holding an iPhone in his uplifted hand and saying "I swear by almighty God…"

It emphasises for believers, and non-believers, that the time has come for the simple solution proposed by the Law Reform Commission to be implemented without further delay.

Is there any way to stop this lunacy?

From: Richard H McDonnell Solicitors, Market Square, Ardee, Co Louth

The following is a redacted copy of a letter sent by the above solicitors' firm to the Department of Social Protection, which has been forwarded by that firm to the Gazette for republishing.

Social Welfare Services Office
Recovery of Benefits and Assistance Section
PO Box 12515
Dublin 1

Dear sirs,

We acknowledge receipt of your letter dated the 25th inst (copy attached for ease of reference). This is the first time we have been asked for a client's written consent for a certificate of benefits paid, information that we have been applying for and receiving from you for more than 30 years and on innumerable occasions since the coming into effect of the *Data Protection (Amendment) Act 2003*.

We also note that your office issues such certificates to us and to insurance companies, unsolicited, at an early stage in almost all personal injury cases now (and indeed we wonder how on earth you even know that such claims have even been made before court proceedings have issued … is the Injuries Board notifying you? If so, do they not have any concerns about the *Data Protection Act*?).

If you are so concerned about the *Data Protection Act*, why do you engage in that practice?

All we are trying to do is to assist you (without payment) in recovering moneys expended by your department, and we are at a loss to know why you are erecting new obstacles in the way of this.

Presumably we must now resign ourselves to yet another layer of bureaucracy being added to the most basic commercial transactions and will arrange to obtain a written authority from our client as demanded (for which, of course, no one will pay).

(Editor: see also the article on data sharing in Eurlegal, p58)

viewpoint

HARDIMAN'S LASTING LEGACY

'Loose logic or empty rhetoric rarely escaped a critical eye' – Mr Justice Frank Clarke pays tribute to his former colleague Mr Justice Adrian Hardiman

Mr Justice Frank Clarke is a judge of the Supreme Court

There is a problem with writing about well-known people whom we have known for a long time. There may be too much to say to fit into the space available. There may well be things we cannot – or at least should not – say. Much may already have been written.

Each of these problems applies in spades in the case of Adrian. A great deal has already been written in the short space of time since his untimely death. But that does not mean that much more could not be written or, indeed, that not all of it should.

I was tempted to start by suggesting that Adrian was larger than life. His passions and interests were so widespread and so engaged that it might superficially seem an appropriate phrase. However 'larger than life' sometimes connotes a triumph of style over substance. That would not be Adrian.

He was in many (but, it must be said by no means all) aspects of his life very stylish. His advocacy and debating skills, and his writing, were stylish in the extreme. But that style did not mask the substance behind. While it would not be fair, therefore, to describe Adrian as larger than life, it is, I think, entirely right to say that he lived a large life.

> 'Even where the court divided and one found oneself on the other side, Adrian's forensic analysis upped the performance all round. If not persuaded to agree, you had to up your own game in explaining why'

Insatiable thirst for information

The range of his interests has been well documented. I think it may be fair to suggest that he had an almost insatiable thirst for information, whether trivial or potentially profound. When exposed to even those parts of human endeavour that were not at the forefront of his interests, he always seemed to want to know more about them.

Sport was not, perhaps, one of Adrian's abiding interests. But I well remember, when he and Yvonne travelled to Aintree for the Grand National, that my much-cherished self-image as the world's leading expert on the topic was sorely challenged by Adrian's constant enquiries.

The broad range of his interests was matched by his extraordinary ability to recall. Many a conversation or debate was enlivened by the insertion of accurate details of events long ago. Obscure facts remembered from long-past researches or casual reading were trotted out as if they were gleaned from the detailed papers read yesterday for today's hearing. Large chunks of literature were deployed with ease. Sometimes those talents were deployed in aid of argument, but just as frequently as part of always engaging conversation. Censorship was limited. A good story would not be suppressed simply because it might embarrass, but the same light-touch filter was applied to materials that might embarrass the speaker as much, if not more, than others.

I might be in a position to add just one quotation of relevance to Adrian's public career. As some have noted, Adrian was unique in his university career in succeeding by election to both the auditorship of the Literary & Historical Society (where he defeated me) and the presidency of what was then known as the Students' Representative Council. Given his debating skills, achieving the former office was hardly a surprise.

But the SRC was a different matter. At that time, in the early '70s, it was very much the preserve of the left. It is in that context that a quote from Adrian's election literature might inform. Having introduced himself, his election statement started with the following: "I am seeking your support in the belief that it is in terms of a candidate's approach to the issues and to his ability to deal with them that he must be judged, not in terms of personalities or meaningless political labels.

"I do not intend, as has been the custom in recent years, to offer a single catch-cry of 'community action', 'militancy', or whatever, as an excuse for policies. Instead, I am offering a realistic programme, which, with reasonable negotiating skill and hard work, is attainable this coming year."

An interesting task for a modern-day student would be to compare that manifesto with Adrian's approach as a judge.

Critical eye

But it is, of course, for his contribution to the Supreme Court that Adrian's public reputation will be most remembered. Much has already and much will doubtless in the future be written about Adrian's achievements in that role. From the public perspective, his judgments will remain a lasting legacy. From the practitioner's perspective, his court interventions will remain an important aspect of his legacy.

The point was well made by Michael McDowell during his oration at Adrian's funeral, when he recalled the regular moments when the pen was raised and counsel was asked to repeat the point just made. Loose logic or empty rhetoric rarely escaped a critical eye.

It might, however, be worth recording some impressions on the less public aspect of Adrian's role as a Supreme Court judge. I served with him in that role

> His legacy is in the memories of debate, conversation and exploration, always engaging, never boring, but always overlain with a substantial layer of fun

PIC: PHOTOCALLIRELAND

for four years although, of course, he had been a member of the court for over a decade prior to my arrival. During those four years, there were a number of cases on which, as is obvious from the public record of the judgments, the members of the court were divided on important legal issues. As those judgments record, the views on all sides were strongly felt and robustly put – Adrian's certainly no less so than others.

But I think I can safely say that the internal debate among the members of the court, while just as rigorous and robust as the judgments might suggest, was never conducted in anything other than in a collegiate and professional way. Adrian could think you were very wrong (and you, indeed, him) and his views might be expressed in robust terms, but relations always remained friendly. I was particularly happy that Ruadhán MacCormaic, in his article on Adrian in *The Irish Times*, made that point. A wrong impression could easily have gone out that genuinely and strongly held opposing views might have led to strained personal relations. Nothing could have been further from the truth.

Major contribution

There are, of course, issues on which we can do no more than agree to differ. It would also be wrong to concentrate only on what were, in truth, a relatively small number of cases where the court divided. But the process of internal debate in a collegiate court amounts to a lot more than the simple recording of the views of the panel of judges. Sometimes members are swayed by the force of the argument put forward by a colleague with whom they initially were inclined to disagree. But even when disagreement remains, the need to reflect in one's own considered view a well-put argument to the contrary can only enhance the overall reasoning of the case. In this (perhaps not fully understood and undoubtedly not fully appreciated) role, Adrian made, in my view, a major contribution. Even when not writing a judgment himself, his critique of the case often found its way into the judgments of others, not least where he agreed with the broad result, but expressed concerns about the way in which the court should give reasons for coming to that result.

But even where the court divided, and one found oneself on the other side, Adrian's forensic analysis upped the performance all round. If not persuaded to agree, you had to up your own game in explaining why.

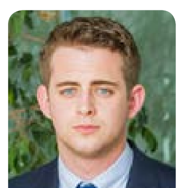
In that perhaps understated way, Adrian often made a contribution, which is not publicly recognised and which I think deserves to be recorded. The very fact that he could engage in robust debate, but remain friendly, must surely have contributed to an engagement with his views and judgments that improved the quality of all.

But to those of us who had the honour and pleasure of being counted among his friends, for many (including myself for over four decades), his legacy is in the memories of debate, conversation and exploration, always engaging, never boring, but always overlain with a substantial layer of fun.

news in depth

NEW PROTECTIONS FOR VICTIMS OF CRIME

The EU *Victims' Rights Directive*, which greatly strengthens the rights of victims of crime, has direct effect in Ireland. James Roddy outlines its implications



James Roddy is a trainee solicitor at McDowell Purcell Solicitors

The interests of victims in the criminal justice system have been ever evolving. Historically, emphasis has been placed on the rights of the accused. Where previous conventions and declarations have failed to protect the victims of crime, the courts placed obligations on member states to give reasons for decisions, to take preventative operational measures, and to adequately protect victims and witnesses throughout the judicial process.

On 16 November 2015, Directive 2012/29/EU (the *Victims' Rights Directive*), establishing minimum standards on the rights, supports and protections of victims of crime, was brought into force. As there has been no domestic legislation implemented, this directive has direct effect in Ireland. The State has previously enacted a number of legislative measures designed to better protect the interests of the victims of crime. For example, section 13 of the *Criminal Evidence Act 1992* deals with the circumstances in which evidence can be given by way of video-link. This measure was adopted where a specific and pressing need was identified as existing. The directive, on the other hand, identifies principles and standards that will inform more broad-based reform in general.

Obligation on states

The rights, supports, and protections set out in the directive aim to protect the dignity and privacy of the victims of crime. There is an obligation on the State to ensure that these rights, supports, and protections are at all times observed.

A victim of crime, as defined by the directive, includes both direct and indirect natural persons – therefore, the rights, supports, and protections of a victim are extended to their family members. Each state will have to create, safeguard, and implement measures to protect victims from victimisation, intimidation, and retaliation for making a complaint.

> **'The directive balances the scales and affords victims of a crime rights, protections, and support that have been far too long overdue'**

The directive places an obligation on each state to take into account and consider the risk of emotional or psychological harm that may occur for a victim during the interview process and, indeed, while participating in any trial.

Without prejudice to the rights of the accused, and in accordance with rules of judicial discretion, the State must ensure that the interviews of victims are conducted without unjustified delay. Prior to interview, the victim should be informed of their entitlements and access to legal aid. Interviews should be kept to a minimum and should be carried out only where necessary. Subsequent interviews should be conducted by the same persons.

Victims' dignity

In seeking to protect a victim's dignity, each state shall comply with all reasonable requests of victims. Where a victim requests the avoidance of contact with the accused, the State should establish the necessary conditions to facilitate this. This in turn places an obligation on the State to ensure that court premises are capable of ensuring that a victim can avoid all visual contact with the accused. Court facilities may have to be upgraded, or cases could be moved to a more suitably equipped courtroom, in certain circumstances to facilitate where a victim applies to give their evidence via video-link. All appropriate measures to protect the privacy of a victim should be taken.

The State shall carry out individual assessments of victims to identify any specific protective needs and determine whether a victim would benefit from any special measures in the course of criminal proceedings. The extent of the individual assessment may be adapted according to the severity of the crime and the degree of apparent harm suffered by the victim.

The obligation rests with the State to ensure that victims with specific protection needs benefit from these protections, while taking into account victims' requests.

The directive makes provision for minors who are the victim of crime. Where a victim is a minor, it will be presumed that the minor has specific protection needs due to their vulnerability to secondary and repeat victimisation, to intimidation, and to retaliation. To determine whether and to what extent they would benefit from special measures, minors shall be subject to an individual assessment.

Where the victim is a minor, the State shall ensure that all interviews with the child victim are audio-visually recorded. These recorded interviews may in turn be used as evidence in criminal proceedings. A special representative should be appointed for a minor where the holders of parental responsibility are precluded from representing the minor as a result of a conflict of interest. Where such a case arises, the minor has the right to legal advice and representation in their own name.

Codified set of rights

The directive has far-reaching powers and has, for the first time, given the victims of crime a codified set of rights,

Each state will have to create, safeguard, and implement measures to protect victims from victimisation, intimidation, and retaliation for making a complaint

PIC: GETTY IMAGES

supports, and protections that will serve to shield and include them and their families in criminal law proceedings.

One of the most significant and welcome developments for victims will be the increased amount of information that they can be provided with. The Office of the Director of Public Prosecutions, on request, must provide a victim with a written summary of reasons for a decision not to prosecute. The directive will not apply retrospectively, but will apply to decisions made on or after 16 November 2015.

Victims will now be offered the opportunity to be notified when the offender is released from or has escaped detention.

In case of release or escape, victims are to be informed of relevant measures issued for their protection. It has been publicly reported that, in the last five years, nearly 300 prisoners have escaped from custody. Of this number, 15 (at the date of writing) are still at large.

Already, the *Victims' Rights Directive* is having an impact in the Irish courts. In Tallaght District Court, Judge Patricia McNamara considered the directive while determining the correct court jurisdiction in a sexual offences case. And in a Circuit Court case involving the possession of stolen antique books, Judge Petria McDonnell has invited the owners of the books to provide a victim-impact report for the upcoming sentencing hearing.

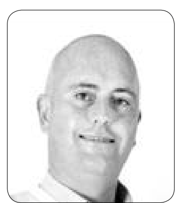
The impact of the implementation of the directive into Irish law will be widely observed. Courthouses the length and breadth of the country will have to ensure that they are capable of protecting victims.

The directive will not affect an accused's right to a fair trial, as enshrined in article 6 of the ECHR. Instead, the directive balances the scales and affords victims of a crime rights, protections, and support that have been far too long overdue.

news in depth

SURVIVING A CRYPTO-VIRUS ATTACK ON YOUR SYSTEMS

If you've been following the news recently, you've probably heard of a new and particularly dangerous form of virus currently doing the rounds – 'ransomware'. Rob Allen pushes Ctrl-Alt-Delete



Rob Allen MCSA has been providing expert advice and solutions to eXpd8 clients for over 14 years

The term 'ransomware' loosely refers to a variety of viruses – *Cryptolocker*, *Paycrypt* and *Lock*, to name but three – that encrypt businesses' information and demand a ransom for a decryption key.

The ransom is typically payable in Bitcoin – which is worldwide, untraceable, and can be converted back to cash by its recipient. Unfortunately, though, even if the ransom is paid, you have no guarantee that you will be provided with the key.

Ransomware viruses can infect computers and networks from a variety of sources. We have seen computers and networks infected via email, through normal web usage and, in one instance, through the deliberate infection of a server.

Email infections generally rely on a user opening an infected attachment (typically a macro-enabled document or executable zip file). Many such emails are extremely well-written and convincing (an excellent example of social engineering), and may have words or phrases specific to the target – for example, 'invoice.pdf' or 'defence.zip'.

CryptoLocker

Your personal files are encrypted!

Your important files **encryption** produced on this computer: photos, videos, documents, etc. Here is a complete list of encrypted files, and you can personally verify this.

Encryption was produced using a **unique** public key RSA-2048 generated for this computer. To decrypt the files you need to obtain the **private key**.

The **single copy** of the private key, which will allow you to decrypt the files, located on a secret server on the Internet; the server will **destroy** the key after a time specified in this window. After that, **nobody and never will be able** to restore files...

To obtain the private key for this computer, which will automatically decrypt files, you need to pay **300 USD** / **300 EUR** / similar amount in another currency.

Click «Next» to select the method of payment.

Any attempt to remove or damage this software will lead to the immediate destruction of the private key by server.

Private key will be destroyed on 10/20/2013 12:37 PM

Time left 72 : 34 : 50

Next >>

Web infections are facilitated by PCs with out-of-date browsers or third-party plugins like Adobe *Flash* or *Java*. You could visit a perfectly normal and legitimate website, using an advertising network that has been compromised, and get infected, as we saw in one case where an out-of-date *Flash* plugin facilitated the infection.

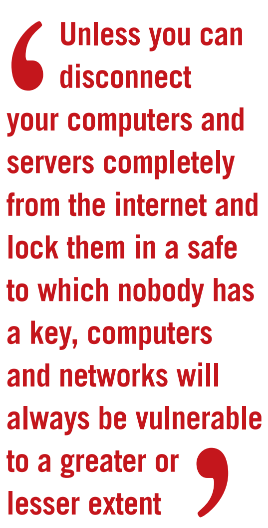
Can I stop or avoid this happening?

In short – no. Unless you can disconnect your computers and servers completely from the internet and lock them in a safe to which nobody has a key (not the most practical of solutions), computers and networks will always be vulnerable to a greater or lesser extent.

Can I reduce my risk of being infected? Absolutely.

Up-to-date anti-virus software on all PCs and servers is critically important. Hosted anti-virus and anti-spam software that scans emails before they enter your network will block most email infections.

Web filtering (similar to email filtering, web traffic is scanned for malicious content, and known compromised websites are blocked) can also help protect from web-based threats. A good firewall is an essential element of a properly secured network. Access to local services from the internet – if deemed necessary – should be strictly controlled and ideally should also be monitored.



Keep in mind that anti-virus companies will always be one step behind those that create malware. Recent changes to anti-virus software have begun to filter out crypto-viruses, but there is always a new threat out there waiting to strike. Keeping your security layers updated will go a long way towards heading off infections before they happen, as will increased vigilance by your employees.

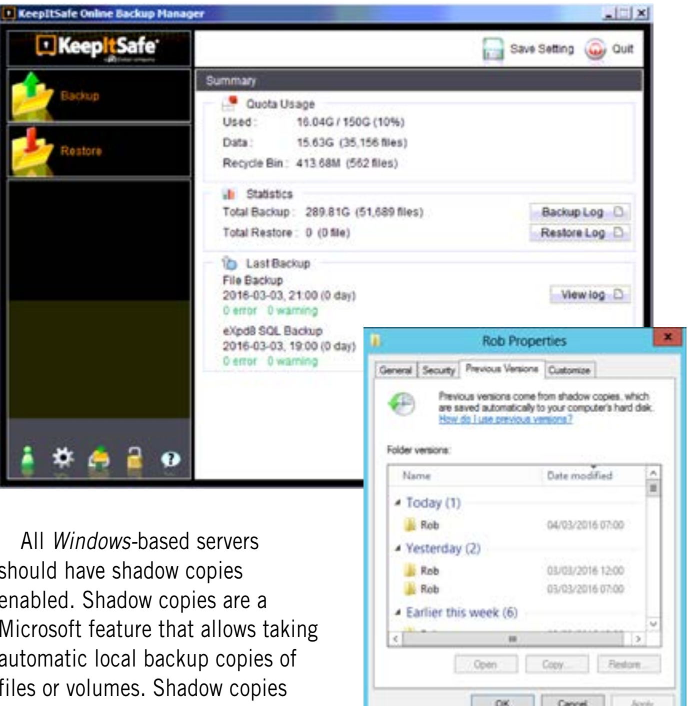
The weakest link

Staff should be educated and aware of these dangers. A chain is only as strong as its weakest link and, with network security, the weakest link is often users and their behaviour. Staff should know to beware of unsolicited email (in particular, they should not open any attachments that come from an unrecognised address). Be sure of the integrity of the sender. Even if the sender is genuine, do not open suspicious looking or unexpected attachments. Policies should be in place with regard to workplace internet usage.

Unfortunately, though, even with multiple layers of protection in place and with a well-educated and extremely careful staff, you can still fall foul of ransomware. So what can you do?

In all instances of our clients being infected with ransomware, none of them have lost more than a few hours' worth of work. How is this?

> Keeping your security layers updated will go a long way toward heading off infections before they happen, as will increased vigilance by your employees



All *Windows*-based servers should have shadow copies enabled. Shadow copies are a Microsoft feature that allows taking automatic local backup copies of files or volumes. Shadow copies are often the fastest and easiest ways to revert files and folders to a previous state. Sometimes, however, if a crypto-virus infects a server rather than a PC, the virus can disable and delete shadow copies. Therefore, servers should also be backed up on-site. We recommend and implement NAS-based (networked attached storage) on-site backups for all customers. In the event of shadow copies being unavailable, a local backup from the night before is the next best and fastest solution.

Again, however, if a server is infected, local backups might also be rendered unusable, so critical information should also be backed up off-site. Off-site backups may not be the first or second port of call in the event of a crypto-virus infection but, in the event that shadow copies or local backups are unavailable, they can be crucial.

It should go without saying that unless PC backups are also taking place on a regular basis, all important data should be stored on the server where it is backed up, and not on a local machine. When a crypto-virus infects a computer, the local drives and folders are usually the first to be encrypted (for us as an IT provider, this is usually the best indicator of which machine is the source of an infection).

Because of these backup systems, in all cases we were able to pinpoint a time before the crypto-virus infection and restore our client's systems to that point. Little or no information was lost and – most importantly – no ransom paid. In fact, most of our client's employees have been unaware that any of this has happened until well after the event.

Summertime BLUES

John McCarthy is a partner with McCarthy & Co, Solicitors, Clonakilty, Co Cork. He has a particular interest in personal injuries litigation

The *Package Holidays and Travel Trade Act 1995* celebrates its 21st birthday this year. Several recent cases contain comprehensive considerations of the duty imposed on tour operators when there is non-performance of the contract. John McCarthy slathers on the sun cream

The *Package Holidays and Travel Trade Act 1995* is Ireland's implementation of Council Directive 90/314/EEC on package travel, package holidays and package tours. It can look forward to being significantly modernised when the new directive on package travel and linked travel arrangements is ultimately transposed into Irish law.

The new directive will significantly widen the scope of the existing legislation to take account of the dramatic rise in e-commerce since the 1990 directive. While package holidays are still very popular with the travelling public, they have become something of a bit player due to the ability of consumers to arrange their own holidays modularly online, by booking their flights, hotel rooms, rental cars and other travel-related services from the websites of several different providers.

For this reason, the directive retains the concept of a 'package' (being a combination of at least two components of transport, accommodation, or other tourist services that are prearranged by a single trader and are paid for at the same time), but it also introduces the notion of a 'linked travel arrangement', which is one consisting of two or more elements, bought from different traders and concluded through separate contracts, but linked through personal data such as contact information, credit card details, or passport numbers being passed on by the first trader. The contracts must have been concluded within 24 hours of one another to be deemed linked.

Considering the very broad nature of the definition of a 'linked travel arrangement', it doesn't take a soothsayer to predict that the final wording of the Irish legislative provision that will be

at a glance

- The *Package Holidays and Travel Trade Act 1995* is Ireland's implementation of Council Directive 90/314/EEC on package holidays
- A new directive will significantly widen the scope of the existing legislation to take account of the dramatic rise in e-commerce since the 1990 directive
- In the wake of a 2014 English judgment, any solicitor bringing a claim under the 1995 act may feel that it would be prudent to be in a position to tender evidence as to the relevant standards applicable in the country where the accident occurred

> ‘But what is the standard that must be met? Is it that which would pertain were the accident to have occurred in Ireland, or is it what is to be expected in the jurisdiction of the event?’

PIC: GETTYIMAGES

adopted to give life to the new directive will be the subject of intense scrutiny and – most probably – litigation.

As for the legislation currently on our statute books, a 2014 decision of the English Court of Appeal would suggest that there may be a very significant difference in judicial thinking between jurisdictions on how the provisions of the existing directive are to be interpreted.

Here comes the summer

The Supreme Court's 2007 judgment in *Scaife v Falcon Leisure Group (Overseas) Ltd* contains a comprehensive consideration of the duty imposed on tour operators by section 20 of the 1995 act when there is non-performance of the contract. In that case, the plaintiff was injured when she slipped in a hotel restaurant in Spain due to some liquid substance such as soup or sauce not having been cleaned up.

Having reviewed the cases and legislation that had been cited, Macken J found that "the conclusions to be drawn from all of the above cited cases are that … the established principle is that the organiser is not an insurer to the customer … The test is not one of strict liability … The standard by which the acts in question are to be judged is that of reasonable skill and care, which standard, if not expressed in a contract, will be readily implied into it. In the circumstances, I am satisfied that the reasonable skill and care test generally applicable according to the above case law and by statute, and applied by the High Court judge, was the correct test in law."

But what is the standard that must be met? Is it that which would pertain were the accident to have occurred in Ireland, or is it what is to be expected in the jurisdiction of the event? Macken J did not feel that she had to make a finding on this point, as the issue did not arise at trial. However, she made plain her views when she stated, *obiter*, that "the application of a lower standard, if such exists in respect of the safety of hotels in Spain, might not necessarily comply with the provisions of the directive". She was swayed in this regard by the opinion of Advocate General Tizzano in *Leitner v TUI Deutschland GmbH & Co KG*, in which he stated that, "in the event of any doubt, the provisions of the directive in question must be interpreted in the manner most favourable to the person whom they are intended to protect, namely the consumer of the tourism service".

Permanent vacation

By contrast, the position in England had, for some time, appeared to be that the standard by which the performance of the contract falls to be judged is not that by which it would be judged if the service were being delivered domestically. Prior to the passing of the *Package Travel, Package Holiday and Package Tours Regulations 1992* (the British equivalent of the 1995 act), the High Court considered a tour operator's duty under section 13 of the *Supply of Goods and Services Act 1982* to carry out its obligations under a holiday contract with reasonable care and skill. In *Wilson v Best Travel Limited* (1993), Phillips J held that "there are bound to be differences in the safety standards applied in respect of the many hazards of modern life between one country and another … the duty of care of a tour operator is likely to extend to checking that local safety regulations are complied with. Provided that they are, I do not consider that the tour operator owes a duty to boycott a hotel because of the absence of some safety feature which would be found in an English hotel, unless the absence of such a feature might lead a reasonable holidaymaker to decline to take a holiday at the hotel in question."

Christian Bale: Welsh

> An Englishman does not travel abroad in a cocoon … Plainly, compliance with locally promulgated safety regulations may not be the end of the enquiry

There had been ongoing speculation as to whether or not this principle applied to cases brought under the 1992 regulations, and this question has now finally been settled by the Court of Appeal's 2014 judgment in *Lougheed v On the Beach Limited*.

Dreadlock holiday

While staying at the H Top Royal Star hotel in Lloret de Mar in Spain, Mrs Lougheed slipped and fell on a flight of granite steps at the hotel. She alleged that the steps were wet and it was this that caused her to fall, as a result of which she sustained personal injuries. In the course of the trial, the hotel manager was cross-examined as to the prevalent local standards, but no evidence of this nature was submitted on the claimant's behalf. The trial judge found for the claimant, and the defendant appealed the decision on a number of grounds, one being that the claimant had provided no evidence that the accident happened as a result of a failure to meet the applicable Spanish standards.

Giving the court's judgment, Tomlinson LJ said that "standards of maintenance and cleanliness vary as between countries and continents and indeed what is reasonably to be expected in a five-star hotel in a Western European capital differs from what is reasonably to be expected in a safari lodge, however well appointed. There may, perhaps, be certain irreducible standards in relation to life-threatening risks, but to expect uniformity of approach on a matter such as the frequency of inspection and cleaning of floor surfaces is unrealistic. An Englishman does not travel abroad in a cocoon … Plainly, compliance with locally promulgated safety regulations may not be the end of the enquiry. The regulations may be recognised locally as inadequate. There may be steps routinely taken to draw attention to risks tolerated by the local regulations, as for example the placing of a warning sticker on untoughened glass. One would not expect to find locally promulgated regulations governing the frequency with which a hotel floor should be either cleaned or inspected for the presence of spillages on which guests might slip. The standards by which the hotel is to be judged in its performance of such tasks as are unregulated, or where regulations are supplemented by local practice or are recognised to be inadequate, must necessarily, and on authority, be informed by local standards of care as applied by establishments of similar size and type."

While, in his judgment in *Lougheed*, Tomlinson LJ acknowledged the possibility of a claim under the *Package Travel Regulations* proceeding in the absence of evidence as to local standards, he made it clear that a claimant who chose not to adduce such evidence would be doing so "at his peril".

Summertime

The decision in *Lougheed* has since been applied in the Northern Irish case of *Bronagh Kerr v Thomas Cook Tour Operations Limited*, with Maguire J finding that, "in this case, there has been no evidence adduced by the plaintiff which establishes the standard of care which the court should apply. It seems to the court that, unless there is such evidence, the court is unable to conclude that there has been a breach of the obligation."

In the recent case of *Vincent Reid v Topflight Limited and others* (11 June 2015), Hanna J awarded the plaintiff damages after he lost the tip of one of his fingers due to a defective catching mechanism on a sun lounger at his hotel's swimming pool while on a week-long package holiday at the Hotel Savoy Palace at Lake Garda in Italy. Perhaps unsurprisingly, the local standards argument did not arise, as any defendant attempting to argue that a piece of furniture that had the potential to result in amputations would have been deemed fit for purpose according to Italian norms would almost certainly have been on a hiding to nothing.

> **'Any defendant attempting to argue that a piece of furniture that had the potential to result in amputations would have been deemed fit for purpose according to Italian norms would almost certainly have been on a hiding to nothing'**

While the views expressed by Macken J in *Scaife* are certainly very plaintiff-friendly, until such time as this issue has been ruled upon definitively by the Irish courts, in the wake of the *Lougheed* judgment, any solicitor who is bringing a claim under the 1995 act may feel that it would be prudent to at least be in a position to tender evidence as to the relevant standards applicable in the country where the accident occurred, whether regulatory or in the form of custom and practice. g

look it up

Cases:

- *Bronagh Kerr v Thomas Cook Tour Operations Limited* [2015] NIQB 9
- *Leitner v TUI Deutschland GmbH & Co KG* (Case C-168/00) [2002] ECR I-2631
- *Lougheed v On the Beach Limited* [2014] EWCA Civ 1538
- *Scaife v Falcon Leisure Group (Overseas) Ltd* [2007] IESC 57
- *Vincent Reid v Topflight Limited and others* (High Court, 11 June 2015)
- *Wilson v Best Travel Limited* [1993] 1 All ER 353

Legislation:

- Council Directive 90/314/EEC on package travel, package holidays and package tours (OJ L 158, 23.6.1990, p 59)
- *Package Holidays and Travel Trade Act 1995*
- *Package Travel, Package Holiday and Package Tours Regulations 1992* (SI 1992/3288, Britain)
- *Supply of Goods and Services Act 1982* (Britain)

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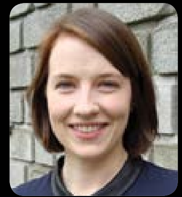
En GARDE!

The Law Society's *AML Guidance Notes* provide best-practice guidance for solicitors wishing to assess the risk of money laundering and terrorist financing. Helen Kehoe whips out her épée



Helen Kehoe is policy development executive at the Law Society

As highlighted in the March *Gazette* article (p28) on combating terrorist financing and money laundering, solicitors are reminded of the need to be aware of the following issues in the context of their statutory anti-money-laundering (AML) obligations:

- The risk of committing the substantive offence of money laundering,
- Indicators of suspicion/red flags, and
- The risk-based approach.

Reviewing the Law Society's *AML Guidance Notes*, as well as the dedicated AML webpage, will be of assistance to solicitors in developing their awareness of these issues. It is vital that solicitors bear these matters in mind when considering how to manage the risk of becoming unwittingly involved in money laundering and/or terrorist financing.

By understanding the elements of the offence itself, solicitors will be in a better position to limit their risk of becoming unwittingly involved in money laundering.

Solicitors should also familiarise themselves with the non-exhaustive list of red flags provided in chapter 9 of the guidance notes, as it should help with assessing the risk of money laundering. These 'indicators of suspicion' will be considered in more detail, with some examples or case studies, in a future issue.

Chapter 1 of the guidance notes offers a broad summary of the statutory AML regime and how it applies to solicitors.

Chapter 2 describes the substantive offence of money laundering, the knowledge elements, and the risks for solicitors transferring assets that might be tainted.

The legal definition of money laundering in section 7(1) of the *Criminal Justice (Money Laundering and Terrorist Financing) Act 2010*, as amended by the *Criminal Justice Act 2013* (see also paragraph 2.7 of the guidance notes), is broader in scope than the traditional concept of money laundering. Traditionally, money laundering refers to the ways in which criminals pass the proceeds of their criminal activity through legitimate financial structures to make the money appear to be 'clean'; however, the legislative definition here additionally includes acquiring, possessing or using the proceeds of criminal activity.

at a glance

- Something that starts out as a non-AML-regulated legal service might, over time, change to an AML-regulated legal service
- Solicitors should identify all clients and verify their identification documents
- There are three main reasons why lawyers are exposed to misuse by criminals involved in money-laundering activities

> The Law Society recommends that solicitors should identify all clients and verify their identification documents

PIC: GETTY IMAGES

As a result, the mere possession, acquisition or use of such property, knowing that such property is derived from criminal activity, is sufficient for the offence of money laundering to arise, even where the objective is not to 'launder' or 'cleanse' the asset – for example, the handling of such property.

Section 7(6) of the AML legislation clarifies that 'handling' consists of the following: "For the purposes of subsections (1) and (2), a person handles property if the person (a) receives, or arranges to receive, the property, or (b) retains, removes, disposes of or realises the property, or arranges to do any of those things, for the benefit of another person."

The scope of the offence is further increased by the very wide legislative definition of property and the fact that the legislation contains no *de minimis* provision (that is, no minimum amount of money is excluded from money-..laundering potential). Property may take any form, including in money or money's worth: securities, tangible property and intangible property. This means that it is not just proceeds generated by criminal activity that are caught by this definition, but also the following:

- Benefits (for example, in the form of saved costs) arising from a failure to comply with a regulatory or legal requirement where that failure is an offence (for example, benefits obtained from tax evasion), and
- Benefits obtained through bribery or corruption, including benefits (such as profit or cash flow) from contracts obtained by these means.

Paragraph 2.9 of the guidance notes clarifies that "tax offences are not in a special category; the proceeds of a tax offence, like the proceeds of the other examples of criminal activity, may be the subject of money-laundering offences under the legislation".

Probable cause

The person alleged to be money laundering must know or believe (or be reckless as to whether or not) the property constitutes the proceeds of criminal activity (section 7(1)(b) of the AML legislation). Section 7(4) goes on to state that such knowledge or belief "includes a reference to knowing or believing that the property probably comprises the proceeds of criminal conduct".

The guidance notes state (at paragraph 2.8) that knowledge is likely to include:

- Actual knowledge,
- Shutting one's mind to the obvious,
- Deliberately refraining from making enquiries, the results of which one might not care to have,
- Deliberately deterring a person from making a report, the content of which one might not care to have,
- Knowledge of circumstances that would indicate the facts to an honest and reasonable person, and
- Knowledge of circumstances that would put an honest and reasonable person on enquiry and failing to make the reasonable enquiries that such a person would have made.

Section 7(3) of the AML legislation states that a person who commits an offence under section 7 is liable, on conviction on indictment, "to a fine or imprisonment for a term not exceeding 14 years (or both)".

'If a solicitor knows his/her client well and understands their instructions thoroughly, the solicitor will be better placed to assess risks and spot suspicious activities'

In summary, it is clear that the substantive offence of money laundering is broader than what might be first expected: it is extensive enough to include the mere possession or handling (such as receiving) of such property without requiring an intent to actually launder the property, in addition to which the definition of property is sweeping in its scope (meaning any form of property and encompassing tax offences), and the element of knowledge includes both objective and subjective knowledge (for example, actual knowledge and what a person ought to have known).

AML regulated legal services

As solicitors are aware, there are legal services that are exempt from the AML legislation.

Under the AML legislation, solicitors are required to carry out statutory 'client due diligence' (CDD – see chapter 3 of the AML legislation) where they participate in certain types of legal work. This work is specified in the definition of the term 'relevant independent legal professional' (section 24(1) of the AML legislation; see also paragraphs 1.36-1.37 of the guidance notes).

Nevertheless, in practical terms, whether providing AML-regulated or non-AML regulated legal services, solicitors should bear in mind that, while an instruction may start out as a non-AML-regulated legal service, over time it might change to an AML-regulated legal service, which would require full statutory CDD and carry the risk of committing the substantive offence of money laundering.

For example, while a solicitor might initially provide a litigation legal service, such as in family law, which is not an AML-regulated legal service, if the solicitor subsequently transfers assets between spouses, for example, the legal service then changes to a statutory AML-regulated legal service.

In addition, although solicitors are not required by the AML legislation to identify or perform any of the other CDD measures for non-AML-regulated legal services, the Law Society's view is that best practice and risk management requires solicitors to identify all clients to whom they wish to provide any legal service. As a consequence, the Law Society recommends that solicitors should identify all clients and verify their identification documents (see paragraph 6.4 of the guidance notes).

As stated in past articles, it is helpful for solicitors to take into account the following best-practice guidance, as outlined in paragraphs 1.24 and 1.25 of the guidance notes: "These risks must be identified, assessed and mitigated, just as a solicitor would do for all business risks facing their firm. If a solicitor knows his/her client well and understands their instructions thoroughly, the solicitor will be better placed to assess risks and spot suspicious activities. Applying the risk-based approach will vary between firms. While a solicitor can, and should, start from the premise that most clients are not launderers or terrorist financers, the solicitor should assess the risk level particular to his firm and implement reasonable and considered controls to minimise those risks.

"Solicitors are not expected to be detectives and should:

- Make a reasoned assessment of the risks,
- Take reasonable steps to conduct client due diligence,
- Use their judgement and discuss issues with colleagues,
- Document what they find,
- Be able to demonstrate that they undertook due diligence and took reasonable steps to protect the firm."

Solicitors will find guidance in chapter 4 in relation to the risk-based approach. It outlines factors that should be of assistance in

assessing your firm's risk profile, depending on the firm size, type of clients, and practice areas engaged in (see paragraphs 4.13-4.30).

Paragraph 4.21 makes the point that the process of risk assessment forms an integral part of operating a solicitor's practice: "Risk assessment is an ongoing process both for the firm generally and for each client, business relationship and retainer. In a solicitor's practice, it is the overall information held by the firm gathered while acting for the client that will inform the risk-assessment process, rather than sophisticated computer data analysis systems. The more a solicitor knows his/her clients and understands his/her instructions, the better placed he/she will be to assess risks and spot suspicious activities."

> Risk assessment is an ongoing process and forms an integral part of operating a solicitor's practice

International best practice

Solicitors may also find it helpful to consider the following international documents about risk and red flags particular to the legal profession, both of which are available on the Law Society's dedicated anti-money-laundering resource webpage:

- The FATF report *Money Laundering and Terrorist Financing Vulnerabilities of Legal Professionals* (June 2013), and
- The IBA/CCBE/ABA's *Lawyer's Guide to Detecting and Preventing Money Laundering* (October 2014).

The IBA/CCBE/ABA guide highlights the vulnerability of the legal profession to the risk of money laundering: "There are three main reasons why lawyers are exposed to misuse by criminals involved in money-laundering activities. First, engaging a lawyer adds respectability and an appearance of legitimacy to any activities being undertaken – criminals concerned about their activities appearing illegitimate will seek the involvement of a lawyer as a 'stamp of approval' for certain activities. Second, the services that lawyers provide, for example, setting up companies and trusts, or carrying out conveyancing procedures, are methods that criminals can use to facilitate money laundering. Third, lawyers handle client money in many jurisdictions – this means that they are capable, even unwittingly, of 'cleansing' money by simply putting it into their client account."

Due to the nature of the legal services, there is a potential vulnerability that these services can be misused by money launderers. Therefore, it is crucial that solicitors be aware of the risk of how they could unwittingly commit the offence of money laundering in light of the broad scope of the offence under the AML legislation. g

look it up

Legislation:

- *Criminal Justice Act 2013*
- *Criminal Justice (Money Laundering and Terrorist Financing) Act 2010*

Literature:

- FATF (June 2013), *Money Laundering and Terrorist Financing Vulnerabilities of Legal Professionals (June 2013)*
- IBA/CCBE/ABA (October 2014), *A Lawyer's Guide to Detecting and Preventing Money Laundering*
- Law Reform Commission (February 2016), *An Administrative Consolidation of the Criminal Justice (Money Laundering And Terrorist Financing) Act 2010*

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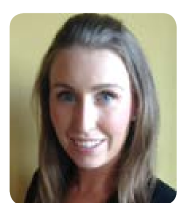
FULL Disclosure

In March, the previous government published guidance for public bodies on establishing and maintaining procedures for the making of protected disclosures by current and former workers. Lauren Kierans ain't just whistling Dixie



Lauren Kierans is a practising barrister specialising in whistleblowing law

In March 2016, the government published its guidance for public bodies that are obliged under the *Protected Disclosures Act 2014* to establish and maintain procedures for the making of protected disclosures by current and former workers.

The guidance is designed to assist public bodies by providing advice and information on how they should design and operate their procedures. In addition to this, the Workplace Relations Commission (WRC) has published a statutory code of practice on the act, which gives guidance and sets out best practice to help employers, workers, and their representatives understand the law with regard to protected disclosures and how best to deal with such disclosures.

The purpose of protected disclosures procedures is primarily to incentivise internal reporting. Internal reporting allows employers to respond swiftly to wrongdoing, thus limiting any potential damage, and it reduces the risk of confidential information being leaked to external recipients. Further, by implementing protected disclosure procedures, this creates a workplace culture where workers are encouraged to disclose information of wrongdoing in the confidence that they will not be penalised for having done so. It also encourages workers to come forward with information of wrongdoing in the knowledge that their disclosure will be acted on. This will undoubtedly result in improving trust, confidence and morale of workers.

The principle of the thing

Given the range of public bodies in this jurisdiction, the guidance is not prescriptive in nature, but rather it sets out the main principles that each public body must take into account when establishing appropriate procedures for the making and receiving of disclosures.

The guidance gives a detailed analysis of these main

at a glance

- The purpose of protected disclosures procedures is primarily to incentivise internal reporting
- Internal reporting allows employers to respond swiftly to wrongdoing, thus limiting any potential damage, and it reduces the risk of confidential information being leaked to external recipients
- The WRC has produced a statutory code of practice on protected disclosures, and employers in the private and non-profit sector must familiarise themselves with the provisions of this code

The procedures operated in the public sector will be viewed by all employers as the standard to achieve
PIC: GETTY IMAGES

principles, beginning with the issue of who should have the overall responsibility for the procedures. The guidance provides that overall responsibility should rest with the relevant board of the public body or the management board of a government department (or the equivalent person or body). The guidance then addresses the issue of who the day-to-day responsibility lies with, and advises that it is a matter for each public body to consider, but that a function with the appropriate level of knowledge and expertise to operate the procedures is recommended. The guidance proposes that each public body should include a policy statement that confirms the organisation's commitment to creating a workplace culture that encourages workers to make protected disclosures.

The guidance proceeds to address issues that reflect the provisions of the act. It provides that the procedures should set out to whom they will apply and recommends that the procedures' coverage should reflect the definition of 'worker' under the act. It also suggests that the procedures can go further than the act, in that they can include volunteers, even though volunteers do not fall within the scope of the act. The guidance then sets out what a protected disclosure is, as defined under the act, and provides that the procedures should contain the meaning of terms included in this definition – for example, 'relevant wrongdoing', 'reasonable belief', 'in connection with their employment', and so on.

The guidance gives advice on what information should be included in the procedures in relation to how a worker should make a protected disclosure. Despite the fact that the procedures are intended to increase the likelihood that a worker will make their disclosure internally to their employer, the guidance provides that the procedures should make it clear that alternative channels for making disclosures are provided for under the act and that these channels should be outlined – that is, a prescribed person, a minister for the government, a legal advisor, and section 10 recipients.

Confidential informant

The guidance also addresses the important issue of confidentiality/protection of identity and asserts that the procedures should confirm that there is an obligation on recipients of disclosures under the act to protect the identity of the worker, but that this protection is not absolute and that certain exceptions apply, such as where the disclosure of the discloser's identity is necessary for the investigation of the wrongdoing, to prevent a crime, where it is necessary in the public interest, and so on.

Related to the issue of confidential disclosures is the issue of anonymous disclosures. Anonymous disclosures are not specifically provided for in the act, but the guidance provides that the procedures should draw a distinction between these two types of disclosures and that public bodies should give a commitment to act on information disclosed anonymously. This advice is clarified further by a recommendation that the procedures should include a statement that investigations of such disclosures may be restricted and, in the event of retaliation against the discloser, that it may be difficult or impossible to provide protection unless their anonymity lifts.

> **It is prudent for all employers to put in place protected disclosures procedures, as it is likely that a court or adjudication officer will consider this a factor in protected disclosures proceedings**

An important issue that the guidance addresses is the difference between a personal complaint and a protected disclosure. The act only relates to disclosures of relevant wrongdoings, as defined, and not to personal employment complaints. The guidance advises that the procedures should confirm the distinction between these types of complaints and also that the procedures will not act as a substitute for normal day-to-day operational reporting or other internal employment procedures.

A matter of motive

The guidance also deals with the controversial issue of motivation. The act provides that motivation is irrelevant when determining whether or not a disclosure falls within the provisions of the act. The guidance reiterates this, and provides that all public bodies must deal with protected disclosures irrespective of the worker's motivation in making their disclosure. The guidance goes further than the act in this regard, however, and provides that a disclosure made in the absence of reasonable belief may result in a disciplinary action against the discloser.

The guidance then proceeds to issues of assessment and investigation, and sets out detailed advice as to how these should be carried out. The guidance firstly deals with a screening process that forms part of the initial investigation. The purpose of this process is to determine if the disclosure should be treated as a protected disclosure and whether the disclosure is wholly or partly a personal complaint. The guidance then sets out that the risk assessment of the alleged wrongdoing should include a consideration of whether an investigation should be initiated and, if so, what the nature and extent of that investigation would be. The guidance is firm in advising that public bodies should carefully consider whether the procedures should include a detailed and prescriptive investigative process or specific investigative time frames, given the range of disclosures that may be disclosed – from the relatively simple to more complex disclosures – which may ultimately limit the public body's flexibility in responding to each individual disclosure. Thus, the guidance suggests that a general framework for investigation procedures, with a set of guiding principles, should be included in order to ensure consistency in terms of approach.

The guidance deals with the issue of the protection of the rights of respondents, advising that appropriate protection is provided to such persons and that fair procedures are respected. The guidance also addresses a number of issues, such as feedback to the discloser, support and advice to disclosers, the disciplinary record of the discloser, the provision of information to workers regarding the procedures, training for workers and those who deal with protected disclosures, evaluation and review of the procedures, non-restriction of rights to make protected disclosures, and mandatory reporting.

A draft set of procedures was included in earlier versions of the guidance, but this was eventually shelved. A list of minimum details that should be included in a disclosure is attached to the guidance instead, and it is recommended that a similar list is included in any procedures.

Call of duty

The guidance assists public bodies in complying with their duty under the act to produce, by 30 June each year, a report detailing the number of protected disclosures made to the public body in the immediately preceding year and any action taken in response to that disclosure. The guidance proposes a system where each public body establishes a contact for coordination of information and

case management, so that information on protected disclosures can be collected and managed.

As previously mentioned, the WRC has produced a statutory code of practice on protected disclosures, and employers in the private and non-profit sector must familiarise themselves with the provisions of this code, which overlap to a certain degree with the provisions of the guidance. The code is viewed as the private sector model for protected disclosure procedures; however, it is not as detailed as the guidance. The code underpins the principle that it is in the interest of employers, workers, and their representatives to have in place clear and agreed procedures providing for the making of protected disclosures in the workplace.

It also underscores the principle that the disclosure of information of wrongdoing in the workplace is best dealt with, in the first instance, at workplace level – but that there may be circumstances where this may not be appropriate. It is worth noting that section 42(4) of the *Industrial Relations Act 1990* provides that a code of practice is admissible in evidence in proceedings, and any provision of the code that appears to be relevant to any question arising in the proceedings will be taken into account in determining that question. Thus, the importance of this code cannot be understated.

Prudent practice

It is prudent for all employers to put in place protected disclosures procedures, as it is likely that a court or adjudication officer will consider this a factor in protected disclosures proceedings, and especially in relation to whether or not it was reasonable for a worker to have made a disclosure to any external recipients, such as to the media. Thus, a worker will more likely be protected in making a wider public disclosure if the employer did not have a disclosures procedure or if the worker had not been made aware of the disclosures procedures.

The guidance represents best international practice with regard to protected disclosures procedures. It is devised on the premise that a 'one-size-fits-all' approach is not appropriate, given the nature and scope of the different public bodies in the State. Nonetheless, the guidance consists of the fundamental characteristics of a good set of procedures that must be adopted by public bodies. With respect to the WRC code, although this is intended to be the private sector model for protected disclosures procedures, former Minister Brendan Howlin emphasised, at a public sector consultative event on the guidance at the National Gallery in April 2015, that it is intended that the procedures operated in the public sector will be viewed by all employers as the standard to achieve. Therefore, in order to ensure comprehensive and effective procedures, employers in the private and non-profit sectors should consult the guidance, as well as the code, when formulating their own protected disclosures procedures. g

look it up

Legislation:

- *Protected Disclosures Act 2014*

Literature:

- Department of Public Expenditure and Reform (March 2016), *Guidance under Section 21(1) of the Protected Disclosures Act 2014 for the Purpose of Assisting Public Bodies in the Performance of their Functions under the Act*
- Workplace Relations Commission, *Code of Practice on Protected Disclosures Act 2014, (Declaration) Order 2015*

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The trials of ROGER CASEMENT

John McGuiggan is an English barrister practising at the Irish Bar. He was educated at Ruskin College Oxford and University College Cork and is a former British trade union official

John Lavery's famous painting of Roger Casement's appeal has recently gone on public display in the Hugh Lane Gallery. John McGuiggan paints the picture

The world of legal paintings – those that adorn the walls and rooms of judges and lawyers, in their offices and Inns – are a little like the lawyers and judges themselves are sometimes perceived: rather dull and rather worthy. These are works more frequently noted for their formality, rather than as works of art.

Paintings of lawyers and judges actually at their work, inside the courtroom, are rare indeed. And there are simply none of the quality of Sir John Lavery's great work – all ten by seven foot of it – titled *High Treason: The Appeal of Roger Casement, The Court of Criminal Appeal, 17 and 18 July 1916*.

We are fortunate to have Lavery's great painting of the court where Casement was tried and convicted for high treason, and where he was sentenced to death. The trial, which attracted significant public attention, took place in the Royal Courts of Justice in London.

> **'The other partners gave him an ultimatum – the choice of staying with the firm or, if he insisted on representing Casement, resigning'**

While the painting is of the appeal hearing, and not the trial itself, the courtroom is the same. The only difference between this view and what we would have seen at the trial proper is that here there are five scarlet-robed judges, whereas at the trial there would only have been three. There would also have been a jury present at the trial but, for the appeal hearing, the jury box was occupied solely by John Lavery. Sitting in the jury box, paints beside him, sketching, drawing, measuring the scene, listening intently to this dramatic moment in the long conflict between England's laws and Ireland's destiny, Lavery captured a moment of great historical and legal importance.

In this respect, Casement is quite unique – for, in addition to the Lavery painting of him in the Court of Criminal Appeal, there is that famous photograph of him sitting in the dock in Bow Street Magistrates Court *(left)* – an image that was, without any doubt, taken illegally and that probably was, and still is, in contempt of court.

Run of the jury box

The great Lavery canvas has been taken for display in the Hugh Lane Gallery from the room where it hung – even hid – in the King's Inns, for this centenary year. No hiding

at a glance

- In this centenary year, the great Lavery depiction of Roger Casement's appeal has been taken for display in the Hugh Lane Gallery from the room where it hung in the King's Inns
- The painting captures a moment of great historical and legal importance: it was to be the most important state trial of the 20th century and likely to be one of the outstanding moments of English legal history

there – for they have flooded it with light. The painting leaps from the canvas in all its glory and colour. They have hung it low – almost at floor level – so that the figures within it are at the same level, and appear at the same size, as the viewer. If some barristers from the Four Courts were to visit in their wigs and gowns, they would easily fade into and merge with the canvas.

One of the qualities that will be recognised immediately by all lawyers is that, although the scene is now 100 years old, the courtroom it depicts is familiar. It is a scene we know, a scene we see each day. A modern courtroom would appear almost exactly the same, apart from the addition of some smartphones and a laptop or two among the law books. It is a lawyers' painting. It knows of wigs and gowns, of procedure and precedent. It captures the life of the law. As it was, and as it still is.

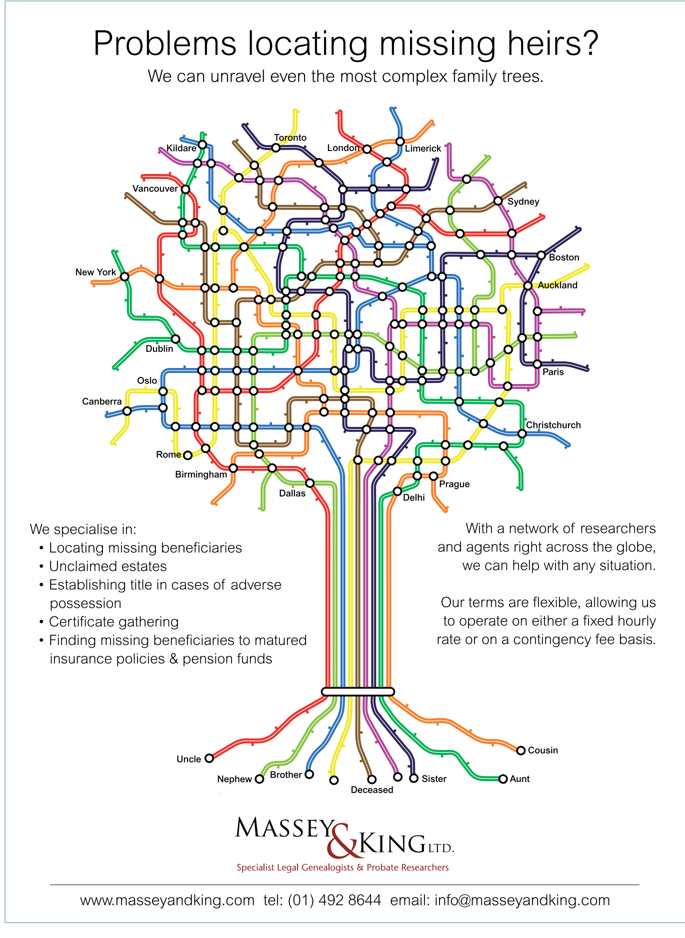
Many eyes are drawn towards Judge Darling, the presiding judge. Stern, straight-backed, he commands his courtroom. The painting flatters him. It catches him in handsome and noble profile. And so it should, for it was he who gave Lavery the run of the jury box to prepare his sketches and drawings.

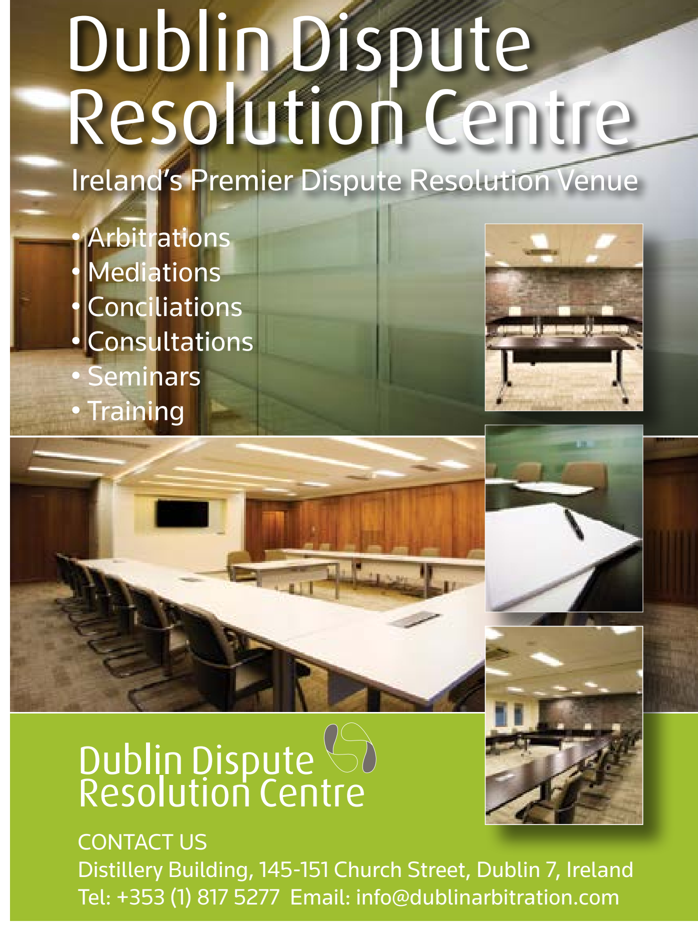
They were old friends, Darling and Lavery. In 1907, Lavery had completed a portrait of Darling showing him in full judicial robes and wearing the black cap. It was considered by many in the world of law to be in extremely poor taste, and it somewhat confirmed Darling's reputation for vanity. Perhaps it was that vanity that led Darling to commission this second painting. This was, after all, to be the most important state trial of the 20th century and likely to be one of the outstanding moments of English legal history. It was Judge Darling's bid for legal immortality. A great moment in history. A famous knight of the realm in the dock. A great trial. A great artist. And a great judge.

Legal heroes

Sitting at the solicitors' table, bent over his papers is Casement's solicitor George Gavan Duffy. He was English educated, at Stonyhurst, and had a cut-glass English public school accent.

At the time he was approached to take on the Casement case, he was enjoying a prosperous career as a partner in a large London firm. The other partners gave him an ultimatum – the choice of staying with the firm or, if he insisted on representing Casement, resigning. To his eternal glory, as both an Irishman and a lawyer, he chose his client. He is one of the legal heroes of the Casement story.





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He preferred, as is well known, a senior English King's Counsel to conduct the defence. One of the more disturbing professional elements of the trial is that he was unable to find a KC of the English Bar willing to take the case.

Unable to secure the services of an English KC, Gavan Duffy turned to the Irish Bar and appointed Alexander Sullivan, who was married to his sister. Sullivan was a KC of the Irish Bar, though at the English Bar he was merely a junior. He was, therefore, not allowed to occupy the front bench, that being reserved for senior counsel, and we see him addressing the court from the second bench for JCs.

At the actual trial, in the same courtroom, Sullivan delivered an eloquent summing up to the jury. He argued that nationalist Ireland had been engaged in arming itself solely to defeat the threats to home rule emanating from the heavily armed unionist Ulster volunteers.

The speech made much of the limited material available from the evidence that had been provided. In fact, a bit too much. He was interrupted by the chief justice and by prosecution counsel FE Smith, who protested that he was introducing arguments to the jury that were not supported by any evidence given by witnesses. He made a rather poor attempt to say the evidence had been given by RIC officers. The interruption affected him greatly. He acknowledged he was wrong and was obliged to apologise. In doing so, he lost the thread of his argument, swayed unsteadily on his feet, and collapsed into his seat saying, "My Lords, I cannot go on."

The trial was immediately adjourned and, when it continued next day, Sullivan was absent and the closing speech was completed by his junior, Artemis Jones. The prisoner was not impressed. As we can see, Sullivan was fully recovered and on his feet by the time of the appeal.

'It was a nasty, malicious, and spectacularly successful black campaign that prevented many, including the American government, from weighing in on behalf of Casement'

Defence of the realm

We should recall, briefly, a rather important judge who does not appear in this painting, but who sat in the trial proper, with the Lord Chief Justice, in this same courtroom about three weeks earlier. Mr Justice Avory is of particular interest.

He had previously, in 1902, defended another Irishman accused of high treason: the Australian-born Irishman, Colonel Arthur Alfred Lynch, who had commanded an Irish brigade against the British during the Boer War. He advanced the ingenious defence that the 1351 *Statute of Treasons*, under which Lynch was charged, disclosed no offence because it only applied to acts committed within the realm – and as Colonel Lynch's treachery had occurred without the realm, in South Africa, then the statute did not apply.

Now, at Casement's trial, Avory would listen to Casement's counsel arguing exactly the same point he himself had argued and lost. When it was said of the Casement defence that the law was against them, no one else involved in the trial would have known that better than Avory.

The original statute, written in Norman French without punctuation, was examined by the judges, who dismissed any suggestion that it should be interpreted with commas that restricted treason to only being within the king's realm. Casement wrote: "God deliver from such antiquaries as these, to hang a man's life on a comma and throttle him with a semi-colon."

George Bernard Shaw had urged Casement to dispense with his lawyers, refuse to recognise the court, and demand a trial before Irishmen in Ireland. He was to tell the court he was an Irishman captured in a fair attempt to free his country. But the legal team was fighting for a life and, in reality, if it were to stand any chance of a reprieve from the death sentence, then an argument on the technicalities of the law was all that was open to it. The court would have quickly brought to an end any attempt to use the trial for a political purpose, or to allow the trial to descend into passion.

Without requiring FE Smith to reply to the submissions of Sullivan, Darling dismissed the appeal. The sentence of death was confirmed.

No consent

There should, of course, have been a further appeal to the House of Lords, but such an appeal needed the consent of the attorney general. Smith refused his consent, arguing that between the trial and the appeal, eight of the most senior judges in England had unanimously rejected the defence argument, and that was enough.

All that was left now were appeals for clemency. It was not the conduct of the trial that defeated such appeals. It was the diaries.

Casement's network of supporters from his humanitarian work was vast and international. The calls for clemency would have been equally vast and equally international. But it was the diaries that destroyed any attempts to engage that network.

Those involved in the trial had little to do with the circulation of the diaries. They were deployed by the state authorities, not by the law – by the secret service, the politicians, the cabinet. It was a nasty, malicious, and spectacularly successful black campaign that prevented many, including the American government, from weighing in on behalf of Casement.

But it also succeeded in undermining the integrity of this trial.

This is an edited version of the author's illustrated lecture on the painting, which can be seen at http:/bit.ly/1MUKYFO.

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GARDA *patrol*

Injured members of the gardaí may claim compensation for their injuries, in certain circumstances. James Kane reviews some recent relevant case law

James Kane is a barrister in general practice, with a particular emphasis on judicial review and garda compensation cases. This article was prepared with the kind assistance of Liz Hughes and Julie Smyth (Hughes Murphy Solicitors)

The *Garda Síochána (Compensation) Act 1941* (as amended) permits members to seek compensation for maliciously inflicted injuries in the High Court.

Under the act, the Minister for Public Expenditure and Reform has a role to play. The minister is responsible for deciding whether each and every application should be permitted to progress to the High Court. This role is essentially to filter out minor claims. The manner in which the minister exercises this discretion has been the subject of a number of judicial review decisions. The importance of these decisions is that they assist with identifying the proper limits of the minister's powers under this act, and these cases also assist with the interpretation and application of the act.

Recent statistics from the Courts Service show that 125 garda compensation cases came before the High Court in 2014 (166 cases in 2013). These numbers do not include those members who are awaiting a ministerial decision or who have been denied permission to prosecute their claims in the High Court.

This area of law has recently been addressed in *Costigan v Minister for Justice and Equality* (2015).

Garda Compensation Acts

Section 6(1)(b) of the *Garda Compensation Act 1941* (as amended) sets out the circumstances in which the minister shall grant or refuse an authorisation to apply to the High Court for compensation for non-fatal injuries sustained.

Firstly, "in case the minister is of the opinion that such injuries are of a minor character and were sustained in the course of the performance of a duty not involving special risk, the minister shall refuse" an application for compensation. Where, however, the minister is of the opinion that the injuries were minor, were sustained in the course of duties involving 'special risk', and that a sum of £100 would be adequate compensation, the minister may pay compensation, up to the amount of £100, to the injured member. In all other cases, the minister must authorise the applicant to initiate proceedings in the High Court for compensation.

It is the exercise of this statutory function – the granting of permission to apply to the High Court – that has generated the bulk of the case law in judicial review of ministerial decisions under this statute. Predictably, two matters of contention have been the determination

at a glance

- Under the *Garda Compensation Acts*, the Minister for Public Expenditure and Reform is responsible for deciding whether each and every application should be permitted to progress to the High Court
- Two matters of contention have been the determination of what constitutes 'injuries of a minor character' and duties involving 'special risk'
- Statistics show that 125 garda compensation cases came before the High Court in 2014 (166 cases in 2013); this does not include those awaiting a ministerial decision or who have been denied permission to prosecute their claims

of what constitutes 'injuries of a minor character' and duties involving 'special risk' (see panel).

Injuries of a minor character

The first case in which the minister's decision-making was questioned was not in the context of a judicial review application, but rather in the course of a judgment in the plenary hearing of the substantive claim for compensation. The minister issued an authorisation, and the matter came before the High Court to assess compensation. In *McGee v Minister for Finance* (1996), the applicant garda sergeant was headbutted by his assailant at the station. The applicant suffered a nosebleed and bruising, which cleared up completely within two to three weeks. There was no sign of a fracture and no sick leave was taken.

Generously, the minister authorised the applicant to initiate High Court proceedings for compensation. In the course of his judgment, which assessed damages in the applicant's favour, Carney J stated that the "minimum level of injury required to attract the benefit of … compensation … is considerably above that of a nosebleed and some associated bruising and discomfort".

The judge went on to write that "the minister's certification does violence to the English language and represents a failure on her part to discharge her statutory function to filter out the advancement of trivial and minor claims".

Because the decision of the minister had not been challenged at the outset, the judge was bound to assess compensation, notwithstanding the minister's error.

Refusal to authorise

Conversely, *Merrigan v Minister for Justice* (1998) dealt with a refusal of the minister to authorise the applicant to apply to the High Court on the basis that the minister determined that the injuries were of a minor character. This decision was reached after an extraordinary delay of five years after the application was first made.

Having been requested to furnish a copy of his own doctor's report to the Garda Surgeon, the surgeon finally examined the applicant four-and-a-half years after the application was made. He noted that there was pain "from time to time" in the right shoulder area that was a sequel to the original injuries sustained. Although this report did not comport with the applicant's own doctor's report, the court was not satisfied that the minister's decision was lawful, even taking the surgeon's report as accurate. Geoghegan J ruled that "undisputed continuing adverse *sequelae* four-and-a-half years after the incident" could not be said to be injuries that were of a minor character.

Geoghegan J continued to give some non-exhaustive guidance on the concept of injuries of minor character. He ruled out any argument that minor injuries could be discerned from the

FOCAL POINT

special risk

In *Looby v Minister for Justice, Equality and Law Reform* (2010), the applicant sought to argue that a special risk arose by virtue of the event (that is, the fact that an injury was sustained) and the fact that "garda duty inherently involves special risk, not ordinarily assumed by a citizen". Hedigan J disagreed, and stated that the event and risk are distinct and "one cannot create the other"; the judge was satisfied that 'ordinary' garda duties cannot be equated with 'special risk'.

In *McGuill v Minister for Justice and Equality* (2012), Hogan J quashed that part of the minister's decision related to duties that were not of a special risk for failure to give reasons as to why he had formed such an opinion.

Pictured at the Carrick-on-Shannon cluster are speakers and representatives from Law Society Skillnet and Leitrim, Longford, Midlands, Roscommon and Sligo Bar Associations.

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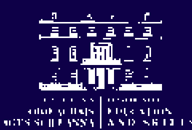

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legislative provision dealing with compensation of £100. Injuries of a minor nature would include those injuries that "cleared up after say two months with no ill effects" or those in which "there has been a complete recovery within a matter of weeks with no medically explicable adverse *sequelae*".

In *McGuill v Minister for Justice and Equality* (2012), the applicant was refused a certificate to proceed to the High Court owing to the conclusions drawn by the minister that the injuries were minor and sustained in the course of a duty that did not involve a special risk. The applicant was injured when his patrol car was struck by a jeep and he was dragged under the vehicle for a short distance. He suffered a sprain to his shoulder and "superficial grazes" to his knees and elbows, which cleared up within weeks. He also suffered some disturbed sleeping patterns and experienced symptoms indicative of PTSD, which lasted for several months. However, these injuries were "mild and did not functionally impair the performance of duty".

Hogan J, in applying the established case law, was satisfied that there was no irrationality in the minister's determination that the injuries were of a minor character.

The recent *Costigan* case concerned an officer who sustained a fractured nose resulting from a headbutt received from a prisoner in a patrol car. He was treated with a splint in his nose under a local anaesthetic. He eventually had to have surgery under general anaesthetic and wore an external nose splint. He remained in in-patient care for two days after the operation. He suffered "significant congestion of the nasal lining and some scar tissue" resulting from the surgery and assault.

Hedigan J ruled that the injuries could not be determined to be of a minor character and that the minister's finding in that regard was unreasonable.

Standard of review

In *McGuill*, Hogan J stated that the courts will not quash a decision unless it is either "not factually sustainable or reasonable", but no further details are provided as to the preferred standard. This approach was cited in *Costigan*.

There are two approaches to 'unreasonableness' in Irish law. The first approach is under *State (Keegan) v Stardust Victims' Compensation Tribunal*, which holds that decision-makers must not fundamentally disregard common sense or reason.

The second approach, in *O'Keefe v An Bord Pleanála*, sets forth a heightened level of deference, in that the courts will intervene only where it can be shown that there was "no relevant material" upon which the decision could be supported. This is indeed a difficult hurdle for applicants to surmount.

> **One could validly question if the minister possesses any special 'expertise' in deciding if the injuries were minor or incurred during a duty of special risk**

The significance of these two standards is that they affect the degree of vigour employed by a court in reviewing the minister's decision. In a case in which the minister is presented with conflicting medical reports or conflicting evidence as to whether or not a duty was of 'special risk', the *O'Keeffe* standard entirely insulates the minister's decision from review, owing to the presence of at least some "relevant material" that the minister's decision comports with. The *Keegan* standard does not insulate the minister's decision in such a manner and allows an applicant to argue 'unreasonableness', notwithstanding the presence of some evidence supporting the decision taken.

In *Merrigan*, the standard of review was considered by Geoghegan J. The correct course of action for the minister when faced with "respectable medical opinion" supporting an applicant's assertion of non-minor injuries and contradictory reports from the Garda Surgeon is to find in favour of the applicant. It is, in fact, not open to the minister, in those circumstances, to form the view that the injuries are of a minor character without undertaking further investigation.

Looby concerned an off-duty garda who intervened when he witnessed an individual threatening a member of the public with a knife. Looby sustained a cut to his finger during the struggle that ensued as a result of his intervention. The minister declined to grant an authorisation on the basis that the injuries were not of minor character and, further, that they were sustained in the context of activities that were not of a 'special risk'.

The applicant challenged the reasonableness of both of these conclusions. In the course of his decision, Hedigan J recited both the *Keegan* and *O'Keeffe* cases. He ruled, as far as the injuries were concerned, that the presence of relevant material before the minister was enough to save his decision from review. This appears to prefer the *O'Keeffe* standard.

To an extent, *Merrigan* and *Looby* employ different standards of review of ministerial decisions. The *O'Keefe* standard is a heightened level of deference, and it is typically only employed when the courts are reviewing a decision taken by a decision-maker who possesses a special skill or expertise (such as a planning authority). One could validly question if the minister possesses any special 'expertise' in deciding if the injuries were minor or incurred during a duty of special risk. In that regard, one might suggest that the *Keegan* approach to unreasonableness in the context of garda compensation claims is to be preferred. g

look it up

Cases:

- *Costigan v Minister for Justice and Equality* [2015] IEHC 299
- *Looby v Minister for Justice, Equality and Law Reform* [2010] IEHC 411
- *McGee v Minister for Finance* [1996] 3 IR 234
- *McGuill v Minister for Justice and Equality* [2012] IEHC 519
- *Merrigan v Minister for Justice* (unreported; High Court, 28 January 1998)
- *O'Keefe v An Bord Pleanála* [1993] 1 IR 39
- *State (Keegan) v Stardust Victims' Compensation Tribunal* [1986] IR 642

Legislation:

- *Garda Síochána (Compensation) Act 1941*
- *Garda Síochána (Compensation) (Amendment) Act 1945*

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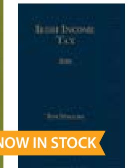
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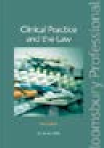
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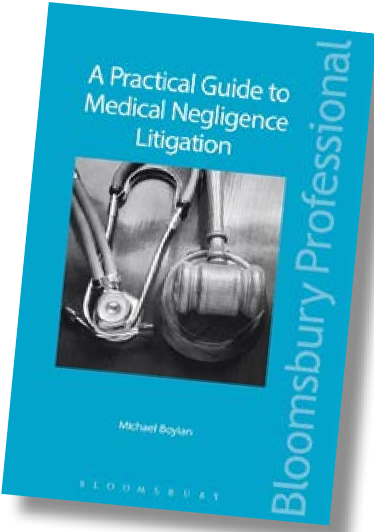
A Practical Guide to Medical Negligence Litigation

Michael Boylan. Bloomsbury Professional (2016), www.bloomsburyprofessional.com.
ISBN: 978-1-7804-384-50. Price: €195.



In terms of the volume of cases and in jurisprudence, the practice of law in the area of medical negligence in this country can be conveniently divided into the period before and after the decision in the famous case of *Dunne (A Minor) v National Maternity Hospital* (31 October 1989 [SC350]). Before *Dunne*, there were approximately six cases, starting with *Boyle* in 1932 and ending with *Kelly v St Laurence's Hospital* in 1988.

Dunne marked the beginning of what can best be described as an explosion in the number of medical negligence cases. For example, for each of the years 2014 and 2015, upwards of 1,000 High Court writs have been issued in this area. The publication of Michael Boylan's book is therefore timely and most welcome for legal practitioners.

The great benefit of this book is that it brings a very complex area of law together in a very structured and accessible way for practitioners and academics alike. All of the issues and concepts that are regularly encountered in the field of medical negligence are explained and presented in clear, straightforward language. Technical language and legalese is avoided, which is a most telling development.

Some of the most challenging topics in this area of practice – including that most difficult of concepts, 'causation' – are addressed comprehensively by the author and in a manner that is easy to understand.

All experienced practitioners in this area will know that, in a given case, you can have a duty of care, you can have a breach of that duty, and you can have the most catastrophic consequences resulting – but unless you can link them, you don't have a cause of action. The chapter on this topic in Boylan's book is very clear, well analysed, and will be a wonderful aid to practitioners and, indeed, law students in coming to grips with what is, effectively, an essential plank for the winning of any medical negligence case.

Unfortunately, in the last several years, death is an all-too-common occurrence arising from adverse events in Irish hospitals. The character and function of the resultant inquest and the manner in which these enquiries are conducted has changed dramatically. The chapter on inquests is informative and extremely helpful.

The book also looks at various methods of compensation in some detail, including the lump sum, as well as the alternative approaches of structured and periodic payments.

The title of the book is somewhat misleading. Though designed to provide a practical aid and guide to practitioners, it does much more. While it certainly deals with practical issues, it also covers, in a most profound way, the substantive issues that practitioners and other professionals (including academics) encounter on a daily basis. It runs to 337 pages and is divided into 18 chapters, which are logically sequenced. The book concludes with a very useful appendix of precedent pleadings.

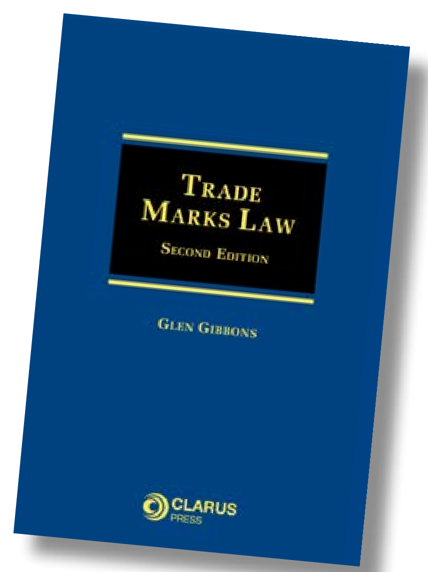
This type of litigation is difficult and problematic, even for experienced practitioners. Running medical negligence cases is also extremely expensive and involves, almost in every case, having to engage experts from abroad. The clear and concise way in which Boylan's book is written, and the logical step-by-step guidance it provides for all the singular events – including the first consultation; knowing what information to elicit and what questions to ask; the procurement of the medical records; the manner in which those records are required to be organised, indexed, paginated and made ready for dispatch to foreign-based experts; the briefing of experts; discovery, and so on – makes it an invaluable aid in this very challenging field of practice.

Mr Boylan's book makes a welcome and profoundly worthwhile contribution to the library of Irish law books now available, and it is an essential guide and excellent reference book for any practising lawyer, law student, or academic interested in the area of medical litigation.

Damien Tansey is senior partner in Damien Tansey Solicitors, Sligo, and has specialised in this area of law for more than 30 years.

Trade Marks Law

Glen Gibbons. Clarus Press (2nd edition, 2016), www.claruspress.ie. ISBN: 978-1-905536-80-1. Price: €149.



There can be little doubt that trademarks are an extremely valuable asset to any business, and the importance of protecting its brand, exploiting it intelligently, and enforcing its rights against the threat of infringement cannot be overstated.

This book serves as a useful guide for practitioners and non-practitioners alike on the legalities and practicalities of trademark protection and enforcement. It relates to the law as of 1 December 2015 and was published just before the publication of the final text of the new EU *Trademark Directive* (2015/2436) and before the coming into force of the *Community Trademark Regulation* in March 2016. However, the first chapter provides an overview of the principal changes that the updated legislation brings.

The chapter on passing-off provides an in-depth analysis of the three strands of passing-off, as well a detailed review of some of the recent case law on the topic from Britain and Ireland.

The majority of the remaining chapters examine each stage of the trademark registration process – from application and registration, to refusal, infringement, and enforcement – in a clear and concise manner, under both Irish and EU legislation. Relevant case law and decisions related to each topic are examined along the way. A chapter on defences to infringement claims has been added since the last edition and examines the attitude of the courts to both the statutory and non-statutory defences that may be raised.

The last chapter deals with practice and procedure in Ireland and sets out a useful summary of procedures before the Irish Patent Office and provides notes on civil court litigation of trademark matters in this jurisdiction. The Irish *Trade Mark Act* and *Trade Mark Rules* are also conveniently appended for reference.

The book provides a practical and comprehensive overview of the law of trademarks, as well as providing a broad analysis of recent jurisprudence in the area.

Elaine McGrath is partner in the Dublin law firm Reddy Charlton.

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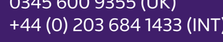
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SELECTED STATUTORY INSTRUMENTS

Rules of the Superior Courts (Service of Documents) 2016

Number: SI 148/2016
Amend rule 2(1) of order 121 of the *Rules of the Superior Courts* to clarify that the methods specified in rule 2(1) for service or delivery of documents not required to be served personally are subject to any other methods of delivery or service specified in other provisions of the rules for particular types of proceedings.
Commencement: 3/5/2016

District Court (Amendment) Rules 2016

Number: SI 149/2016
Amend order 19, rule 6 and order 26, rule 4 of the *Rules of the District Court* and substitute Forms 19.1, 28A.15, and 66.4 in schedule B and schedule C, respectively, annexed to the *District Court Rules 1997*.
Commencement: 4/4/2016

Residential Tenancies Act 2004 (Prescribed Form) Regulations 2016

Number: SI 150/2016
Prescribe the form to be used when making an application to the Private Residential Tenancies Board to register the tenancy of a dwelling.
Commencement: 6/4/2016

Rules of the Superior Courts (Choice of Court (Hague Convention) Act 2015) 2016

Number: SI 161/2016
Amend the *Rules of the Superior Courts* by the insertion of a new order 42D and a new part V containing Form 1 in appendix F to facilitate the operation of the *Choice of Court (Hague Convention) Act 2015*.
Commencement: 10/5/2016

Road Traffic (Fixed Charge Offences – Tyres) Regulations 2016

Number: SI 167/2016
Set out the offences relating to the use of defective or worn tyres for which fixed-charge notices may be issued by the gardaí and the associated penalties. The offences arise under section 11(5) of the *Road Traffic Act 1961*.
Commencement: 17/4/2016

Circuit Court Rules (Actions for Possession, Sale and Well Charging Relief) 2016

Number: SI 171/2016
Amend the *Circuit Court Rules* by revising the forms of civil bill (Form 2R) and the verifying affidavit (Form 54) in the schedule to the *Circuit Court Rules*.
Commencement: 19/5/2016

Circuit Court Rules (Choice of Court (Hague Convention) Act 2015) 2016

Number: SI 172/2016
Amend the *Circuit Court Rules* by the insertion of a new rule 4 of order 61A and the insertion of Form 41F to the schedule of forms annexed to the *Circuit Court Rules* in order to facilitate the operation of the *Choice of Court (Hague Convention) Act 2015*.
Commencement: 19/5/2016

Offences Against the State Acts 1939-1998 Special Criminal Court (No 1) Rules 2016

Number: SI 182/2016
Annul and replace the *Offences Against the State Acts 1939-1972*, the *Special Criminal Court Rules 1975*, and the *Offences Against the State Acts 1939-1998 (Special Criminal Court Rules) 2001*; regulate practice and procedure in the Special Criminal Court under the *Offences against the State Acts 1939-1998*.
Commencement: 25/4/2016

Offences Against the State Acts 1939-1998 Special Criminal Court (No 2) Rules 2016

Number: SI 183/2016
Regulate practice and procedure in the Special Criminal Court.
Commencement: 25/4/2016

Child Care (Amendment) Act 2015 (Commencement) Order 2016

Number: SI 203/2016
Commencement: 26/4/2016 for sections 1, 10, 11 and 12

Children First Act 2015 (Commencement) Order 2016

Number: SI 211/2016
Provides for the commencement of sections 18 and 20-26 of the *Children First Act 2015* with effect from 1 May 2016. Section 18 provides that the Child and Family Agency is a specified body for the purposes of the *National Vetting Bureau (Children and Vulnerable Persons) Act 2012*. Sections 20-26 provide for the establishment of a Children First Inter-Departmental Implementation Group.
Commencement: 1/5/2016 for specific sections

National Vetting Bureau (Children and Vulnerable Persons) Act 2012 (Commencement) Order 2016

Number: SI 214/2016
Commencement: 29/4/2016, other than section 20

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Solicitors Disciplinary Tribunal

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

In the matter of Elizabeth McGrath, a former solicitor previously practising as O'Connell McGrath Solicitors at 5 Athlunkard Street, Limerick, and in the matter of the *Solicitors Acts 1954-2011* [11016/DT21/14; 11016/DT62/14; High Court record 2015 no 216 SA]
Law Society of Ireland (applicant)
Elizabeth McGrath (respondent solicitor)

On 16 April 2015, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in her practice as a solicitor in that she:

11016/DT21/14

1) Failed to comply with an undertaking dated 16 July 2009 furnished to EBS Building Society in respect of her named clients and property in Co Limerick in a timely manner or at all,
2) Failed to respond to the Society's correspondence and, in particular, the Society's letters of 18 April 2012 and 2 May 2012 in a timely manner or at all,
3) Failed to comply with the direction of the Complaints and Client Relations Committee made at its meeting on 12 June 2012 that she make a contribution of €300 towards the costs incurred by the Society as a consequence of her failure to respond to the Society,
4) Failed to comply with the direction of the Complaints and Client Relations Committee, made at its meeting of 26 July 2012, that she comply with the section 10 notice and that she pay a further sum of €150 in respect of her failure to respond to the Society's correspondence.

11016/DT62/14

1) Notwithstanding the fact that she had a second signatory on the client account, allowed a deficit of €16,447.01 to be in existence on her client account as of 30 June 2013, due to client ledger debit balances, in breach of regulation 7(2) of the *Solicitors Accounts Regulations*,
2) Notwithstanding the fact that she had a second signatory on the client account, allowed a further deficit of €36,861.76 to be in existence as of 30 September 2013,
3) Failed to keep proper books of account on a regular basis, allowing same to have been approximately nine months in arrears prior to the investigation of her practice, in breach of regulation 12 of the *Solicitors Accounts Regulations*,
4) Allowed debit balances to arise as of 31 December 2012 of €9,997, in breach of regulation 7(2) of the *Solicitors Accounts Regulations*, and failed to have all cleared, notwithstanding the fact that her reporting accountant stated that the deficit had been cleared in full,
5) Paid part of the premium due for her professional indemnity insurance from the client account on 24 May 2013,
6) Made round sum transfers of costs totalling €16,500 from the client account to the office account without supporting documentation.

On 25 January 2016, the High Court declared that the respondent is not a fit person to be a member of the solicitors' profession, having regard to the adjudication made by the Solicitors Disciplinary Tribunal on 16 April 2015 in respect of the complaints then before the tribunal, and ordered that the respondent do pay to the Society the whole of the costs of the proceedings, to be taxed in default of agreement.

The respondent solicitor had previously been struck off the Roll of Solicitors by the High Court on 28 April 2014.

In the matter of Deirdre M Fahy, a solicitor previously practising as D Fahy & Associates, Solicitors, 69 Main Street, Blackrock, Co Dublin, and in the matter of the *Solicitors Acts 1954-2011* [5471/DT137/13; DT138/13; DT139/13; DT140/13; DT141/13; DT142/13; DT191/13; DT100/14; High Court record 2015 no 124 SA]
Law Society of Ireland (applicant)
Deirdre M Fahy (respondent solicitor)

On 23 July 2015, the Solicitors Disciplinary Tribunal heard eight complaints against the above solicitor. The tribunal found the respondent solicitor guilty of misconduct in her practice as a solicitor in that she:

5471/DT137/13

1) Failed to comply with an undertaking dated 18 February 2008, furnished to IIB Homeloans (now KBC Bank) in respect of her named client and borrower and two properties, one at Athlone, Co Westmeath, and at New Ross, Wexford, in a timely manner or at all,
2) Failed to respond to the Society's correspondence and, in particular, the Society's letters of 20 March 2012, 12 April 2012 and 16 May 2012 in a timely manner or at all,
3) Failed to comply with the direction of the Complaints and Client Relations Committee made at its meeting on 26 June 2012 and communicated to the solicitor on 29 June 2012 within the time specified or at all,
4) Failed to comply with a further direction of the committee made at its meeting on 4 September 2012 and communicated to the solicitor on 10 September 2012 within the time specified or at all.

5471/DT138/13

1) Failed to comply with an undertaking furnished to the complainants on 7 November 2008 in respect of her named client and property in Tallaght, Dublin 24, in a timely manner,
2) Failed to respond to the Society's letters and, in particular, the Society's letters of 25 June 2012, 25 July 2012 and 10 September 2012 in a timely manner, within the time specified in the letter, or at all,
3) Failed to comply with the direction of the committee made at its meeting on 4 September 2012 and communicated to her by letter dated 10 September 2012 within the time specified by the committee or at all.

5471/DT139/13

1) Failed to comply with two undertakings, one dated 13 July 2005 and one dated 3 July 2007, both in respect of her named borrower and property at Ongar, Dublin 15, furnished to ICS Building Society, in a timely manner or at all,
2) Failed to respond to the Society's correspondence and, in particular, the Society's letters of 22 December 2010, 25 January 2011, 7 March 2011, 22 March 2011, 9 May 2011, 20 July 2011, 4 August 2011, 30 August 2011, 13 September 2011, 1 November 2011, 14 November 2011, 12 December 2011, 9 January 2012, 7 February 2012, 27 March 2012, 24 April 2012 and 17 May 2012 in a timely manner or at all,
3) Failed to comply with the directions of the Complaints and Client Relations Committee made at its meeting on 26 June 2012 and communicated to the solicitor on 29 June 2012 within the time specified or at all,
4) Failed to comply with a further direction of the committee made at its meeting on 4 September 2012 and communicated to the solicitor on 10 September 2012 within the time specified or at all.

5471/DT140/13

1) Failed to comply with an undertaking furnished to the complainants on 10 August 2009 in respect of her named client and property at Donabate, Co Dublin, in a timely manner or at all,
2) Failed to respond to the Society's correspondence and, in particular, the Society's letters of 25 June 2012, 26 July 2012, 16 August 2012, 26 September 2012 and 22 October 2012 in a timely manner, within the time specified in the letter, or at all,
3) Failed to comply with the direction of the committee made at its meeting on 4 September 2012 and communicated to her by letter dated 10 September 2012 within the time specified by the committee or at all,
4) Failed to comply with a further direction of the committee made at its meeting on 16 October 2012 and communicated to her on 22 October 2012 in a timely manner or at all.

5471/DT141/13

1) Failed to comply with an undertaking furnished to the complainants on 28 March 2006 in respect of her named client, the borrower, and property at Lucan, Co Dublin, in a timely manner or at all,
2) Failed to respond to the Society's correspondence and, in particular, to the Society's letters of 22 June 2012, 26 July 2012, 16 August 2012, 10 September 2012, 2 October 2012 and 22 October 2012 in a timely manner, within the time specified in the letter, or at all,
3) Failed to comply with the direction of the committee made at its meeting on 4 September 2012 and communicated to her by letters dated 10 September 2012 and 2 October 2012 within the time specified by the committee or at all,
4) Failed to comply with a further direction of the committee made at its meeting on 16 October 2012 and communicated to her on 22 October 2012 in a timely manner or at all.

5471/DT142/13

1) Failed to comply with an undertaking dated 20 July 2007 furnished to IIB Homeloans (now KBC Bank) in respect of her named clients and borrowers and property at Lucan, Co Dublin, in a timely manner,
2) Failed to respond to the Society's correspondence and, in particular, the Society's letters of 20 March 2012, 12 April 2012, and 16 May 2012 in a timely manner or at all,
3) Failed to comply with the direction of the committee made at its meeting on 26 June 2012 and communicated to the solicitor on 29 June 2012 within the time specified or at all,
4) Failed to comply with a further direction of the committee made at its meeting on 4 September 2012 and communicated to the solicitor on 10 September 2012 within the time specified or at all.

5471/DT191/13

1) Failed to ensure there was furnished to the Society a closing accountant's report, as required by regulation 26(2) of the *Solicitors Accounts Regulations 2001* (SI 421 of 2001) in a timely manner or at all, having ceased practice on 30 November 2012,
2) Through her conduct, showed disregard for her statutory obligation to comply with the *Solicitors Accounts Regulations* and showed disregard for the Society's statutory obligation to monitor compliance with the regulations for the protection of clients and the public.

5471/DT100/14

Failed to comply with an undertaking furnished to Bank of Ireland Mortgages on 30 May 2012 in respect of her named clients and borrowers and property in Dublin 12 in a timely manner or at all.

The tribunal, having heard the eight complaints and made those findings of misconduct, referred the matter to the President of the High Court and, in proceedings entitled 2015 no 124 SA on 1 February 2016, the High Court made an order that:

1) The respondent solicitor's name be struck from the Roll of Solicitors,
2) 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.

In the matter of Simon W Kennedy, a solicitor previously practising under the style and title of Simon W Kennedy & Co, Solicitors, at 4 Charles Street, New Ross, Co Wexford, and in the matter of the *Solicitors Acts 1954-2011* [2980/DT90/13]
Law Society of Ireland (applicant)
Simon Kennedy (respondent solicitor)

On 2 February 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 dated 4 December 2006, furnished to Bank of Ireland Mortgages in respect of his named clients and property at New Ross, Co Wexford, in a timely manner or at all,
2) Failed to respond to the Society's correspondence in a timely manner, within the time specified, or at all, including the letters of 21 September 2011, 22 November 2011, 18 January 2012, 10 February 2012, 6 March 2012, 5 April 2012, and 3 July 2012,
3) Failed to comply with the direction made by the Complaints and Client Relations Committee at its meeting of 26 June 2012 that he furnish certain information and documentation to the Society within 28 days of that date in a timely manner or at all.

The tribunal ordered that the respondent solicitor:

1) Do stand censured,
2) Pay a sum of €200 to the compensation fund,
3) Pay a contribution of €1,000 towards the whole of the costs of the Law Society in respect of this case and cases 2980/DT91/13, 2980/DT152/14, and 2980/DT78/15.

In the matter of Simon W Kennedy, a solicitor previously practising under the style and title of Simon W Kennedy & Co, Solicitors, at 4 Charles Street, New Ross, Co Wexford, and in the matter of the *Solicitors Acts 1954-2011* [2980/DT91/13]
Law Society of Ireland (applicant)
Simon Kennedy (respondent solicitor)

On 2 February 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 Bank of Ireland Mortgages, the complainant, on behalf of the named borrowers, dated 4 November 2002, in respect of property at New Ross, Co Wexford, in a timely manner or at all,
2) Failed to respond to the Society's correspondence of 21 September 2011, 18 October 2011, 22 November 2011, 9 February 2012, and 4 April 2012 in a timely manner or within the time limits set out in the letters or at all,
3) Failed to comply with the direction of the Complaints and Client Relations Committee made at its meeting of 3 April 2012 in a timely manner or at all.

The tribunal ordered that the respondent solicitor:

1) Do stand censured,
2) Pay a sum of €200 to the compensation fund,
3) Pay a contribution of €1,000 towards the whole of the costs of the Law Society in respect of this case and cases 2980/DT90/13, 2980/DT152/14 and 2980/DT78/15.

In the matter of Simon W Kennedy, a solicitor previously prac-

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tising under the style and title of Simon W Kennedy & Co, Solicitors, at 4 Charles Street, New Ross, Co Wexford, and in the matter of the *Solicitors Acts 1954-2011* [2980/DT152/14]
Law Society of Ireland (applicant)
Simon Kennedy (respondent solicitor)

On 2 February 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 Bank of Ireland Mortgages, the complainant, on behalf of his named clients and borrowers, dated 11 March 2005 in respect of property at Bunclody, Co Wexford, in a timely manner or at all,
2) Failed to respond to the Society's correspondence and, in particular, the Society's letters of 21 September 2011, 3 January 2012, 24 January 2012, 14 March 2012, 15 May 2012, 8 June 2012, and 3 July 2012 in a timely manner, within the time prescribed in that letter, or at all.

The tribunal ordered that the respondent solicitor:

1) Do stand censured,
2) Pay a sum of €200 to the compensation fund,
3) Pay a contribution of €1,000 towards the whole of the costs of the Law Society in respect of this case and cases 2980/DT90/13, 2980/DT91/14 and 2980/DT78/15.

In the matter of Simon W Kennedy, a solicitor previously practising under the style and title of Simon W Kennedy & Co, Solicitors, at 4 Charles Street, New Ross, Co Wexford, and in the matter of the *Solicitors Acts 1954-2011* [2980/DT78/15]
Law Society of Ireland (applicant)
Simon Kennedy (respondent solicitor)

On 2 February 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 EBS Building Society on 24 April 2007 in respect of his named client and property at New Ross, Co. Wexford, in a timely manner or at all,
2) Failed to comply with an undertaking furnished to EBS Building Society on 12 August 2005 in respect of his named client and property at New Ross, Co Wexford, in a timely manner or at all,
3) Failed to comply with an undertaking furnished to EBS Building Society on 6 March 2002 in respect of his named client and property at New Ross, Co Wexford in a timely manner or at all,
4) Failed to respond to the Society's correspondence and, in particular, the Society's letters of 23 March 2012, 28 March 2012, 20 June 2012 and 22 June 2012 in a timely manner or within the time prescribed in that letter or at all,
5) Failed to comply with the direction made by the Complaints and Client Relations Committee at its meeting on 16 October 2012 that he furnish to the Society a list of information in respect of the properties that were the subject matter of the outstanding undertakings within a 21-day period, which was communicated to him by letter dated 19 October 2012.

The tribunal ordered that the respondent solicitor:

1) Do stand censured,
2) Pay a sum of €250 to the compensation fund,
3) Pay a contribution of €1,000 towards the whole of the costs of the Law Society in respect of this case and cases 2980/DT90/13, 2980/DT91/13 and 2980/DT152/14.

In the matter of Ruairi Ó Cathain, a solicitor previously practising as Ruairi Ó Cathain, Solicitors, 30 South Mall, Cork, and in the matter of the *Solicitors Acts 1954-2011* [9169/DT85/15]
Law Society of Ireland (applicant)
Ruairi Ó Cathain (respondent solicitor)

On 16 February 2016, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of professional misconduct in that he failed to ensure that there was furnished to the Society a closing accountant's report, as required by regulation 26(2) of the *Solicitors Accounts Regulations 2001* (SI 421 of 2001), in a timely manner, having ceased practice on 8 August 2014.

The tribunal ordered that the respondent solicitor:

1) Do stand advised and admonished,
2) Pay a sum of €500 as a contribution towards the whole of the costs of the Society.

In the matter of Michelle Cronin, a solicitor practising as Mi-

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chelle Cronin, Solicitor, Kennedy Buildings, 24 Main Street, Tallaght Village, Dublin 24, and in the matter of the *Solicitors Acts 1954-2011* [15089/DT76/15]
Law Society of Ireland (applicant)
Michelle Cronin (respondent solicitor)
On 23 February 2016, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in her practice as a solicitor in that she:

1) Failed to comply with an undertaking furnished to Bank of Ireland Mortgages on 10 December 2012, furnished in respect of her named clients and property at Tallaght, Dublin 24, in a timely manner,
2) Failed to respond to the bank's correspondence in connection with the undertaking dated 19 June 2013 and 17 July 2013, in a timely manner or at all,
3) Failed to respond to the Society's correspondence of 12 June 2014, 30 June 2014, 10 July 2014, 29 July 2014, 18 September 2014, and 5 November 2014 in a timely manner, within the time provided, or at all,
4) Failed to comply in a timely manner or at all with the directions made by the Complaints and Client Relations Committee made at its meeting of 22 July 2014 that she furnish a response to the complaint and pay a contribution of €350 towards the Society's costs,
5) Failed to comply with the direction made at the committee's meeting on 16 September 2014 that she furnish an update to the Society on or before 10 October 2014,
6) Failed to attend a meeting of the committee on 31 March 2015, despite being required to do so.

The tribunal ordered that the respondent solicitor:

1) Do stand censured,
2) Pay a sum of €1,000 as a contribution towards the whole of the costs of the Society, to be paid within 12 months from 23 February 2016.

In the matter of Kevin Higgins, a solicitor practising as Kevin Higgins & Company, Solicitors, Ballyroan House, Main Street, Ballyroan, Co Laois, and in the matter of the *Solicitors Acts 1954-2011* [11663/DT59/15 and High Court record 2015 no 215 SA]
Law Society of Ireland (applicant)
Kevin Higgins (respondent solicitor)
On 29 October 2015, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

1) Failed to ensure that there was furnished to the Society an accountant's report for the year ended 31 March 2014 within six months of that date, in breach of regulation 21(1) of the *Solicitors Accounts Regulations 2001* (SI 421 of 2001),
2) Through his conduct, showed disregard for his statutory obligation to comply with the *Solicitors Accounts Regulations* and showed disregard for the Society's statutory obligation to monitor compliance with the regulations for the protection of clients and the public.

The tribunal ordered that the Society bring the matter before the President of the High Court and, on 29 February 2016, the High Court ordered that:

1) The motion be struck out, noting that the accountant's report had been received by the Society,
2) The Society recovers the whole of its costs as against the respondent solicitor, to be taxed in default of agreement.

In the matter of Edward A Kelly (otherwise Eamonn Kelly), previously practising as Eamonn Kelly, Solicitor, at Iveragh Road, Killorglin, Co Kerry, and in the matter of the *Solicitors Acts 1954-2011* [5754/DT47/14; DT48/14; DT49/14, DT50/14; DT51/14; DT52/14; DT53/14; DT54/14; High Court record 2016 no 16 SA]
Law Society of Ireland (applicant)
Edward A Kelly (otherwise Eamonn Kelly) (respondent solicitor)
On 5 November 2015, the Solicitors Disciplinary Tribunal heard eight complaints against the above solicitor. The tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

5754/DT47/14

1) Failed to comply with a solicitor's undertaking to Bank of Ireland Mortgages, dated 28 March 2001, up to the date of swearing of the Society's affidavit,
2) Failed to reply to correspondence from the Society investigating the complaint, being letters dated 28 June 2012, 30 July 2012, 9 October 2012, 25 October 2012, 17 December 2012, and 15 January 2013,
3) Failed to comply with 11 directions of the Complaints and Client Relations Committee numbered from (a) to (k) (inclusive) in the minutes of the meeting of the committee on 11 December 2012,
4) Failed to attend a meeting of the committee on 11 February 2013, despite being required to so attend.

5754/DT48/14

1) Failed to comply in a timely manner or at all with a solicitor's undertaking dated 13 June 2005, furnished to the complainant in respect of his named client and property at Killorglin, Co Kerry,
2) Failed to reply to correspondence from the Society, being letters dated 16 May 2012, 2 July 2012, 31 July 2012, 29 August 2012, and 27 September 2012,
3) Failed to comply with a direction of the committee made on 16 October 2012 that he furnish the information laid out in the minutes from (a) to (k) (inclusive) within 21 days,
4) Failed to attend the meeting of the Complaints and Client Relations Committee on 11 December 2012 or to arrange to be represented.

5754/DT49/14

1) Failed to reply to correspondence from the Society, being letters dated 7 August 2012, 16 August 2012, 9 October 2012, 5 November 2012, and 20 February 2013,
2) Failed to comply with the direction of the Complaints and Client Relations Committee made on 11 December 2012 requiring him to furnish certain information within 21 days or at all,
3) Failed to attend a meeting of the committee, as required to do so on 19 February 2013.

5754/DT50/14

1) Failed to comply with an undertaking to the complainant dated 22 May 2010 in respect of named clients and property at Cahirciveen, Co Kerry,
2) Failed to reply to correspondence from the Society investigating the complaint, being letters dated 19 June 2012, 6 July 2012, 21 August 2012, 10 October 2012, 23 October 2012, 20 November 2012, and 15 January 2013,
3) Failed to comply with the direction of the Complaints and Client Relations Committee set out at (a) to (k) (inclusive) of the minutes of the meeting of 11 December 2012.

5754/DT51/14

1) Failed to comply with a solicitor's undertaking dated 24 August 1998 furnished to the complainant on behalf of his named client and property at Beaufort, Co Kerry, in a timely manner or at all,
2) Failed to reply to correspondence from the Society, being letters dated 16 May 2012, 7 June 2012, 26 July 2012, 9 August 2012, 30 August 2012, 1 October 2012, 22 October 2012, and 13 December 2012,
3) Failed to comply with a direction of the Complaints and Client Relations Committee made on 16 October 2012 within 21 days, as directed,

4) Failed to attend the meeting of the committee on 7 December 2012 as directed or to arrange representation.

5754/DT52/14

1) Failed to comply with a solicitor's undertaking furnished to the complainant, dated 29 June 2000, in respect of his named client and property at Killorglin, Co Kerry,
2) Failed to reply to correspondence from the Society, being letters dated 16 May, 2012, 2 July 2012, 21 August 2012, 10 October 2012, 23 October 2012, 20 November 2012, and 15 January 2013,
3) Failed to comply with a direction of the Complaints and Client Relations Committee made on 11 December 2012, and communicated to him by letter dated 17 December 2012, in a timely manner or at all.

5754/DT53/14

1) Failed to comply with an undertaking, dated 2 April 2007 and given to EBS Limited, up to the date of swearing of the Society's affidavit,
2) Failed to reply to correspondence from the Society, being letters dated 16 May 2012, 2 July 2012, 15 August 2012, 30 August 2012, 13 September 2012, and 25 September 2012,
3) Failed to comply with the direction of the Complaints and Client Relations Committee of 16 October 2012,
4) Failed to attend the meeting of the committee on 11 December 2012 or to arrange to be represented.

5754/DT54/14

1) Failed to comply with an undertaking furnished to the complainant, stamped February 2004, in respect of his named client and property at Palmerstown, Dublin 20, in a timely manner or at all,
2) Failed to reply to correspondence from the Society investigating the complaint, being letters dated 16 May 2012, 7 June 2012, 21 August 2012, 24 September 2012, 8 October 2012, and 5 November 2012,
3) Failed to attend a meeting of the Complaints and Client Relations Committee or to arrange representation on 19 February 2013, as required,
4) Failed to comply with a direction of the committee made at its meeting on 11 December 2012 and communicated to him by letter dated 17 December 2012 within the time specified by the committee or at all,
5) Failed to attend a meeting of the committee on 11 February 2013 despite being required to so attend.

The tribunal, having heard the eight complaints and made the findings of misconduct set out above, referred the matter to the President of the High Court and, in proceedings entitled 2016 no 16 SA on 29 February 2016, the High Court ordered that:

1) The respondent solicitor's name be struck from the Roll of Solicitors,
2) The Law Society recover the costs of the proceedings herein and the costs of the proceedings before the Solicitors Disciplinary Tribunal, to include witness expenses, to be taxed in default of agreement.

In the matter of Domhnall G McKevitt, a solicitor practising as McKevitt & Company, Solicitors, at Suite 103, Premier Business Centre, 14/17 Leeson Street, Dublin 2, and in the matter of the *Solicitors Acts 1954-2011* [8644/DT36/15]

Law Society of Ireland (applicant)
Domhnall G McKevitt (respondent solicitor)

On 8 March 2016, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he failed to ensure that there was furnished to the Society an accountant's report for the year ended 31 December 2013 within six months of that date, in breach of regulation 21(1) of the *Solicitors Accounts Regulations 2001* (SI 421 of 2001).

The tribunal ordered that the respondent solicitor:

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

In the matter of Michael Quinn, a solicitor previously practising as Michael Quinn & Company, Solicitors, at Gray Office Park, Galway Retail Park, Headford Road, Galway, and in the matter of the *Solicitors Acts 1954-2011* [10574/DT115/14]

Law Society of Ireland (applicant)
Michael Quinn (respondent solicitor)

On 8 March 2016, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

1) Failed to ensure that there was furnished to the Society an accountant's report for the year ended 31 August 2013 within six months of that date, in breach of regulation 21(1) of the *Solicitors Accounts Regulations 2001* (SI 421 of 2001),
2) Through his conduct, showed disregard for his statutory obligation to comply with the *Solicitors Accounts Regulations* and showed disregard for the Society's statutory obligation to monitor compliance with the regulations for the protection of clients and the public.

The tribunal ordered that the respondent solicitor:

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

In the matter of Claire Keaney, a solicitor previously practising as Keaney & Company, Solicitors, 2 The Coachhouse, Slane, Co Meath, and in the matter of the *Solicitors Acts 1954-2011* [7372/DT94/14; 7372/DT123/14; 7372/DT146/14; High Court record 2016 no 34 SA]

Law Society of Ireland (applicant)
Claire Keaney (responden solicitor)

On 12 January 2016, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in her practice as a solicitor in three separate referrals from the Society to the tribunal. The solicitor was found guilty of professional misconduct in that she:

7372/DT94/14

1) Failed to comply with an undertaking furnished to Bank of Ireland Mortgages on 23 August 2012 in respect of her clients and the named borrowers and named property at Malahide, Co Dublin, in a timely manner or at all,
2) Failed to respond to the Society's correspondence of 13 January 2014 and 17 February 2014 in a timely manner, within the time provided, or at all,
3) Failed to comply with the direction made by the Complaints and Client Relations Committee at its meeting of 11 March 2014 that she pay a contribution of €250 to the committee by reason of her failure to correspond to the Society's complaint.

7372/DT123/14

1) Failed to comply with an undertaking furnished on 15 May 2006 to the complainant solicitors in respect of their named client and property at Dundalk, Co Louth, to furnish a deed of partial discharge, duly sealed by ACC, in a timely manner or at all,
2) Failed to respond to the Society's letters of 14 November 2013, 13 December 2013, and 14 January 2014 in a timely manner, within the time prescribed, or at all,
3) Failed to attend a meeting of the Complaints and Client Rela-

tions Committee on 11 March 2014, despite being required to do so,

4) Failed to comply with the direction made by the committee at its meeting on 29 April 2014 that she furnish a progress report to the Society on or before 28 May 2014.

7372/DT146/14

Failed to ensure there was furnished to the Society an accountant's report for the year ended 31 December 2013 within six months of that date, in breach of regulation 21(1) of the *Solicitors Accounts Regulations 2001* (SI 421 of 2001).

The tribunal ordered that the three matters should go forward to the High Court and, on 4 April 2016, the High Court ordered that:

1) The respondent solicitor not be permitted to practise as a sole practitioner or in partnership; that he be permitted only to practise as an assistant solicitor in the employment and under the direct control and supervision of another solicitor of at least ten years' standing, to be approved in advance by the Law Society of Ireland,

2) The Law Society recovers the costs of the motion and order from the respondent solicitor, to be taxed in default of agreement.

In the matter of Cormac P Dunleavy, a solicitor practising as Dermott S Dunleavy & Son, Solicitors, at Ross Road, Taghmon, Co Wexford, and in the matter of the *Solicitors Acts 1954-2011* [6982/DT104/15]

Law Society of Ireland (applicant)

Cormac P Dunleavy (respondent solicitor)

On 7 April 2016, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of professional misconduct in that he failed to comply with an undertaking furnished to a named credit union on 15 April 2005 to discharge moneys due to the credit union out of the net proceeds of the sale of a named property in New Ross, Co Wexford, when the sale had been successfully completed.

The tribunal ordered that the respondent solicitor do stand admonished and advised.

In the matter of Patrick Enright, a solicitor formerly practising as Patrick Enright & Co, Solicitors, Tralee Road, Castleisland, Co Kerry, and in the matter of the *Solicitors Acts 1954-2011* [5340/DT72/14 and High Court record 2015/66 SA]

Law Society of Ireland (applicant)

Patrick Enright (respondent solicitor)

On 16 April 2015, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he was convicted before Tralee Circuit Criminal Court of offences of forging documents with intent to defraud, contrary to section 4(1) of the *Forgery Act 1913*, and on 28 June 2013 was sentenced to a term of one year's imprisonment from that date.

The tribunal ordered that the matter go forward to the High Court and, on 4 April and 18 April 2016, the President of the High Court ordered that:

1) The name of the respondent solicitor be struck from the Roll of Solicitors,

2) There be no order for costs made in respect of the tribunal proceedings,

3) The respondent solicitor pay the Society its costs of the High Court proceedings, to be taxed in default of agreement.

In the matter of John P Kean, a solicitor formerly practising at High Street, Tuam, Co Galway, and in the matter of the *Solicitors Acts 1954-2011* [3488/DT75/15 and High Court record 2016 no 44SA]

Law Society of Ireland (applicant)

John P Kean (respondent solicitor)

On 23 February 2016, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that, up to the date of referral of the matter to the tribunal, he failed to comply with an undertaking furnished to St Jarlath's Credit Union on 28 May 1999 in a timely manner or at all.

The tribunal referred the matter forward to the High Court and, in proceedings entitled 2016 no 44 SA on 25 April 2016, the High Court ordered that:

1) The respondent solicitor not be permitted to practise as a sole practitioner or in partnership; that he be permitted only to practise as an assistant solicitor in the employment and under the direct control and supervision of another solicitor of at least ten years' standing, to be approved in advance by the Law Society of Ireland,

2) The Society recovers the costs of the proceedings as against the respondent solicitor, to be taxed in default of agreement.

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

DATA SHARING IN THE PUBLIC SECTOR

October and November 2015 produced the decisions of the CJEU in *Schrems* and *Weltimmo*, two of the most significant in the history of the law pertaining to data sharing. Little wonder then, that another decision – Case C-201/14, *Bara and Others* (1 October 2015) – got comparatively little attention.

However, it is the *Bara* decision that has the potential to transform a state's current practices and approaches to data sharing, and which is increasingly being regarded as at least as significant as the more media-friendly case of *Schrems*.

At its core, *Bara* turned on a key question that many states have examined. When a person must give their personal data to one state body for one particular purpose, can another state body use the data without that person's consent, if their data is going to be used for a different purpose?

Ms Bara was a self-employed Romanian national. The second-named defendant (ANAF) is the Romanian national tax authority and the first (CNAF) is the operator of the Romanian national health insurance fund. CNAF (under a 2007 inter-agency protocol) provided income details of Bara and the other plaintiffs to ANAF.

It then required the payment of arrears of contributions to the health insurance regime, which it claimed owed. Bara and the affected others challenged the lawfulness of that data transfer in the national courts.

Beam me up

Core to their case was that their data was transferred on the basis of a protocol concluded between the public bodies, rather than a legislative measure, and that it was used for purposes other than that for which it had been collected. Neither prior notice nor prior consent of the data subjects had been obtained prior to the transfer.

The Romanian court of appeal asked the CJEU whether a public body could transfer personal data to another public body for further processing, on the basis of a measure akin to an administrative measure (here, the protocol from 2007).

> **Overshadowed by the decision in *Schrems*, the *Bara* decision is a landmark one**

The CJEU concluded that articles 10 and 11 of the *Data Protection Directive* (95/46/EC) (fair processing requirements) and article 13 (exemption from provision of a fair processing notice) must be interpreted as precluding national measures that allow a public administrative body in a member state to disclose personal data to another public administrative body for their subsequent processing, without the data subjects being informed of that disclosure and processing.

To the uninitiated, this may not seem noteworthy; however, it has potential to have a transformative effect on data sharing in the public sector. Overshadowed by the decision in *Schrems*, the decision is a landmark one.

Tread carefully

Indeed, it triggered updated guidelines from the Data Protection Commissioner (DPC) on data sharing in the public sector. Those guidelines welcomed the *Bara* decision as part of a "strong trend emanating from recent judgments whereby the court has interpreted the *Data Protection Directive* so as to extend and to re-enforce the protection of the rights of individuals".

The DPC's guidance observed that individuals may expect public sector bodies to share their personal data where it is "essential and necessary to provide him/her with the services sought". These are clearly high legal thresholds to meet, and therefore public sector bodies need to tread extremely carefully in establishing such data-sharing practices.

The DPC recommends that all data-sharing arrangements in the public sector should:

- Have a basis in primary legislation,
- Be made clear to individuals that their data may be shared and for what purpose,
- Be proportionate in terms of their application and the objective to be achieved,
- Have a clear justification for individual data-sharing arrangements,
- Share the minimum amount of data to achieve the stated public service objective,
- Have strict access and security controls, and
- Ensure secure disposal of shared data.

Shape-shifter

Implementing *Bara* for many public sector organisations across the EU is going to require a complete shift in mindset from the approach evident in many current data-sharing arrangements, which would almost certainly fall foul of it as they stand. Complying with the DPC guidance and the proper implantation of *Bara* are not easy to achieve. To do so, and to properly document that compliance, requires the kind of approach increasingly common in the private sector, where privacy impact assessments are entered into before services are rolled out at all.

However, this is far from a formulaic box-ticking exercise, and it is likely to require specialist advice if the internal resources available to the public sector body are not experienced in these matters. Data privacy rights are human rights, and any measures taken to limit them or make their use subject to conditions will properly be narrowly construed. How the *Bara* decision will sit with particular provisions of the *General Data Protection Regulation*, when in force, remains to be seen.

What is clear is that the case (which few observers noted last autumn) may become the cornerstone for a shift in how states view data sharing, and it may trigger legislative responses in many states to try to limit its effect.

Plain English explanations of the data transfers, their underpinning, and their extent will be needed. This cannot be achieved by the mere updating of privacy policies, and (as in the private sector, where board engagement on this issue is increasingly common) senior management input is necessary.

Public sector bodies need to stop and question the 'why' of any data-sharing arrangements they have entered into. The data transfer being for the 'common good' doesn't satisfy the standards set in *Bara*. The analysis needs to be deeper than that – or the data transfer needs to be scaled back or stopped entirely.

Jeanne Kelly is a technology and contracts law partner in Mason Hayes & Curran.

Data privacy rights are human rights – cue existential angst for an android

Recent developments in European law

LITIGATION

Case C-377/14, *Ernst Georg Radlinger and Helena Radlinerová v Finway*, 21 April 2016

Mr and Mrs Radlinger concluded a consumer credit agreement with Smart Hypo in August 2011. There were to be 120 monthly payments under the contract, with heavy penalties if the terms of the contract were not adhered to. Smart Hypo transferred the debt to Finway. In September 2011, Finway sought full payment, including interest, charges and penalties. This was done because the Radlingers, when concluding the contract, had not disclosed a seizure of their property.

In April 2013, a regional court in Prague declared the Radlingers bankrupt and opened insolvency proceedings against them. In those proceedings, the Radlingers contested the amount claimed by Finway. Czech law does not permit a court ruling on insolvency to examine whether a term of a consumer contract is unfair. The Prague regional court asked the CJEU whether this Czech law is precluded by EU consumer protection law. It also asked whether the national court is required to ascertain of its own motion whether the information on consumer credit agreements, which those agreements must contain, has been set out clearly and concisely.

The CJE held that the obligation of the national court to examine the compliance by sellers or suppliers with the rules of EU consumer protection law applies to insolvency proceedings and also applies to the rules concerning consumer credit agreements. The court declared that the *Unfair Terms in Consumer Contracts Directive* (93/13) precludes the Czech legislation that, in insolvency proceedings, does not permit the court to examine whether a term of a consumer contract is unfair, even where it has the legal and factual elements necessary to that end.

A national court must also ascertain of its own motion whether the information relating to the credit has been stated clearly and concisely. It is then required to establish all the consequences under its national law arising from the infringement of the obligation to provide information. The penalties must be effective, proportionate, and dissuasive.

With regard to the examination of whether the penalties imposed on a consumer who fails to fulfil his obligations are unfair, the court noted that the national court is required to assess the cumulative effect of all the terms of the agreement, and, where it finds that a number of those terms are unfair, to exclude all unfair terms.

professional notices

WILLS

Bowe, Michael (deceased), late of 92 Clontarf Road, Clontarf, Dublin 3, who died on 21 February 2016. Would any person having knowledge of the whereabouts of a will made by the above-named deceased please contact John Hickey, Poe Kiely Hogan Lanigan, 21 Patrick Street, Kilkenny; tel: 056 772 1063, email: admin@pkhl.ie

Brereton, Ursula (deceased), late of 13 Tymonville Crescent, Tallaght, Dublin 24, who died on 29 February 2016. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact John O'Connor, Solicitors, 168 Pembroke Road, Ballsbridge, Dublin 4; tel: 01 668 4366, email: cilian@johnoconnorsolicitors.ie

Clarke, George (deceased), late of 49 Johnstown Park, Dun Laoghaire, Co Dublin, who died on 2 May 2015. Would any person having knowledge of the location of the original will executed by the above-named deceased, or if any firm is holding same, please contact Justin McKenna, Partners at Law, Solicitors, 8 Adelaide Street, Dun Laoghaire, Co Dublin; tel: 01 280 0340, email: jmk@pals.ie

Foody, Christopher (deceased), late of Emilymoran, Bonniconlon, Ballina, in the county of Mayo. Would any person having any knowledge of the whereabouts of the original will, dated 12 January 1995, of the above-named deceased, who died on 8 April 2011, please contact Bourke Carrigg & Loftus, Solicitors, Teeling Street, Ballina, Co Mayo; tel: 096 21 455, email: info@bcllaw.ie

Gallagher, Bernard (orse Barney) (deceased), late of Meenala, Gortahork, Letterkenny, Co Donegal, who died 27 December 2015. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Beatrice Dolan, Vincent McCormack & Co, Solicitors, 11 St Michael Street, Tipperary Town; tel: 062 52899, fax: 062 52944, email: tipplegal@eircom.net

Kavanagh (née Muldoon), Eileen (deceased), late of Sheemore Ward, St Patrick's Hospital, Carrick-on-Shannon, Co Leitrim, having formerly resided at 24 Trathnona, Ballinamore, Co Leitrim, who died on 13 March 2016. Would any person having knowledge of the whereabouts of a will executed by the above-named deceased please contact Niall Finnegan, solicitor, Branigan Cosgrove Finnegan, Solicitors, 31 Pembroke Road, Dublin 4; tel: 01 668 2477, email: niall@bcf.ie

Kenny, Denis (deceased), late of 141 Griffith Road, Finglas East, Dublin 11, who died on 10 February 2016. Would any person having knowledge of the whereabouts of any will executed by the said deceased please contact Delahunt Solicitors, 357 North Circular Road, Phibsborough, Dublin 7; tel: 01 830 4711, email: delahuntsolicitors@eircom.net

McCarthy, Thomas (deceased), late of 64 Fortlawn Drive, Clonsilla, Dublin 15, and Talbot Lodge Nursing Home, Kinsealy Lane, Malahide, Co Dublin, who died on 14 February 2016. Would any person having knowledge of a will made by the above-named deceased, or if any firm is holding same, please contact Frances Cunneen, Dermot McNamara & Company, Solicitors, Main Street, Rush, Co Dublin; tel: 01

RATES

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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*.

professional notices

843 8766, fax: 01 843 8940, email: frances@dermotmcnamara.ie

Morris, Annie (deceased), late of 33 La Touche Road, Bluebell, Dublin 12, who died on 4 August 2014. Would any person having knowledge of the whereabouts of any will made or purported to have been made by the above-named deceased, or if any firm is holding same, please contact Charles BW Boyle & Son, Solicitors, 70 Middle Abbey Street, Dublin 1; tel: 01 873 1588, email: office@boylesolicitors.ie

Silles, Thomas Anthony (deceased), late of Ballinclogher West, Lixnaw, Co Kerry, and formerly of 4/57 Cracknell Road, Annerly, Queensland, Australia, and PO box 242, Annerley, Queensland 4103, Australia, who died on 18 February 2016. Would any person having knowledge of the whereabouts of any will made by the above-named deceased, of if any firm is holding same, please contact Rory O'Halloran, Thomas J O'Halloran, Solicitors, Ashe Street, Tralee, Co Kerry; DX 41015; tel: 066 712 3377, email: info@tohalloransolicitors.com

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TITLE DEEDS

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the premises 3 and 4 Buckingham Street, Dublin 1, held under an indenture of assignment dated 21 November 1995 made between Stephen Lambe of the one part and PJ McGrath of the other part, being part of the lands demised by an indenture of lease dated 28 December 1807, made between John Walsh of the one part and Christopher Russell and Peter Russell of the other part for the term of 900 years from 28 December 1807, and the lands demised by the indenture of lease dated 16 November 1819, made between Laurence Mooney of the one part and Christopher Eiffe of the other part; **and 68 Summerhill, Dublin 1,** held under indenture of assignment dated 26 July 2001 and made between Peter Jenkins of the one part and Patrick J McGrath and Mary McGrath of the other part, and being the lands demised by an indenture of lease dated 26 March 1791 and made between William Duke Moore of the one part and John McCann of the other part for the term of 990 years from 29 September 1791.

Take notice that Patrick J McGrath and Mary McGrath intend to submit an application to the county registrar for the city of Dublin for acquisition of the freehold interests in the aforesaid properties, 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 for the city of Dublin for directions as may be appropriate on the basis that the person beneficially entitled to the superior interests, including the freehold reversion on each of the aforesaid premises, are unknown and unascertained.

Date: 3 June 2016
Signed: Gandon Law Firm (solicitors for the applicants), 3 Farmhill Road, Clonskeagh, Dublin 14

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'Panama Papers' magic roundabout

All five London 'magic circle' law firms have been named in an online database identifying thousands of companies connected to the 'Panama Papers' leak, *Legal Cheek* reports.

According to the International Consortium of Investigative Journalists (ICIJ), it contains information on "who's behind almost 320,000 offshore companies and trusts".

Earlier this year, Panama law firm Mossack Fonseca suffered a major data breach, with millions of sensitive files being passed to German newspaper *Süddeutsche Zeitung*, which in turn enrolled the help of the ICIJ to sift through the information.

The documents showed how Mossack Fonseca helped wealthy clients circumvent local tax laws. The firm – which now has its own unofficial clothing range, with the tagline "because taxes are for poor people" – maintains that it has done nothing wrong.

According to the *Legal Cheek* website, Linklaters, Freshfields, Clifford Chance, Slaughter and May, and Allen & Overy are all named by the site, alongside a host of other leading firms.

Police overreaction over 'reactions'?

Belgian police have warned citizens concerned about privacy not to use Facebook's new 'reactions' feature, *The Independent* reports.

In February, the company launched six new ways of 'reacting' to a post, alongside the familiar 'like' button. However, Belgian police say that Facebook is (entirely predictably) using them to collect information and determine how best to direct advertising to people.

The site can use the tool to tell when people are likely to be in a good mood and then use that to decide when is the best time to show them ads, a post on Belgian's official police website claims.

Facebook had previously confirmed that reacting 'angrily' to a post would be treated as any other kind of engagement with it, meaning that angry reactions could lead to seeing similar posts.

Courtroom selfie just taking the pic

A man who took a selfie at York Magistrates Court and posted it on his Facebook page has been handed a £190 fine, *Legal Cheek* reports.

James Kyle wanted to document his friend's appearance in court last November and whipped out his phone to take the pic while the court was in session.

Police arrested him for two offences under the *Criminal Justice Act 1925*. According to a local newspaper, the magistrate asked Kyle if he had seen the signs around the court building that explicitly said photography was strictly forbidden.

Kyle – appearing in the same courtroom in which he took the selfie – replied: "Yes, I have."

Pressed as to why he took the photo, despite knowing it was illegal, Kyle said: "There were a few of us. I just took a photograph of all of us. It's called a selfie."

Kyle got an £85 fine, a further £85 in costs, and a statutory surcharge of £20.

Stealing food not a crime if in need, says Italian court

In early May, Italy's highest court ruled that stealing food out of dire necessity is not a crime, *Foreign Policy* reports.

In 2011, Roman Ostriakov (36) couldn't afford anything to eat, so he stole less than €4-worth of cheese and sausage from a supermarket. On conviction, he was sentenced to six months in prison and a fine of €100, which he couldn't pay. An initial appeal court upheld the decision but, at the final stage of appeal, the conviction was overturned and the sentence annulled.

The Supreme Court of Cassation ruled: "The condition of the accused and the circumstances in which he obtained the merchandise show that he had taken the little amount of food he needed to overcome his immediate and essential requirement for nourishment … People should not be punished if, forced by need, they steal small quantities of food in order to meet the basic requirement of feeding themselves."

La Stampa lauded the view that the "right to survival prevails over property".

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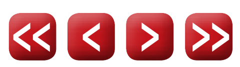

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PERSONAL INJURIES DEFENCE SOLICITOR
€50,000 - €60,000 / Mid Tier / Dublin
Our client, a highly respected firm in Dublin, is seeking to recruit a litigation solicitor with personal injury defence experience. The ideal candidate will work on a range of issues from catastrophic injury to motor liability and marine claims as well as medical negligence and fraud issues. You will work in a dynamic and supportive environments with excellent opportunities for career development and training.
Ref: 907536

CIVIL LITIGATION SOLICITOR
€35,000 - €45,000 / General Practice / North Cork
Our client, a boutique general practice law firm based in Cork, is seeking to recruit a junior solicitor with litigation experience to join its team. You will engage in a high volume of High Court/Circuit Court civil litigation as part of a small, dynamic team. The successful candidate will be eager to develop his/her career in an extremely busy litigation practice with a view to long-term responsibility within the firm.
Ref: 907231

IN-HOUSE

International Legal Counsel
€100,000 - €120,000
Insurance / Dublin
Ref: 906143

Corporate In-House Lawyer
€100,000 - €120,000
FMCG / Dublin
Ref: 906974

Commercial Contracts Lawyer
€70,000 - €90,000
Pharma / Dublin
Ref: 905054

Commercial Contracts Officer
€45,000 - €55,000
3rd Level Institution / Dublin
Ref: 907079

Featured Jobs

SENIOR DIRECTOR
€120,000 - €150,000 / Pharma / Dublin
Our client, a pharmaceutical company is seeking to recruit a senior legal director. Reporting directly to the head of legal, this appointment will be a key business partner to the senior commercial and operations management team, drafting and negotiating commercial contracts for corporate clients. Supporting strategic growth initiatives for the EMEA and US team which is part of an international pharmaceutical research company. A client-facing position which demands the senior counsel, legal director to establish effective relationships with internal and external clients and business partners. This role will require a proven record in such a role within practice and/or pharmaceutical, telco or technology industries.
Ref: 905099

GENERAL COUNSEL
€110,000 - €120,000 / Insurance / Dublin
Our client, an international life assurance company, is seeking to recruit an experienced legal and compliance lawyer. Reporting to the Chief Risk Officer, this appointment will support the senior leadership team whilst acting as an intrinsic part of the group's risk, legal and compliance function. Duties will include overseeing and implementing the monitoring of compliance educational programmes and legal planning. Heading up the AML reporting and data protection function within the group and support SLT with managing the relationships with the CBI. This role will require strong knowledge of the life assurance market and regulation, in particular Solvency II. This role will offer a competitive six figure base salary plus car allowance, bonus, pension, healthcare and other benefits.
Ref: 907106

COMMERCIAL CONTRACTS COUNSEL
€60,000 - €70,000 / 3rd Level Institute / Dublin
Our client, a leading 3rd level institution, is seeking to recruit an experienced legal counsel to join its contracts office. The successful candidate will be responsible for drafting, reviewing and negotiating contracts with a view to minimising the exposure/liability of the institution and ensuring adherence to its policies and practices. You will join a dynamic team of experienced legal professionals with the primary goal of assisting and protecting the research function of the institution itself.
Ref: 907292

Should you require further information about any of these roles, please contact our legal consultants in strictest confidence:

Michael Minogue, Senior Consultant
m.minogue@brightwater.ie

Deborah Crilly, Partner
d.crilly@brightwater.ie

Stephen Adam, Consultant
s.adam@brightwater.ie

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A number of our private practice clients in the Big 6, Top 10 and international arena are currently seeking to recruit exceptional senior lawyers at associate and partner level. With client relationships forged over 20 years, we are uniquely placed to advise you on senior legal career opportunities.

For an exploratory conversation about career opportunities, please submit your CV to bryan.durkan@hrmrecruit.com or contact me by phone on +353 1 632 1852. All discussions and applications are strictly confidential.

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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 well-focused 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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