



SPOT THE BALL

When do actions on the sports field become negligence or assault?



A TAX OF THE CLONES

Practitioners must be aware of key changes to the tax appeals process



PRIVILEGED GROUP

'Legal professional privilege' and 'client confidentiality' are very different concepts

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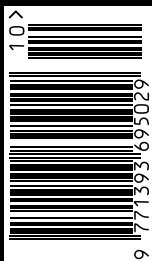
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THUMBS DOWN?

Social media and employers' liability

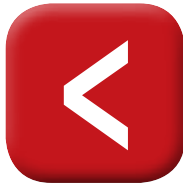




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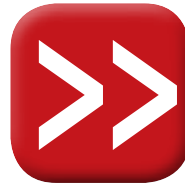
BACK TO
CONTENTS
PAGE



PREVIOUS
PAGE



NEXT
PAGE



NEXT SECTION/
FEATURE

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NO ONE TO BLAME BUT THEMSELVES

As you will have seen from my bulletin issued a week ago, the major activities in the past month have been the appearances by Law Society representatives in the media and before the Oireachtas Joint Committee on Finance, Public Expenditure, and Reform on the rising costs of motor insurance.

Throughout the course of this year, we have had to endure relentless propaganda from the conglomerate of insurers falsely blaming all the ills of their industry and the significant hikes in motor-insurance premiums on the supposed 'increase in legal costs'.

However, it is increasingly being shown that the insurance companies are hiking the cost of motor insurance to make up for their previously bad business practices, and these are now also resulting in an investigation by the Competition and Consumer Protection Commission.

Having read through the full transcript of the appearance

before the Oireachtas Finance Committee on 13 September by our representatives – senior vice-president Stuart Gilhooly and director general Ken Murphy – it is clear that they performed extremely well, as did Bar representatives Paul McGarry and Sarah Moorhead. Our thanks are due to both Stuart and Ken for the huge amount of time, effort and no little skill expended in preparing for and ultimately presenting before the committee.

Incidentally, in addition to meeting with the Oireachtas Finance Committee, on 15 September Stuart and Ken also met with the Inter-Departmental Working Group on Motor Insurance Costs. That meeting was chaired by Minister of State, Eoghan Murphy TD.

We will have to await the next chapter in all of this. I, no doubt like the rest of you, was growing extremely tired of the continuing falsehoods issued by the insurance companies against the legal profession. Now, at last, the tide seems to be turning, as it becomes clearer that the insurance

companies have no one to blame but themselves for the current situation.

Following a few months' break during the summer, the cluster events resumed in early September, when I attended, chaired, and made my debut as a speaker at the event held in Tralee, Co Kerry, on 8 September.

Hopefully my talk on the *Legal Services Regulation Act* was not too boring. I was glad to see plenty of people present at the end of my talk – amazing what we will do for our CPD points!

As usual, the event was superbly organised by the Law Society Skillnets team in conjunction with the Kerry Law Society, and special mention must go to bar association president Paddy Mann and secretary John Galvin, with whom we had a very enjoyable night after the conclusion of the event.

As you read this, I will be entering the final month of my presidential year – and it promises to be the busiest month of all!

In my next and final message, I look forward to filling you in.



“ I was growing extremely tired of the continuing falsehoods issued by the insurance companies against the legal profession ”

Simon Murphy
President



28

gazette

LAW SOCIETY

cover story

24 Socially unacceptable

Employers might be liable for the abuse of social media or the internet by workers – and for online harassment outside working hours. Cliona Kimber monitors the web traffic



46

features

28 Rights and privileges

The terms 'legal professional privilege' and 'solicitor/client confidentiality' are not synonymous. Michelle Lynch discusses the distinction

32 Carpe diem?

In their second article on the impact of Brexit on intellectual property, Helen Johnson and Jane Bourke focus on protected geographical indications, trademarks and designs, trade secrets, litigation and commercial contracts

38 A certain tax appeal

Practitioners need to be aware of the key changes in the tax appeals process to best protect their clients' interests. Julie Burke and Clare McGuinness do the sums



38



42 Pitched battle

What is the standard of care owed to those entering the sporting arena – and when do acts on the field of play become acts of negligence or criminal assault? Alban O'Callaghan draws the red card

46 Songs of the fields

In the second of a two-part series, Ciaran O'Mara highlights a further three of the six Irish solicitors, from both North and South, who died at the Battle of the Somme in 1916

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regulars

4 Frontline

4 Nationwide

5 News

12 People

16 Comment

16 **Viewpoint:** ADR – an alternative to legal costs taxation?

18 **Viewpoint:** Making medico-legal reports more efficient

20 Analysis

20 **News in depth:** Law Society challenges myths of motor insurance costs

22 **News in depth:** Entering the Law Society Library archives

50 Books

50 *Irish Family Law Handbook; Cyber Law and Employment; and Children and Family Relationships Law in Ireland: Practice and Procedure*

53 Obituary

53 Dermot Lavery

54 Briefing

54 Eurlégal

58 Professional notices

63 Final verdict

64 Recruitment



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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's family court exertions

The DSBA tells us that it has made strenuous representations to Dublin City Council in an attempt to get the council to reverse the decision to designate part of the new family law complex on Hammond Lane (beside Church St) as a playground, and so reduce the area available for the new complex. The Law Society and the Courts Service are also engaged in putting forward proposals to make better use of the space available.

SLIGO/LEITRIM



Sligo Bar Association president Michael Monahan keeps 'Nationwide' up to date on the latest football news from the West – a team of Leitrim solicitors beat their Sligo counterparts on neutral Roscommon ground to ensure the Philip McVarney Trophy returned to Leitrim on 16 September

GALWAY

Upcoming CPD events in Galway Courthouse

Busy GSBA president James Seymour tells us of the upcoming CPD seminar dates. All will be held in Galway Courthouse and start at 2pm:

- 21 October – three hours' management, regulatory and general (exact composition to be confirmed),
- 28 October – three hours'

management and one hour regulatory (this is the annual seminar organised in conjunction with Outsource, with a reduced fee for GSBA members),

- 8 November 2016 – three hours' general (developments in judicial review; recent developments on the law relating to stress, bullying and harassment at work; and pre-action protocols for clinical negligence disputes under the *Legal Services Regulation Act*),
- 25 November – two hours' general (co-hosted by the Irish Centre for European Law – the debtor as a consumer: an overview of the key provisions of the UCTD and relevant case law; the key role of the *Charter of Fundamental Rights* in debt cases; getting to the European courts: the role of the preliminary reference procedure in debt litigation; and applying EU law to the mortgage contract). This is a free seminar, but registration is essential. To register, see www.icel.ie/conferences, email icel@tcd.ie, or tel: 01 896 1845.

WEST CORK

Presidential visits and courthouse saviours



The West Cork Bar Association recently welcomed Law Society President Simon Murphy at the annual visit. Pictured are (front, l to r): Kevin O'Donovan, Ger Crean, Ray Hennessey, Siúin Hurley, Maeve O'Driscoll, Simon Murphy, Ken Murphy (Law Society director general), Veronica Neville, Roni Collins and Myra Dinneen; (back, l to r): PJ O'Driscoll, John McCarthy, Flor McCarthy, Stephen Coppinger, Diarmuid O'Shea, Tony Greenway, Maura Crean, Eamon Fleming, Plunkett Taaffe, Flor Murphy, Mary O'Leary, and Frank Purcell

Bar association PRO Frank Purcell told 'Nationwide' of their members' success in taking on the Courts Service and saving their local

courthouse by going all the way to the High Court. On 8 July, Mr Justice Noonan delivered a judgment halting the closure of Skibbereen

Court House and remitting the matter for further consideration. On 26 July, he made an order simply quashing the closure decision.

Millions in unpaid English SDT costs

Unrecovered costs awarded against solicitors by the Solicitors Disciplinary Tribunal in England and Wales now add up to millions of pounds, the *Law Society Gazette* of England and Wales has revealed.

Figures released following a freedom of information request show that, in 2015, just £404,131 has been paid out of £1.7 million ordered by the tribunal. In 2014, the unrecovered amount was even greater – only £288,000 was recovered from solicitors, out of a total of more than £2 million ordered.

In total, solicitors prosecuted through the tribunal between January 2014 and April 2016 still owed a total of £3.53 million. As shortfalls in costs are paid through contributions from the profession, solicitors are footing the bill for those who fall foul of the SDT and cannot pay.

A&L Goodbody award calls for ‘bold ideas’



A&L Goodbody is inviting university students to come up with bold ideas in order to address modern legal, business or political challenges in Ireland. The firm's 'Bold Ideas Student Innovation Award 2016' – now in its fifth year – is offering €4,000 in cash and an internship placement for the winning student. The award recognises the most innovative ideas from either undergraduate or postgraduate students at universities across the country. This year's theme is 'Changing times – Ireland's future' and is open to students of all disciplines.

The closing date for entries is Friday 11 November. The winner will be announced at a ceremony on 1 December. For more information or to apply, see www.algoodbody.com/boldideasaward.

www.algoodbody.com/boldideasaward.

A&L also says that it intends to recruit up to 40 graduates over the coming months as part of its trainee solicitor recruitment programme. The programme offers graduates a paid traineeship, during which time they work across the firm's practice areas. The majority of those who complete it are offered a full-time position with the firm. Further information can be found at the firm's [trainees and interns](#) webpage.

Guidance and Ethics Helpline

Occasionally, Law Society members will be faced with a challenging issue on a matter of professional conduct.

The Society's *Guide to Good Professional Conduct for Solicitors* provides helpful guidance in this regard.

However, one-to-one guidance is also available: the Guidance and Ethics Committee facilitates a helpline for solicitors who have ethical queries or are concerned about their own position on any matter of conduct.

Solicitors who contact the helpline are informed about, and guided to, relevant published material, including practice notes. This information will assist the caller in making an informed professional decision on the issue.

Solicitors can contact the helpline at tel: 01 672 4800 or email: t.clarke@lawsociety.ie.

STEP in the right direction

O'Connell Brennan Solicitors in Dublin was awarded 'Boutique Firm of the Year 2016/17' at the 11th Annual STEP Private Client Awards held at the Park Plaza Hotel in London in September. The awards recognise excellence across the private client world.

The firm previously won the prize in 2014. Partners Susan O'Connell and Cormac Brennan expressed their delight at repeating the achievement, adding that it was "fantastic recognition for our team and the hard work that we have put into developing our practice over recent years".



Cormac Brennan of O'Connell Brennan Solicitors and Greg Harris (head, investment services at Maitland, which sponsored the award)

Kildare solicitor re-elected vice-chair of AAJ section

Naas-based personal injuries solicitor Liam Moloney has been re-elected as vice-chair of the international practice section of the American Association for Justice (AAJ) at its recent annual convention in Los Angeles.

AAJ is the world's largest injury lawyers' association, with over 23,000 members, that advocates for the rights of accident victims. Members provide expert advice in areas such as pharmaceutical,



medical-device, aviation, tourist and medical malpractice litigation claims.

Committee for Judicial Studies conferences

The 2017 Circuit Court conference will take place on Friday 23 June 2017 and Saturday 24 June 2017. No

cases should be listed for any Circuit Court on Friday 23 June 2017, save on the instruction of the judiciary.



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Brazilian court approves Lynn extradition to Ireland

Fugitive former solicitor Michael Lynn looks set to return to Ireland soon, following a decision by Brazil's Supreme Court on 13 September that his extradition could proceed. Originally, his extradition had been cleared to take place in December 2014. A first appeal for clarification of aspects of the decision was granted, which held up Lynn's extradition by a year.

A panel of the court's judges rejected a second appeal by Lynn's legal team – once again, based on seeking clarification of previous rulings by the court in the case. While legal opinion held that the petition had no chance of changing the substance of the judgment, it further delayed Lynn's extradition by months.



The basis of the argument in this second clarification request by Lynn's lawyers was that one of his lawyers had left the legal team during proceedings, meaning that his defence had

been impaired. All five Supreme Court justices rejected the argument, saying that other lawyers had been working on Lynn's behalf in the case.

Antenor Pereira Madruga

Filho, representing the Irish State, said: "I really hope this will be the final decision by the court because there are no other avenues for appeal left."

The decision comes nine years after Lynn fled from Ireland – and three years after his arrest in a beach house near Recife.

Subject to no further delays, Brazil's Ministry of Justice will inform the Irish authorities of Lynn's extradition, after which the logistics will be negotiated with Brazil's federal police. No extradition date has been set yet.

Lynn faces 33 charges at Dublin's High Court relating to an alleged €80 million mortgage fraud, although some of these are expected to be dropped as part of the extradition deal.

Leadership in changing times for the in-house solicitor

Steven D'Souza – international executive educator, advisor and author – will be the keynote speaker at this year's in-house and public sector conference. It will take place on 10 November 2016 from 10am to 4pm at the Law Society's headquarters at Blackhall Place.

The conference will focus on practical issues surrounding leadership and will hear the views of senior clients, industry experts and practitioners. D'Souza has worked with some of the world's leading business schools and corporations and has helped them to design transformational learning courses and techniques for senior executives.

It will feature a panel discussion, during which members of the In-house and Public Sector Committee will talk about their own experiences and the opportunities and challenges that are facing the Irish in-house solicitor.

In these testing times, in-house solicitors also need to look after their own welfare and



wellbeing, so the topic of 'leader wellness' will be examined. The conference will share tools and techniques for helping with motivation and dealing with resilience and stress management.

This conference should appeal to all in-house solicitors – whether based in the private or the public sector – and regardless of what stage they're at in terms of their careers. To view the event [brochure](#) and download the [booking form](#), visit the [committee's section](#) on the Society's website.

LawCare – well-being matters



Well-being matters. In a professional context, it matters because it brings a number of benefits – self-esteem, optimism, resilience, positive relationships with colleagues, better physical and mental health, greater motivation, and more productive work.

Lawyers are expected to cope with the demands of the job, and not coping can be seen as a sign of weakness. They often believe that they should be able to handle their own problems, and because lawyers spend so much time resolving other people's, they can find it difficult to acknowledge that they themselves may need support.

They may find it easier to take this step with another lawyer, which is where LawCare comes in. LawCare's staff and volunteers have experience of practising law and understand the legal environment. They can offer support with issues such as stress, depression or anxiety, and related emotional problems.

The law is a rewarding and stimulating career. LawCare wants to ensure that the working culture enables lawyers to have fulfilling and healthy professional lives. You can contact the free, independent and confidential helpline at 1800 991801 or visit www.lawcare.ie.

Kerry solicitors gather for training and networking event

The autumn 2016 programme of Skillnet cluster events got underway on 8 September in Ballygarry House Hotel, Tralee. Law Society President Simon Murphy chaired the event, which was designed and presented in collaboration with the Kerry Law Society.

Over 100 solicitors from all over Kerry attended the 'Update Kerry 2016' event. They were informed about a diverse range of topics, which included a general overview and the impact of the *Legal Services Regulation Act*, the pitfalls and practicalities of the *Companies Act 2014*, an update on the *Children and Family Relationships Act*, data protection and ADR for practitioners, and an overview of agrifood law.

Describing the event, Teri Kelly (director of representation at the Law Society) said: "Local solicitors identified this range of legal issues as being of key importance for the region. Experts delivered updates and highlighted recent developments in the law, and provided a forum for discussion and debate."

The seminar was part of



PHOTO: DOMINICK WALSH PHOTOGRAPHY

a nationwide programme of similar events that will be taking place across the country over the coming months:

- **Mayo** – 29 and 30 September: Connaught Solicitors' Symposium 2016 (parts 1 and 2),

Cork – 18 November: Practitioner Update 2016,

- **Castleblayney** – 14 October: North East CPD Day 2016,
- **Dublin** – 11 November: Practice and Regulation Symposium 2016,
- **Kilkenny** – 25 November:

General Practice Update 2016.

For more details or to book any of these events, contact the team at cpdclusters@lawsociety.ie or visit www.lawsociety.ie/cpdclusters.

With the best will in the world – the 'legacy question'

In 2003, a small number of charities that had experience of how a legacy can improve the lives of others got together to establish My Legacy, writes Mark Jennings (solicitor and voluntary board member of My Legacy).

This umbrella body of almost 70 Irish charities works together to encourage legacy-giving in Ireland. It offers advice and information to individuals, charities and the legal profession about legacy-giving, but does not solicit specific gifts or legacies for individual charities.

A recent study by the London-based Charitable Aid Foundation found Ireland to be in the top ten

most generous countries in the world. The results of this study indicate that 59% of Irish people helped a stranger in 2014, while 67% donated money and 41% spent time volunteering.

While it is clear that charity-giving in Ireland is significantly higher than in other countries, research conducted by My Legacy in 2012 indicates that only about 12% of Irish people have included a charity as a beneficiary in their will – despite the fact that 62% say they would consider leaving a legacy in their will.

Charitable legacies are the foundation for many charities in

Ireland, and the funds received are vital in assisting good causes. In advance of 'Best Will Week' (31 October to 4 November), My Legacy is encouraging practitioners to ask the 'legacy question' – "Would you like to leave a charitable legacy in your will?" – and to seek specific instructions from clients willing to leave a legacy.

From a practical perspective, the instruction from the testator regarding the legacy bequest should include the name and address of the charity in question, the charity number, and the monetary sum of the bequest. Some clients may wish to include information regarding

their choice of legacy, or the reasons why they have chosen a particular charity. A letter of wishes is commonly used to demonstrate the background to the client's legacy intention.

For further information, visit www.mylegacy.ie, the Facebook page at www.facebook.com/MyLegacy.ie, or the Charities Aid Foundation at www.cafonline.org.

My Legacy has 495 solicitor firms on its online database who take part in the yearly 'Best Will Week' campaign. Anyone interested in taking part can subscribe via the website or can contact Ellie on 087 838 9483.

Chief Justice slams Government over Judicial Council delay

Chief Justice Susan Denham has hit out at the Government over the 20-year delay in instituting a Judicial Council, writes Mark McDermott. Speaking on 26 September in advance of the new legal year, Mrs Justice Denham said that the lack of action in establishing the council was “a matter of real concern, both for the judiciary and the State” and that it had created “a significant institutional vacuum”.

“The failure to progress this institutional reform with the urgency it deserves weighs heavily, both on relations between the judiciary and the executive,” she said, “and on the State’s reputation internationally.”

The Chief Justice reminded the Government that Ireland was due to report in the final week of September to the Council of Europe’s anti-corruption group, GRECO, on the progress made to date on five key 2014 recommendations relating to the Irish judiciary.

The report would show no real progress from Ireland – despite being given a time extension. (Three of the five GRECO recommendations would be met by the establishment of a Judicial Council.)



Judicial Council – ‘a necessary element of the infrastructure of a modern democratic state’

Bemoaning the existing inertia on the matter, the Chief Justice stated: “The current placement of the *Judicial Council Bill* under the heading ‘all other legislation’ appeared to be a demotion from its status under previous government legislative programmes.”

She added that the Irish judiciary and other bodies concerned had been advocating for the establishment of a Judicial Council for the past 20 years. Such a council was “a necessary element of the infrastructure of a modern democratic state, providing an important safeguard of the separation of powers”, she said.

The Judicial Council would act as a representative body for the institution of the judiciary, would be a forum for professional development of judges, and a standard-setter in the area of judicial ethics. It would be:

- A key mechanism to facilitate constructive and appropriate interaction between the judicial branch and the other branches of government,
- An essential support to the independence of the judiciary,
- Instrumental in promoting public confidence in the administration of justice,
- A body to organise courses to initiate new members into the judiciary, and to run continuing education courses,
- A mechanism for the investigation and handling of complaints concerning judicial conduct (such a process would serve to underpin the high level of trust which – as international surveys confirm – the public reposes in Ireland’s judges), and
- An institution within which to establish a Sentencing Committee.

In its evaluation report *Corruption Prevention in Respect of Members of Parliament, Judges and Prosecutors*

(November 2014), GRECO advocated the establishment of a Judicial Council in Ireland. It stated that, within 18 months following the adoption of the report, “Ireland shall report back on the action taken in response to the recommendations.”

The 18 months expired on 10 April 2016. This was extended to 30 September 2016.

The Chief Justice concluded: “It is clear that there is an expectation that the State will take the GRECO recommendations seriously and implement them accordingly. The language used in the rules is mandatory in nature. Rule 30(1) states that members ‘shall comply’ with the recommendations set out in the report. The mandatory nature of this rule has obvious ramifications for Ireland.

“In face of the strong consensus in Ireland and internationally as to the need for the establishment of a Judicial Council and legislation for a judicial conduct regime, it is therefore a matter of the most real concern to observe what would appear to be a distinct loss of momentum in delivering this historic institutional reform.”

Law Reform Commission scopes digital safety in latest report

New criminal offences and a brand new oversight agency – the Digital Safety Commissioner – are being recommended by the Law Reform Commission (LRC) to combat cyberbullying, revenge porn and other types of online abuse.

In its *Report on Harmful Communications and Digital Safety*, published on 26 September, the LRC makes 32 recommendations for reform – and includes a draft *Harmful Communications and Digital Safety Bill* (see Appendix A, p162) in order to help implement them.

The LRC advocates the enactment of two new criminal offences aimed at tackling the online posting of intimate images without consent.

The first would deal with so-called ‘revenge porn’ – the intentional shaming of a victim that involves the online posting of intimate images without consent. This would be punishable by up to seven years in prison.

The second new offence would tackle the posting of voyeuristic photos or videos known as ‘upskirting’ or ‘down-blousing’, which causes harm. This would be punishable by up to six months in prison.

The report recommends reforms of the existing offence of harassment, to include online activity such as posting fake social media profiles. There would be a separate offence

of stalking, “which is really an aggravated form of harassment”.

It also proposes the reform of the existing offence of sending threatening and intimidating messages, in order to capture the most serious types of online intimidation.

The LRC also recommends that a statutory Digital Safety Commissioner be established. This role would be modelled on comparable offices in Australia and New Zealand.

The commissioner’s general function would be “to promote digital safety, including an important educational role to promote positive digital citizenship among children and young people,

in conjunction with the Ombudsman for Children and all the education partners”.

The role would also include the publication of a statutory code of practice on digital safety. This would build on the current non-statutory take-down procedures and standards already developed by the online and digital sector, including social media sites. In addition, the code would set out nationally agreed standards on the details of an efficient take-down procedure.

The report forms part of the commission’s Fourth Programme of Law Reform and can be accessed at www.lawreform.ie (see ‘latest news and publications section’).



All clear for take-off – next-generation aviation innovators

Ireland is internationally recognised as the leading jurisdiction for aviation leasing and finance, writes *Freda Grealy* (head of the Law Society's Diploma Centre), with each of the top ten global aircraft lessors enjoying a presence here.

According to the International Air Transport Association, the aviation industry contributes \$10.5 billion to Irish GDP and supports 220,000 jobs nationwide. Latest figures released by the Department of Transport indicate that at least 3,000 skilled professionals are employed within the Irish aircraft leasing and finance sector, including a cadre of highly skilled solicitors.

Not only that, but the global registrar for international interests in aircraft assets is also headquartered in Dublin. Following a global tender process, Aviareto Limited – a joint venture between the Irish Government and SITA SC – successfully secured the role of registrar. On 1 March 2006, coinciding with the entering into force of the *Cape Town Conventions* and the *Aircraft Protocol*, the International Registry for Aircraft Equipment was established. A recent contract renewal means that the registry will remain operated by Aviareto and based in Ireland until at least 2021.

Leading role

The Diploma Centre is well placed to play a leading role in the provision of training and certification within the fast-growing and dynamic aviation sector. Already, the Diploma in Aviation Leasing and Finance programme, offered since 2012, has seen considerable success and found broad appeal, particularly in light of the practice-focus and enhanced employability of attendees.

Building on the expertise, acknowledged talent and goodwill of some of the leading legal experts within the field, the Diploma Centre



Rob Cowan, managing director at Aviareto

is expanding its provision of professional practitioner-led training and certification to include a course focusing on the *Cape Town Convention* and the *Aircraft Protocol*. These specialised programmes support the profession's ability to serve the aviation sector and further

cement Ireland's position as a global hub for aviation leasing and finance.

Ireland has an important role in the field of aviation. The Diploma Centre believes that it is vital that it continues to offer access to lawyers with the requisite experience, knowledge

and skills, and maintain its tradition of standout excellence in the field of aviation law. Looking to the future, the *Cape Town Convention* and the international registry will be important areas of practical innovation for the global aircraft-leasing industry.

The Diploma Centre's Certificate in the *Cape Town Convention* and the *Aircraft Protocol* starts on Friday 28 October 2016. The centre has worked with a broad range of aviation stakeholders and the solicitors' profession to develop this new certificate, which is supported by expert knowledge and input from Aviareto.

For information on this course, visit www.lawsociety.ie/diplomacentre or contact Siobhán Phelan on tel: 01 672 4802.

Press Council upholds child photo complaint

The Press Council of Ireland has affirmed the decisions of the Press Ombudsman to uphold complaints taken by Julie and Robert Duhý against a number of newspapers, both print and online.

The complaints centred on the use of photos that certain newspapers had copied from YouTube of their baby daughter. These were used to illustrate articles on a civil action taken by Julie and Robert Duhý against Ralph Lauren.

The Duhýs had been given a present of a Ralph Lauren baby pants for their daughter. The elastic on the pants was too strong and caused the Duhýs' baby to sustain red welts on her thighs. Her injuries had been photographed at the time and on several occasions afterwards until their complete disappearance after two-and-a-half-years.

Prof Julian Ellis (a Nottinghamshire expert in the



technology of elastic fabrics) had forensically examined the pants in early 2012 and found the elastic used had been twice as powerful as he would recommend – even for an adult. The Duhýs initiated a civil action against the manufacturer on behalf of their daughter.

Ralph Lauren agreed to pay the Duhýs €17,500 in a settlement. This settlement was reported in most national newspapers, many of them using photographs of the Duhý's child obtained from YouTube.

The parents complained that the reports breached the Press Council's *Code of Practice*, and, in particular, that the publication of the photograph of their child breached principle 9 (children).

Four of these complaints were upheld by the Press Ombudsman on the grounds that the publication of the images was a breach of principle 9. This states that "journalists and editors should have regard for the vulnerability of children".

This decision was reached despite the Duhý parents uploading images of their child on a website with no privacy restrictions. The Press Ombudsman decided that the purpose for which the parents had uploaded images of their daughter had to be taken into account in any decision to publish those images.

The ombudsman found that there was no breach of the code of practice in the text of any of the reports – just in the publication of the images of the child.

Irish lawyers share best practice with Malawian DPP and state prosecutors during Dublin visit

“How can we utilise the International Association of Prosecutors (IAP) to raise awareness of the plight of child victims of sexual offences?” This was the question posed to delegates by Mary Kachale, Malawi’s director of public prosecutions, at the 2016 IAP conference in Dublin in September.

The overall theme of the conference was the relationship between the prosecutor and the investigator. Mrs Kachale focused specifically on juvenile prosecution, prosecutorial challenges, and victims and vulnerable persons, including children, during investigation and prosecution.

This theme was of particular relevance for Malawi’s DPP due to the challenges faced by her country’s criminal justice system in providing adequate protection and representation for child victims. For example, there is no express mention of the rights of child victims of crime in Malawi’s *Child Care, Protection and Justice Act*. These challenges are central to the work that the Irish Rule of Law International (IRLI) is working to address in Malawi through its Access to Justice Programme.

IRLI is a joint organisation of the Law Society of Ireland and the Bar of Ireland. It has been working in Malawi since 2011 in an effort to strengthen the criminal justice system there. It focuses on



Irish Rule of Law International held a welcome reception on 14 September at King’s Inns for the Malawian prosecutors. The dinner was hosted by IRLI chairman David Barniville SC

access to justice and protection for the most vulnerable, including children. As well as working with the judiciary, the police service and the legal aid bureau, one of IRLI’s key partners is the Office of the DPP. Through this partnership – and as a result of funding received from Irish Aid – IRLI invited Mrs Kachale to attend the IAP 2016 conference in Dublin. She was accompanied by the Malawian chief state prosecutor Primrose Chimwaza and senior state advocate Tione-Atate Namanja (both sponsored by IRLI).

Through its work, IRLI has established important links with

the Office of the DPP in Ireland in an effort to exchange best practice and experiences with counterparts in Malawi. As a result of this relationship, and with the support of the DPP, Claire Loftus, the Malawian prosecutors had the opportunity to attend a one-week programme in Dublin, developed by the Office of the DPP. The programme featured a series of talks from lawyers working in the Irish office, who discussed the different functions of the legal divisions. Visits to the District Court, Children’s Court and High Court were also arranged.

The achievements of IRLI’s Malawi programme are due chiefly to the success of these important partnerships. At the heart of this work is the commitment and dedication of international volunteer lawyers.

Learn more about the Access to Justice Programme and how you can support it in the November *Gazette*, when Irish volunteer solicitors Emma Weld-Moore and Orla Crowe will share their experiences of working with IRLI in Malawi. A short video about the programme can be viewed at irishruleoflaw.ie.

Seminars highlight a new approach to personal debt litigation

While there have been some statutory developments regarding insolvency and bankruptcy, no ‘new equity’ in the law of property has been created by the Irish legal system in dealing with the contemporary financial and debt crisis, writes *Madeleine Thornton*.

Significant challenges were taken against the ‘summary’ process of repossessions of homes, following the lacuna in the law created by the *Land and Conveyancing Law Reform Act 2009*. However, the new

mortgage category of the consumer ‘housing loan’ has not generated links to wider consumer law.

So what of the individual homeowner and their family – do they have any rights to be protected before a possession or execution order is granted? The Irish courts may not be fully applying key rights that flow from EU consumer protection law and the *Charter of Fundamental Rights*.

The *Unfair Contract Terms in*

Consumer Contracts Directive (UCTD) applies to loan or mortgage contracts, specifically article 3.

Also, the *Treaty on European Union* puts responsibility on member states to provide remedies sufficient to ensure effective legal protection in the fields covered by European Union law.

In Ireland, there are a number of terms that might appear in loan or mortgage agreements that could be deemed ‘unfair’ under the UCTD,

(see article in the November issue of the *Gazette*.)

In order to raise awareness of this area of human rights law, a number of autumn and spring seminars will take place in Dublin, Galway, Cork, Cavan and Kilkenny. Organised by the Open Society Justice Initiative, in association with the School of Law (NUI Galway) and the Irish Centre for European Law. Full details and registration can be found at www.icel.ie/UCTD.



BRITISH AMBASSADOR DISCUSSES BREXIT AT ANNUAL DINNER

'Brexit' was the chief topic of outgoing British Ambassador Dominick Chilcott's speech at the Law Society's annual dinner on 15 July. The address couldn't have been timelier, coming just three weeks after the referendum's shock result.

The ambassador was welcomed to Blackhall Place by Law Society President Simon Murphy, who gave a warm and witty speech of welcome to the Society's guests. Ambassador Chilcott had proved to be an outstanding representative of his country during his time in Ireland, he said, and he wished him well in his future endeavours.

Chilcott was appointed as British ambassador to Ireland in 2012 at a pivotal point in Irish history, right at the beginning of the 'decade of centenaries'. He commented that the inclusive nature of the Irish Government's commemorations for the 1916 Rising would help promote reconciliation and friendship on the island of Ireland and between Ireland and Britain.

Britain had full respect for Ireland's

sovereignty, independence and traditions, he said, and – despite the result of the Brexit referendum – his country would continue to work closely with Ireland, given the long-standing ties and interconnected history between both nations.

Mr Chilcott wasn't the only ambassador attending the annual dinner. Also present was Canadian Ambassador Kevin Vickers.

Among the judges who attended were Mr Justice Frank Clarke, Mrs Justice Elizabeth Dunne and Mr Justice John McMenamin from the Supreme Court, President of the High Court Peter Kelly, Mr Justice Nicholas Kearns (retired President of the High Court) and President of the District Court Rosemary Horgan.

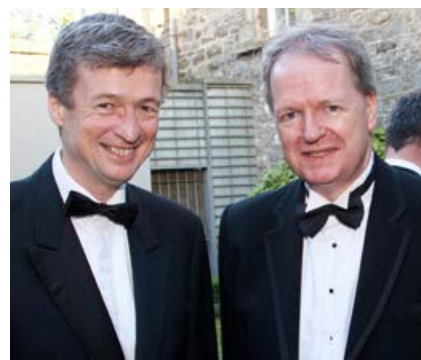
Other luminaries included Attorney General Máire Whelan, Claire Loftus (DPP), Colonel John Spierin (Defence Forces director of military prosecutions), Garda Commissioner Nóirín O'Sullivan, David Stanton (Minister of State for Justice), James Browne TD and Joseph Madigan TD, solicitor.



Claire Solon (president, Society of Chartered Surveyors Ireland) and Simon Murphy (president, Law Society)



Ken Murphy (director general, Law Society) and Máire Whelan (Attorney General)



Judges John O'Connor (District Court) and Keenan Johnson (Circuit Court)



Rosemary Horgan (President of the District Court) and Christine McLintock (past-president, Law Society of Scotland)



Paul Keane (Council member), Eamonn Shannon (president, DSBA), Paul McGarry SC (chair, Bar of Ireland), Simon Murphy, Michele O'Boyle and Stuart Gilhooly



Peter Kelly (President of the High Court), Simon Murphy, and Stuart Gilhooly (senior vice-president, Law Society)



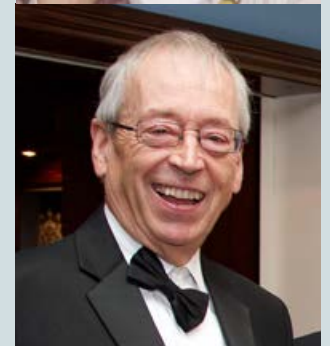
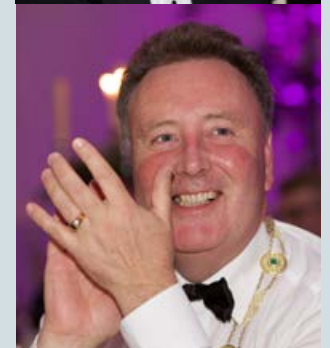
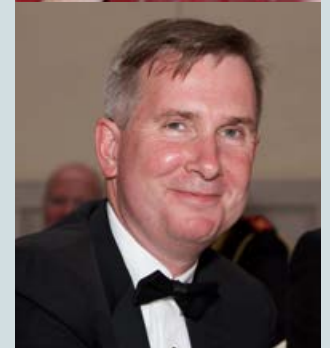
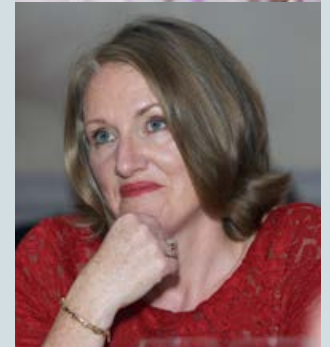
Senator Rónán Mullen, Keith Walsh (Law Society Council member), Josepha Madigan TD, Rosemary Horgan (President of the District Court) and Stuart Gilhooly



Eileen Creedon (Chief State Solicitor), John Guerin (president, Law Society of Northern Ireland) and Fiona Ní Cheallaigh (solicitor)



Maura Derivan (Council member), Dervilla O'Boyle (solicitor), Nano O'Boyle and Michele O'Boyle (junior vice-president)



Getting to grips with legal English – bueno, excelente...



(Front, l to r): Eva Massa (Law Society), Gonzalo Olmos, Maria Francesca Cicotti, Antonella Benedetti, Lorenza De Bonil, TP Kennedy (director of education), Lucia Fabbri, Attracta O'Regan (head, LSPT), Daniela Barbieri and Alessandro Valerio. (Middle, l to r): Colette Reid (Law Society), Alessandro Mazza, Sara De Angelis, Costanza Acciai, Sara Ziveri, Erika Criscione, Stefania Spina and Ines Cavallone. (Back, l to r): Joanne Cox (Law Society), Vanni Sancandi, Renzo Rossi, Elena Guerri, Michele Wurzer, Lorenzo Napoleoni, Michelangelo Dapporto, Enrico Braiato, Marzia Susan Zambon, Francesca Braglia, Chiara G Consonni and Michelle Nolan (LSPT)

Italian and Spanish lawyers took part in the 'Legal Excellence: Legal English Summer School' at Blackhall Place from 18-22 July. The

school included an intensive commercial contracts and advanced negotiation skills masterclass designed by Joanne Cox (course manager, Law

School) and delivered by Irish solicitors. The event was hosted by Law Society Professional Training.

An ethics lecture provided

a comparative analysis of the ethical values applicable to the legal profession in Italy and Ireland. It featured an overview of the relevant principles that guide the conduct of lawyers in their professional relationships. The lecture was a collaborative initiative between the Law Society and the Siena Bar Council and was accredited by the Consiglio Nazionale Forense (CNF) in Italy. It was co-presented by Eva Massa (course manager, Law School) and Lucia Fabbri (a practising barrister in Italy and disciplinary tribunal judge in the District of Florence).

Social aspects of the summer school included a trip to the Four Courts, Kilmainham Jail, and a tour of Kilkenny City, taking in the castle and Smithwick's Brewery. This was followed by dinner and an evening of traditional Irish music and dance.

The programme was run in collaboration with the Academy of European Law, Siena Bar Council, Velletri Bar Council, Bologna Bar Council and the School of Law International Group.

Diploma in International Financial Services



The conferring for the Postgraduate Diploma in International Financial Services Law 2016 took place in UCD on 13 July. Law Society Finuas Network and the UCD Sutherland School of Law hosted the event. (Back, l to r): Prof Joseph McMahon (dean of law, UCD Sutherland School of Law), Carol Plunkett (chair, Law Society Finuas Network), Attracta O'Regan (head, Law Society Finuas Network), Dr Noel McGrath (UCD Sutherland School of Law) and conferee James O'Sullivan (Central Bank). (Front, l to r): Michelle Nolan (Law Society Finuas Network), conferees David Harte (Hedgeserv Limited), William Greensmyth (Walkers Global), Shane McCarthy (McDowell Purcell), Malachy Kearney (Kennedy's Law), Neil Donnellan (Guggenheim Partners, Europe Ltd), Changiz Durrani and Rose O'Connor (Department of Finance)

Barely Legal Golf Society marks tin at the pin

In the dark and dim Blackhall student bar, many a plan has been hatched. Not all of these have seen the light of day, thankfully. The establishment of the Barely Legal Golf Society (BLGS) arose out of one such discussion. To coincide with the enrolling of the class of 2006, a trip was planned. It was seen as a way to play some of the best golf courses in the country and to keep in contact with members of the class who were spread far and wide.

We headed off on our first journey to Mount Juliet, Faithlegg and Waterford Castle, while staying in Dunmore East. Eight further trips followed, where the Old Head of Kinsale, Rosses Point, Tralee, The Heritage and Enniscrone were among the venues.

BLGS has now achieved its tenth ('tin') anniversary and a trip to foreign climes beckons. We will be docking in the beautiful town of Lagos in Portugal from 6-9 April 2017, when the stunning Robert Trent Jones Jnr-



designed Palmeras Golf Resort will be our host venue.

On a serious note, this society and others like it around the country, assist and support colleagues with various problems in their business and personal lives. It also provides expertise in areas outside of a solicitor's comfort zone that invariably arise. The BLGs Whatsapp group is as likely to see a request for an immigration lawyer or a query regarding a difficult conveyancing problem

as an update on someone's golf game. There is always a colleague there to help, whether that is in lining-up a putt or representing you in court!

Anybody who qualified in 2006 is more than welcome to join. Contact conwayohara@gmail.com or galpete@gmail.com.

FinTech – law and regulation demystified

The inaugural Law Society Finuas Network FinTech Symposium took place at Blackhall Place on 2 September. Law Society President Simon Murphy and CEO of Skillnets Paul Healy welcomed the 100-plus participants to the event.

The symposium was designed with the expert guidance of solicitors Eleanor Daly and Gerardine Stack (Fexco), as well as other international financial services sector professionals.

Topics focused on regulatory overview, payment services/e-money, platforms (crowdfunding, personal loan invoice discounting platforms), consumer issues, AML and cyber security. Comprehensive papers from the event are now available for purchase for €30 – contact Finuas@lawsociety.ie.

This FinTech programme



comprises a complimentary online introduction to 'FinTech – The Fundamentals', which can be accessed at any time until 31 December 2016. On completion of the course, participants can claim one hour of general CPD (by e-learning) – contact Finuas@lawsociety.ie to register.

on the move

Two new partners for A&L Goodbody



A&L Goodbody has appointed two new partners, Matthew Cole (Dublin) and Gina Conheady (San Francisco), to the firm's global corporate team.

Having previously practised in London, Matthew brings a wealth of international and domestic experience and will work with clients from the Dublin office on a range of M&A and capital markets transactions. Gina joins as the new head of the San Francisco office, taking over from John Whelan, who has returned to Dublin to lead the IT and data protection practice. Gina, who has

practised on the west coast of the US since 2013, will support US clients with all aspects of Irish corporate law.

Commenting on the appointments, managing partner Julian Yarr said: "I'm delighted to welcome Matt and Gina to the firm as we look to continue our growth and development. They both bring a wealth of international experience to our already very strong corporate and M&A team."

The appointments bring the total number of partners at A&L to 88.

viewpoint

ADR – AN ALTERNATIVE TO LEGAL COSTS TAXATION?

While it is hoped that the Legal Costs Adjudicator's Office will be established shortly, there will remain a need for alternative dispute resolution in the legal costs world, writes **Shane Galligan**



Shane Galligan is a partner with Behan & Associates, Legal Costs Accountants and a fellow of the Institute of Legal Costs Accountants

When I was asked to contribute on this topic, my instinct was to shine a favourable light on the taxation process. It is, after all, where I practise every week, and I have a deep-rooted respect for the taxing masters. Some real issues exist with the process, however, which demand consideration.

There are some common misconceptions. For example, there is no real delay in fixing a case for hearing, and dates are generally given four to seven weeks from the date of summons to tax. In some instances, it can be much sooner. While there can be significant delays in the actual process, these are generally confined and avoidable.

In fact, the vast majority of bills lodged for taxation are still resolved *inter partes*, particularly where experienced legal costs accountants are involved.

It is correct to say that there have been changes in the past five years (since the retirement of the very learned taxing master Flynn and, just before him, the equally experienced taxing master Moran). However unpopular, some change was required given the economic circumstances prevailing at the time and the requirement for greater transparency in the taxation process.

It is also correct to say that there is now greater scrutiny of the work actually done by legal practitioners and experts. Whether absolutely required or not, and the extent to which one ought to scrutinise something (in what is a specialist tribunal) is a matter for debate, an examination of this nature

was essentially envisaged by the *Courts and Court Officers Act 1995*, in particular section 27, which conferred additional powers on the taxing masters. The act was silent, however, on the nature of such scrutiny. In essence, taxation has become more difficult and contentious, leading to delays – even to the point that the Taxing Master has been the subject of judicial review.

Stuck in the middle

A consequence of all this is that clients' moneys have been held up and solicitors have been caught in the middle having to explain the delay to their clients and, at the same time, trying to appease other experts who may not care whether the paying party has paid the costs or not.

Of course, legal costs accountants play a role too, not least to ensure that sufficient information/documentation is made available to the taxing master. Insofar as any professional body can, I believe that the Institute of Legal Costs Accountants has ensured that its

members are sufficiently qualified to deal with the current demands of taxation.

While the number of judges and the volume and scope of litigation have increased dramatically over the past 20 years, taxation has remained relatively untouched, such that the legislative shackles need to be removed. Indeed, this is envisaged by the *Legal Services Regulation Act*. Unfortunately, however, its legal costs provisions are yet to be commenced.

And yet only two taxing masters are tasked with assessing costs in High

and Supreme Court, Court of Appeal, arbitrations, tribunals and solicitor/client disputes (although it is generally overlooked that there is provision in [order 66](#) of the *Circuit Court Rules* whereby the county registrar can determine such cases also). The need for more is very real and obvious.

This need has been increased considerably by the recent Court of Appeal findings in *Sheehan v Corr* ([2016] IECA 168). The shockwaves are still being felt on taxation, and there are few in litigation practice who share the same interpretation of the judgment. The court envisages an even deeper scrutiny of all aspects of the time and labour involved in every activity that a legal practitioner may undertake. It also envisages an overhaul of the traditional detailed bill of costs, which should be welcomed in principle and had, in fact, begun. A difficulty in practice may be that the judgment appears to conflict with the rules as they currently stand and does not appear to work well with, say, [Appendix W](#) items.

Unintended consequences

It is, of course, worth remembering that taxation was designed as an ADR process, the intention being to delegate assessment of costs to a specialist tribunal with a lower standard of proof and thereby cost base. The Court of Appeal decision, however, has had the rather drastic, presumably unintended, effect of amended bills of costs being sought, even in cases already within the taxation process and thereby adding to delays.

Apart from the immediate commencement of the relevant provisions of the 2015 act, there are alternatives that remain largely unexplored in this jurisdiction but have progressed very well in other common law jurisdictions, even in those whose traditional taxation systems were working reasonably well.

Mediation has grown dramatically in this jurisdiction over the past number of years, and many legal costs disputes have been resolved using mediation



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The alternative processes need to be considered, in particular legal costs arbitration or mediation.

Mediation has grown dramatically in this jurisdiction over the past number of years, and many legal costs disputes have been resolved using mediation. The benefits are obvious, somewhat similar to those espoused below for arbitration, but of course it is an absolute prerequisite for mediation that each party has a real intention to resolve the costs dispute. If not, then an adjudicative process may be the only alternative. Mediation, however, can also play a useful part in defining the issues to be determined on taxation or arbitration.

Indeed, when implemented, section 156(2) in part 10 (of the *Legal Services Regulation Act* will grant certain powers to refer parties to “mediation or another informal resolution process if he or she considers that to do so would be appropriate in all the circumstances, whether or not any of the parties have requested that”.

This is just one of the many changes provided for in that act that should be warmly welcomed. One of the most striking is the abolition of the Office of the Taxing Master, the replacement being a Legal

Costs Adjudicator's Office. The exact number is yet to be decided, but all will be overseen by a chief legal costs adjudicator who will have the power to set guidelines for the process itself and basis of assessment of costs.

Real and credible


In terms of legal costs arbitration, it has many positives, but here are just four reasons why I believe it is a real and credible alternative in legal costs disputes:

- **Speed** – while the parties may not necessarily agree the procedure, a good experienced arbitrator will ensure a swift, uncomplicated procedure designed to suit the particular parties' requirements in any particular costs dispute. The hearing itself, where appropriate costs experts are retained, is generally much shorter than a hearing before the taxing master. Bear in mind also, there are time limits within which an arbitrator must deliver his/her award.
- **The rules** – often times, an ad hoc arrangement is best suited to a particular costs dispute. Certain rules, however, will generally apply, mostly that a reasonable and proper bill of costs/points of claim setting out the work done

by the relevant professional is to be provided, the opposing party to reply by way of points of opposition, and then an oral hearing (in certain instances, a brief preliminary meeting is required, although generally a conference call will suffice). In essence, I don't believe that one size should fit all, but the basic rules are natural justice and fair procedures with, of course, a reasoned award at the conclusion.

- **Confidentiality** – all documentation (bills of costs etc) lodged in the Taxing Master's Office become public documents, and all hearings before the taxing masters must be in public (other than the traditional *in camera* cases). Arbitration/mediation, however, is a confidential process between the parties.
- **The cost** – legal costs arbitration (or mediation), with an agreed structured procedure to suit the particular dispute, can be less costly than the process before the taxing master (see *Supreme and High Court (Fees) Order 2014*: court fees arising on the taxing master's total allowance are €8 in each full €100 allowed – essentially an additional 8% on top of all fees including,

quite perversely, 8% on the VAT element (23%) of the legal costs, which by the way is something that is often overlooked by those reporting on the level of costs). Arbitrators' (or mediators') fees, on the other hand, are generally on a time basis, so the parties can effectively assert some control over the level of their own liability. Indeed, the fees of a reasonably qualified legal costs accountant are generally less because, rather than an overly cumbersome detailed bill of costs as envisaged by the judgment in *Sheehan*, a reasonably detailed bill with an outline of the actual work/factors/fees is sufficient, plus the length of the hearing is invariably less, thus less costly, than that before the taxing master.

While it is hoped that the Legal Costs Adjudicator's Office will be established shortly, there will remain a need for alternative dispute resolution in the legal costs world. If nothing else, it will enhance and can work well alongside that office, particularly in modern times, where there is so much pressure on legal practitioners, greater overheads and, I believe, more demanding clients. 

viewpoint

MAKING MEDICO-LEGAL REPORTS MORE EFFICIENT

Doctors often dislike completing medico-legal reports. But solicitors can help grease the wheels of the process, leading to mutually advantageous efficiencies. **Prof Seán Carroll** ticks the boxes



Prof Seán Carroll is a consultant plastic surgeon and company director of MedLaw Reporting Ltd

The process of medico-legal (ML) reporting in Ireland has not changed for many years and remains inefficient for the most part. Little in the way of innovation used in other industries have been incorporated into the field. As is always the case in any relationship, responsibility is shared between the relevant stakeholders.

Deficits in medical practice

As a medic, I can put my hand up and admit that our profession plays a significant role in these inefficiencies. Many doctors do not like writing medico-legal reports. They therefore continually defer medico-legal appointments and are slow in writing reports. Some doctors, because of their dislike of this aspect of their practice, remain disinterested and therefore write poor reports.

A significant cohort of the medical profession believes that ML work is not a core part of medical practice, which they see primarily as caring for the health of the patient. This is understandable to some degree, and certainly there is little if any training in this area in medical schools. Often, the first time a doctor thinks about the medico-legal process is when a young doctor opens his first request for a report. They will then ask a senior colleague for advice and a template for writing their report. This approach does not lead to improvements in quality or standards of ML reporting.

Information deficit

As in any other aspect of life, when there is an information deficit, there are inefficiencies. Clearly, there should be a debate about teaching the skills of ML reporting but, in the interim, I remind my colleagues that there are excellent courses available in Dublin and London on this and related topics. Attending these courses would both

decrease the variance in quality of ML reporting among the medical profession, while undoubtedly improving it. The introduction of a modern ML report template would also lead to standardisation and improved quality across the board.

It is perfectly reasonable for medics not to have an interest in ML reporting, but I suggest that they disclose this early on in the process, thus allowing the solicitor to move on with another medic. In fact, having a smaller cohort of medics providing ML reporting would probably improve standards and speed up the process.

Deficits in legal practice

However, it is not all a one-way street. As a medic, my legal knowledge is, of course, quite limited but, based on 16 years of writing ML reports, I suggest the following.

Recognising that it is in the legal profession's best interest to speed up the ML process, it follows that it is also in its best interest to make it easier for

the medical profession to facilitate the process. This can be done very easily.

The variability in the quality of ML report-request letters can, like ML reports themselves, be profound. Just like ML reports, an agreed template should be used. This should include all relevant patient/client details, the date of the accident, parties involved in the case, the role of the instructing solicitor in the case, and specific instructions

to the medic as to what is required. A brief description of the nature of the accident, the location and names of the facility or medic in or from whom treatment was received, if any, and a brief account of the nature of the complaints are also greatly appreciated. It is highly likely that the instructing solicitor has this information anyway, so passing it on will lead to efficiencies.

Most personal injury cases will involve the client having been to see their local GP or their local emergency department, and perhaps a consultant surgeon.

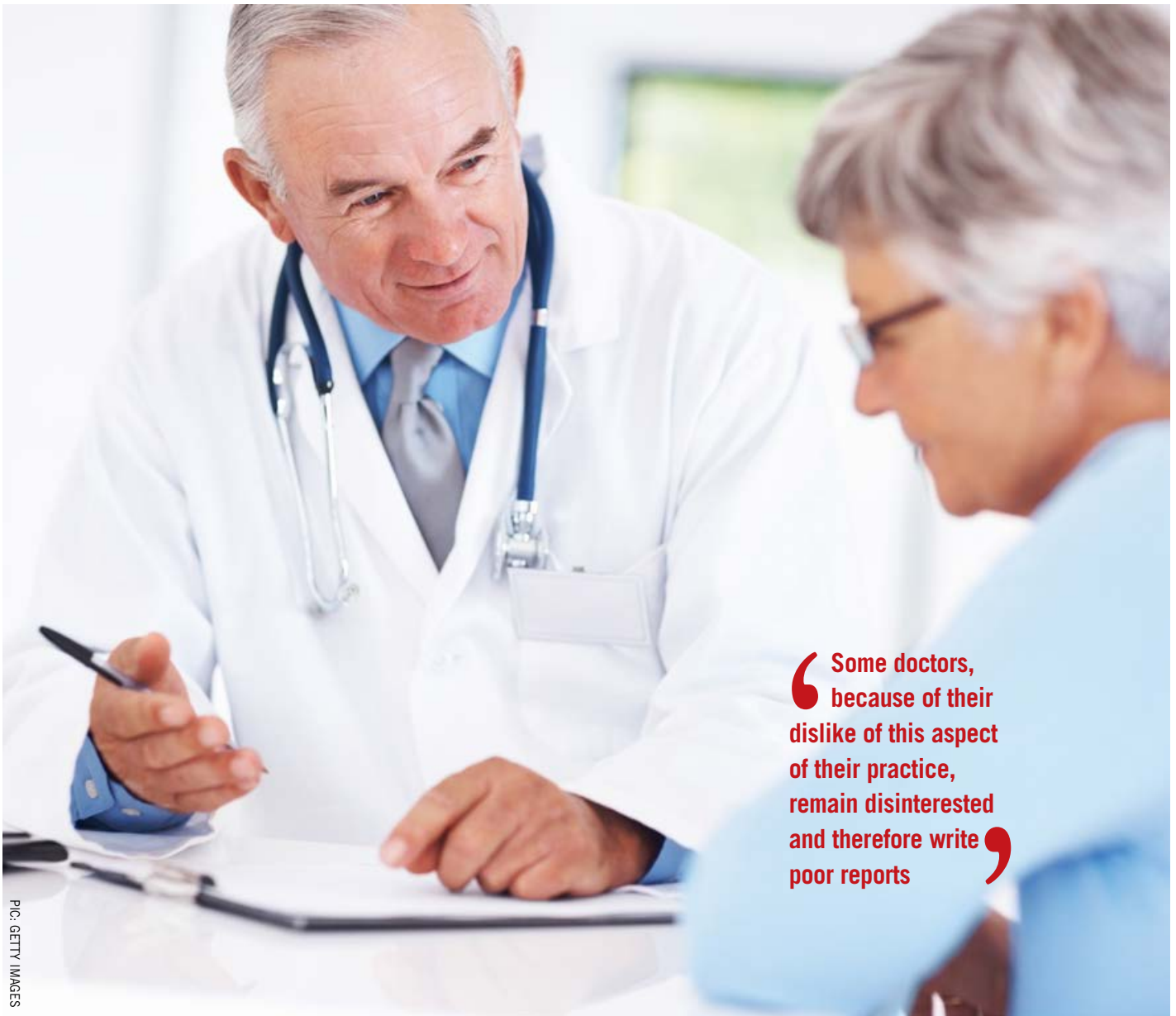
It is immensely frustrating to start a medico-legal consultation and only then recognise that the patient/client has had medical interaction or treatment with regard to the injury, but has no medical notes to hand. The consultation is thus less productive than it should have been. Subsequently, the medical notes have to be extracted from the hospital or GP, the x-rays have to be seen, and the additions made to the original report. Time passes, the lawyers become frustrated, and the whole process becomes

needlessly prolonged.

This happens too frequently and, between the two professions, we need to do things better.

The concept of a personal diary written by the plaintiff patient/client regarding the injury is very valuable and often ignored by the legal (and medical) profession. This diary should include the nature of the injury, the subsequent treatment that they received, the dates

Recognising that it is in the legal profession's best interest to speed up the ML process, it follows that it is also in its best interest to make it easier for the medical profession to facilitate the process



Some doctors, because of their dislike of this aspect of their practice, remain disinterested and therefore write poor reports

PICT: GETTY IMAGES

on which these occurred, the names of the attending doctors, the complaints that they had then, and the concerns that they have now. The diary should ideally be delivered before the consultation occurs. If this happened, the ML report could be populated before the consultation by the secretarial team, so ensuring a more productive consultation that concentrates on examination rather than history taking. This may sound like a repetition of the letter of instruction, but is very useful to the medic.

One must remember that patients/clients are in a stressful situation at these consultations and often forget about some of their complaints. They then call their solicitor to ask them to let the consultant's office know about their forgotten symptom. The phone call is made, but this results in further delays to the production of the report.

Often the doctor will receive a large box containing five or six folders of notes relating to every medical interaction that the patient has had since the incident/

accident. Very often, medical notes are presented in illegible formats due to multiple photocopying and are not in chronological order. Multiple duplications of the same pages serve to confuse and delay the process, as does the inclusion of non-relevant medical events. Most sets of medical notes delivered to me could be reduced by at least 50% without diluting the required information, thus reducing time spent and frustration experienced in the ML-reporting process. Failure to do this obviously

leads to many hours of sifting through medical notes, which results in unnecessary expense.

There are ways around this.

Overall, my impression of the efficiency of medico-legal reporting in Ireland is very varied. When experienced law firms instruct experienced medics, the process is likely to run smoothly. When either of the parties are inexperienced, it does not. With a modest degree of effort and organisation, both professions could practice at a higher level.

news in depth

SOCIETY CHALLENGES MYTHS OF MOTOR INSURANCE COSTS

Law Society representatives appeared recently before an Oireachtas committee on finance to debate the rising costs of motor insurance. **Mark McDermott** reports



Mark McDermott is editor of the Law Society Gazette

On 13 September, the Law Society's senior vice-president Stuart Gilhooly and director general Ken Murphy appeared before the Oireachtas Joint Committee on Finance, Public Expenditure and Reform to discuss the rising costs of motor insurance.

Both addressed the causes of the massive escalation in the cost of motor insurance premiums. Among the issues they raised were questions about apparent anti-competitive conduct by the insurance industry.

In their opening statement, they posed the question: "What has caused this extraordinary, shocking and excruciating increase, reportedly an average of 38% per annum, in motor insurance premiums in Ireland?"

"The answer," they said, "lies inside the closely guarded books of the insurance industry, which each insurer seems remarkably reluctant to open to anyone outside of their own company."

Poor business decisions

What was known, they said, was that – for years – all insurers had engaged in a price war that saw them quote unsustainably

low premiums while insuring bad risks. The inevitable upshot had been an increase in premiums to restore profits – thereby compensating for those poor business decisions.

It was also common knowledge – though rarely admitted by the industry – that much of its profit emanated from the investment of the premium income. It was abundantly clear, they said, that recent returns had not been at remotely the same levels of the past, given the recent volatility of global markets.

"While studiously ignoring these obviously significant factors in the manner of how they have conducted their business," Mr Gilhooly said, "the industry has conducted a long-running and widespread PR campaign in which they have sought to blame everybody but themselves. Part of this has been a campaign of snide innuendo about the bona fides of personal-injury victims, while reserving particular ire for the easy target

of the courts and the lawyers who seek to obtain compensation for the innocent victim."

Pseudo facts

Strenuously defending the legal profession from the charges laid by the insurance industry that lawyers and court judgments were to blame for the upsurge in costs, Mr Gilhooly stated: "The campaign has seen a number of stock phrases and pseudo facts, which are either completely untrue or greatly embellished, and which appear to have gone largely unchallenged." As examples of these untruths, he presented the following:

All cases must go to the Injuries Board and only an insurer can decide not to allow the case proceed through the board

Pseudo fact 1: Lawyers have found a way of bypassing the Injuries Board – this is quite simply not true. All cases must go to the Injuries Board and, in fact, only an insurer can decide not to allow the case proceed through the board. The vast majority do, and the acceptance rate of awards has not changed in any meaningful way in the 12 years of operation of the Injuries Board.

Pseudo fact 2: Lawyers have infiltrated the system – again, completely wrong. Almost since the beginning of the Injuries Board, over 90% of claimants have been represented by solicitors, at their own cost. This figure has not changed at all and, given the fact that it is the claimant who pays for the involvement of their solicitor, it has no effect whatsoever on either awards or premiums.

Pseudo fact 3: Claimants don't show up for medical examinations – there is no evidence to suggest this is true and, while the odd person misses an appointment, it is usually rectified by arranging another. Law Society representatives meet the Injuries Board twice a year to discuss matters of mutual

FOCAL POINT

playback...

You can catch up on the Society's recent contributions to this debate at the following sites:

- *Claire Byrne Live* (RTÉ Player, 12 September), which featured contributions from Damien Tansey (Tansey Solicitors) and director general Ken Murphy,
- Oireachtas TV (13 September), where Stuart Gilhooly and Ken Murphy appeared before the Oireachtas committee (watch [part 1](#) – video starts at 40:37, [part 2](#), and [part 3](#)),
- *Newstalk Breakfast* (14 September), where

Stuart Gilhooly discusses the spiralling costs of car insurance (visit [newstalk.com](#), 'podcasts' section), and

- *Today with Sean O'Rourke* (RTÉ Radio One's radio player; see 'Motor insurance' on 14 September), featuring an interview with Ken Murphy and Minister of State Eoghan Murphy.

Save time by accessing all of these links on the interactive version of this article at [www.gazette.ie](#).

interest, and this has not been raised as an issue.

Pseudo fact 4: Lawyers are persuading claimants to turn down awards and there is no penalty if they get less in court – legislation was passed in 2007 that clearly states that if a claimant fails to beat an Injuries Board award in court, they will receive no costs at all and may have costs awarded against them.

*Pseudo fact 5: Damages are going up and the judges ignore the Book of Quantum – this is another myth. High Court damages – when huge medical negligence awards for tragic birth injuries are removed – have not increased and, in fact, have reduced slightly over recent years. The judiciary are obliged to have regard to the *Book of Quantum* under section 22 of the 2004 act, and the Court of Appeal has repeatedly reduced damages in cases where it felt such amounts were unmerited.*

Unheard voice

Riding to the defence of the victims of road-traffic accidents, Ken Murphy declared that “the one unheard voice in this debate is that of the most vulnerable and the least represented. The victims of road-traffic accidents have no representative organisations and no PR juggernaut to constantly enforce their message in the media. The impression given is that a large number of claims are fraudulent and that many whiplash claims are exaggerated. No evidence is produced to support these assertions,” he said.

“The reality is starkly different,” he pointed out. “The provisions of the 2004 act ensure that any exaggerated or fraudulent claims must be dismissed – and provide for a mechanism for prosecuting anyone found to have so done. While the judiciary have dismissed claims in those circumstances when the appropriate case appears, there have been practically no prosecutions.

“Why is this? The truth is that personal injury claimants suffer genuine and often hugely



Gilhooly told the Oireachtas Finance Committee: ‘The insurance industry’s “black box” must be prised open in the interests of everyone’



Murphy told RTÉ’s *Claire Byrne Live*: ‘There is no evidence to support the motor insurance industry’s assertions that legal costs have risen’


debilitating injuries and have only one voice – that of their own solicitor. The pejorative term

‘whiplash’ that is used to dismiss the significance of neck and back injuries is hugely insulting to the

many citizens of this country who have had their lives damaged, if not ruined, by such injuries caused by the negligence of others.”

Urging immediate action, the Society’s representatives said that it was now imperative to uncover the truth. “The Law Society calls for a new task force, along the lines of the Motor Insurance Advisory Board, to establish the real reasons why premiums are rising at an unsustainable rate and to make recommendations to deal with the problem. Real and accurate data is the key. The insurance industry’s ‘black box’ must be prised open in the interests of everyone.”

By coincidence, as the Society representatives were leaving Leinster House, the Competition and Consumer Protection Commission announced that it was launching an investigation into suspected breaches of competition law in the motor insurance sector.

Two days later, on 15 September, the vice-president and director general also met with the Interdepartmental Working Group on Motor Insurance Costs, which was chaired by Minister of State Eoghan Murphy. 

FOCAL POINT

bar submission

Speaking before the Oireachtas joint committee on behalf of the Council of the Bar of Ireland, Paul McGarry SC said: “The insurance industry has failed to support its allegations with any reliable data, and its claims are at odds with the published data of the Injuries Board and the Courts Service.”

He added that the non-disclosure of data by the insurance industry on claims settled privately outside of the courts and the Injuries Board was “a significant barrier to a comprehensive understanding of the claims environment and of the factors impacting on premium increases. Of the 31,576 injury claims registered in 2014, only

9,046 went to court or were finalised by the Injuries Board. Therefore, in 22,530 cases – or 71% – there is no transparency regarding the cost of settling claims or the awards.”

In his submission to the committee, McGarry said that financial mismanagement and imprudent pricing from 2012-14 had led to premium increases in order to restore profitability. The insurance sector was effectively operating “a boom-bust model, incurring losses of up to almost €500 million over three years”.

He quoted the Central Bank, which had stated that “a number of insurance companies took a very

optimistic view of future economic outlook, built up unsustainable overheads, and followed an imprudent pricing and underwriting approach, which resulted in companies’ business plans becoming less resilient to downside risks such as an increase in frequency and severity of claims”.

A Department of Transport briefing document, released under the *FOI Act*, stated that insurers had increased premiums to “return themselves to profitability or to boost profitability after a number of years of competing for market share, with prices driven down accordingly, and possible underwriting losses in some cases”.

news in depth

ENTERING THE ARCHIVES

Proud of its tradition, the Law Society Library has digitised hundreds of documents that illustrate the history of the solicitors' profession in Ireland. Mary Gaynor reports



Mary Gaynor is head of Library and Information Services

The Law Society of Ireland has a long and interesting history, which has been well documented in published works. Original sources are the key to any historical story. The history of attorneys organising themselves in Ireland dates back centuries, with the Law Club in 1791 and the Law Society in 1830. The Society of Attorneys and Solicitors of Ireland reorganised itself in its own premises for the first time in May 1841, when it took possession of three rooms in the new building in the Four Courts.

The earliest documents in the possession of the Law Society date from 1840 and include Roll books, Council minute books, AGM minutes, registers of members' practising certificate histories, court of examiner minutes, registers of apprentices, the *Gazette*, and other categories, including cash books/ledgers, day books and so on, over different ranges of years.

The documentary archives had been listed and safely stored in the Law Society's premises in the Four Courts for many years and notably survived the fire in 1922. However, historic paper collections are vulnerable to deterioration over time, and storage issues become challenging. Many of the books are large tomes, with magnificent handwritten entries bound in mixtures of card and leather, some of which had deteriorated to varying degrees.

The opportunity to reassess the collection arose in early 2015, and the Society decided to undertake an archives project to conserve and provide online access to the key parts of the collection.

Selection of originals

The collection consists of 269 books. The first step was to move the books from the Four Courts to the library in Blackhall Place for assessment. Age brings its own

value to items. However, not everything old is historically valuable, so it was vital to establish criteria for which categories were of real historical interest and which had passing curiosity value. It was clear that Roll books, Council minutes, registers of apprentices, and other items were uniquely important – but whether cash books that recorded the price of day-to-day commodities were unique enough to digitise was questionable.

A full audit of all of the books was carried out, and approximately half of the collection was identified for digitisation. The remaining items were packed in acid-free archive boxes and safely stored.

A master list was prepared, indicating titles, dates, content, and physical/digital location. Digitisation was outsourced to specialist companies that provided high-quality images in pdf, tiff and jpeg formats and advised on preserving and recreating the look and feel of the original objects. Repair

and rebinding work was undertaken as required. Selected categories of items are now available for members to read on the library online archive pages.

Roll books, 1840-1939

The Roll books in the possession of the Society date from 1840 and contain the actual handwritten signature of members up to 1898. After 1898, the entries were handwritten by Law Society staff members. In 1994, the *Solicitors (Amendment) Act 1994* stipulated that the Roll could be kept in electronic format. The first five books are a record of names of solicitors who were members of the Society of Attorneys and Solicitors of Ireland. Membership cost £1 per annum and conferred rights of entry to the Society's premises in the Four Courts and a right to vote in elections for a committee of the Society, which was made up of 31 members.

From 1898 on, the Roll became a record of solicitors who were qualified to practise, rather than a list of members. Some of the earliest names are John Moore Abbott (21 January 1840), Robert Taaffe (2 November 1840), Robert Denny (1 March 1841), and Edward M Beauchamp (24 November 1840).

Council minutes, 1841-1949

Today, the Law Society's Council is the governing body of the profession. In 1841, the governing body was a "committee of 31". Rules for the election to the committee by the then 1,650 practising members were laid out clearly in the *Rules of the Society of the Attorneys and Solicitors of Ireland*, 10 May 1842.

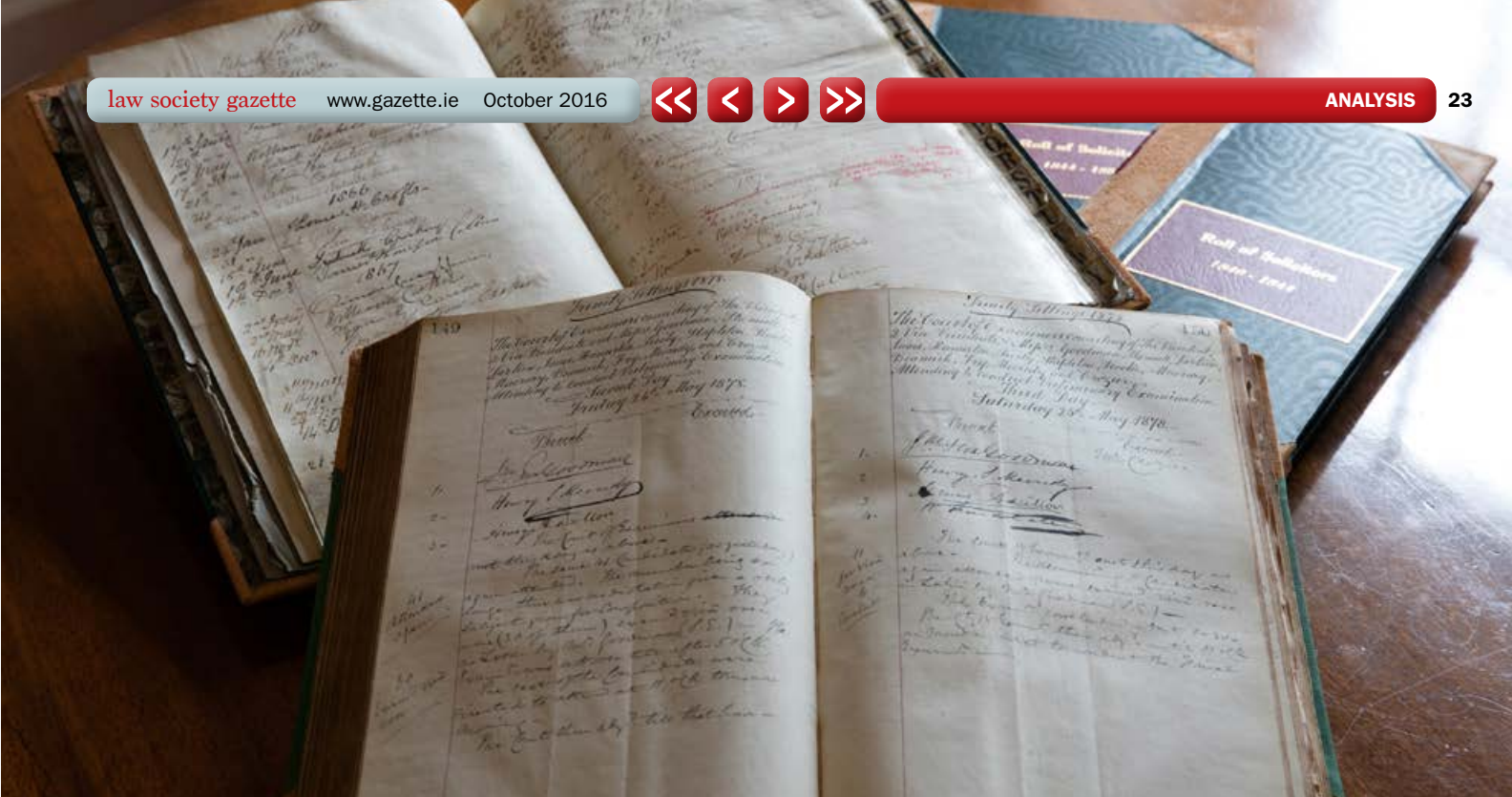
Rule 15 stated that: "The committee shall keep a book, in which shall be inserted regular entries of all of their proceedings." Council minute books consist of 14 bound volumes for the years 1841-1978. Sadly, a further three books are missing, which covered the periods 1850-1864, 1869-1874, and 1908-1916. The books record landmark points in the history of the Society, including the granting of the charters in 1852 and 1888, the passing of the *Attorneys and Solicitors (Ireland) Act 1866*, which gave solicitors autonomy from the control of the King's Inns in matters to do with education of apprentices and established the Court of Examiners, and the later 1898 act that extended independence from the Benchers in education and disciplinary functions.

The minutes reflect the concerns of the profession in relation to issues of practice and regulation and document the work of the Council and committees in the areas of law reform, education and regulation.

Court of Examiners, 1875-1939

The Court of Examiners was established in 1866. The earliest extant minute book dates from 18 May 1875 and records the attendance of 27 students to sit the Preliminary Examination in History, Geography, Arithmetic and Bookkeeping

The Gazette will be celebrating its 110th anniversary in 2017, the first having been published in May 1907



– one student is noted as being unwell and unable to attend. Other examinations were held in English composition, Latin and dictation. The results of the Final Examination were recorded in the minutes of 28 May 1875, with first, second and third places being awarded respectively to Horace Wilson, John G Shaw and Michael O'Meara. Medal awards and other prizes are also documented in the minute books.

The minutes for 19 February 1920 state that an application by Ms Helena Early, law clerk, to be bound to Thomas Early, solicitor, Dublin, was granted. Ms Early went on to qualify in June 1923 and was the first woman to practise as a solicitor and the first woman auditor of the Solicitors' Apprentices Debating Society in 1921.

Registers of apprentices, 1889-1931

These books give detailed information about apprentices, including names, addresses, date of indenture, date of admission, term of service, date of enrolment, graduate or otherwise. For instance, the earliest register records that, in December 1889, James Kirwan of 29 Ailesbury Road, Dublin, became apprenticed for a five-year term to Richard Davoren of 15 Dame Street, Dublin. Charles James Lane of 26 South Mall Cork held a BA (TCD)

and was apprenticed to William Guest Lane for a three-year period from March 1892.

SADSI, 1928-1971

A small collection of minute, roll books and accounts for the Solicitors' Apprentices Debating Society of Ireland (SADSI) are in the Society's possession. The earliest minute book covers the period 1930-1942 and is an interesting snapshot of the activities of the association, including choosing subjects for debates and essay competitions and the planning of annual dances in venues such as the Metropole and the Gresham. Debate topics were far-ranging, including "That this house is in sympathy with the Indian nationalism struggle for independence" (1930), "That this house regrets the discovery of Christopher Columbus" (1932), and "That exemplary damages should be awarded for actions for breach of contract" (1933).

Annual debates were also held with the Solicitors' Apprentices Debating Society of Northern Ireland, and the minutes record the committee's planning around the accommodation and entertainment for these events. Irish debates were also held. The minutes of 3 October 1933 record that the liabilities were £77, the assets £25 ("of which £12.10d had yet to be collected"), and that a deputation would seek a grant of £50

from the Law Society to enable the association to continue its activities. The deputation met with the president and secretary of the Law Society, who recommended that the matter should go to the Council. The grant of £50 was approved by the Council on various conditions, the details of which are not recorded in the minutes, other than to state that the conditions were accepted.

The SADSI archive is rather scant, and we would welcome the opportunity to scan any SADSI material that members may have in their possession.

Gazette, 1907-1996

The *Gazette* will be celebrating its 110th anniversary in 2017, the first having been published in May 1907. The early *Gazettes* were a modest 12 pages in length and aimed to cover "statements of work done by the Council during the previous month, notes of decisions of professional interest, announcements as to examinations and admissions of apprentices". No correspondence was published. The *Gazette* reported also on the activities of the Solicitors' Benevolent Association and the Solicitors' Apprentices Debating Society. The first single-colour covers were published in the early 1970s, and the *Gazette* went full colour in the 1990s, with content broadening to include articles, practice notes,

photographs, advertisements and letters to the editor. All of the *Gazettes* in the archive collection are now searchable.

How to find the online archive

The digital archive is the story of the first 100 years. It is located in the library catalogue area on www.lawsociety.ie. We hope it will provide easy access to the fascinating story of the solicitors' profession in Ireland and will be a useful resource for legal historians and those interested in genealogical research. Contact the library for login and PIN details – [libraryenquire@](mailto:libraryenquire@lawsociety.ie)  [lawsociety.ie](mailto:libraryenquire@lawsociety.ie).

look it up

Literature:

- Hall, Eamonn G and Hogan, Daire (2002), *The Law Society of Ireland, 1852-2002: Portrait of a Profession* (Four Courts Press)
- Hogan, Daire (1986), *The Legal Profession in Ireland 1789-1922* (Law Society)
- *Record of the Centenary of the Charter of the Incorporated Law Society of Ireland 1852-1952* (Law Society, 1953)

SOCIALLY

unacceptable



Cliona Kimber is a Dublin-based barrister and the co-author, with Pauline Walley SC, of the recently published *Cyberlaw and Employment* (Round Hall, 2016)

Employers can be liable for the abuse of social media or the internet by workers – and for online harassment of employees outside working hours.

Cliona Kimber monitors the web traffic

Employers can be liable for the harassment of their workers on social media that takes place outside the workplace. This was determined recently by the Labour Court in *McCamley v Dublin Bus*. Although the employer in that case was not ultimately found liable, the case illustrates the challenges faced by employers in dealing with social-media and internet use in the workplace – challenges that need to be faced up to by employers if abuse of the internet by employees is not to lead to costly damage to companies.

A study published recently by the law firm William Fry found that 78% of people used social media while at work – and this is an ever-increasing number. The use by employees of social media at work is just the tip of the iceberg. When you add blogs, self-publishing tools, tweets, as well as posts after working hours linked to work-related issues, the myriad ways to make information public and to express opinions shows there is clearly a pressure-cooker of issues in the workplace.

Top challenges

The challenge of dealing with social media interaction in the workplace is a live issue. While abusive postings on the internet pose an obvious challenge, the following five matters should also be considered:

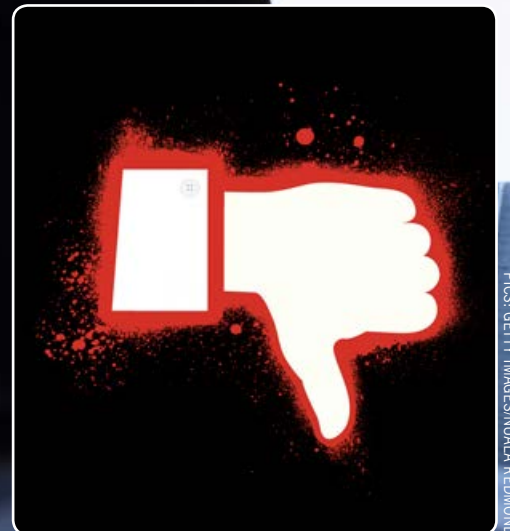
1) *Using social media at work.* Employers may see the use of social media as time wasting. However, in some sectors, such as journalism, hospitality, or product endorsement, social media can be very important to improve brand awareness and to increase the number of customers. Many companies encourage their employees to engage in social media use – outright banning of social media is not, therefore, realistic. Difficulties arise, however, in deciding where corporate promotion stops and employees' ownership of their own creative output begins. In other cases, employees may argue that, for various personal reasons, they require access to

at a glance

- Employers can be responsible for posts made outside the workplace if these harass, discriminate, abuse, or disparage an employee
- Just because posts might be made in a worker's private time does not mean that they are not work-related posts – particularly if they refer to workplace issues
- A company can be held to be directly liable if it has not taken preventative measures in advance and does not have policies in place that cover the relevant social-media abuses
- An employer cannot discipline an employee for internet or social-media abuse unless this is prohibited by a policy or communicated to the workforce



‘ The fact that there was a policy against harassment or sexual harassment at work, which had been widely publicised and had been used on this occasion to discipline an employee, provided a defence ’



their social media – for example, to reduce an anxiety disorder, as was argued in the Equality Tribunal in *O’Connell v Ergo*.

2) *Inappropriate employee posting*. Employers may be concerned about online expressions of opinion and/or online bullying, defamatory or other comments that might either disparage colleagues, defame colleagues, or amount to sexual harassment or other harassment on equality grounds, or damage the corporate brand.

Expressing personal opinions about a company and colleagues took place long before the digital revolution but now, with social media, opinions are being published in a public forum. Employers are facing increased liability for employees’ online expressions of opinion, whether through equality claims or as part of a personal injuries action. This is apparent in the Labour Court decision in *McCamley* (see below).

3) *Stealing intellectual property*. Workplace secrets and practices or customer lists can be downloaded and stolen with a click of a mouse. Employees can walk out the door with valuable confidential information. Organisations clearly need to put in place practical strategies to prevent this. However, they also need to have legally effective policies in place to ensure that employees are made aware of what is designated as confidential information, and that protections are placed in their contracts of employment. Injunctions may have to be obtained to protect employee interests, as happened in *Net Affinity v Conaghan*, where an employee leaving for a new job walked out the door with USB keys full of confidential information.

4) *Liability for employees’ private behaviour and behaviour outside work*. There are huge questions to be asked as to whether an employer has the ability to control an employee’s behaviour outside of work. This ties in with issues such as whether the employer is vicariously liable for comments that could be bullying or defamatory outside work.

The issue also arises of when personal inappropriate behaviour reflects badly on the company, as happened in *Crisp v Apple Retail (UK) Ltd*, where an employee was lawfully dismissed after having made posts on Facebook that disparaged Apple products. In certain circumstances, therefore, the organisation can impose censorship on an employee’s online posts outside of work (this was the case in *McCamley*).

5) *Employee background*. Social media and online profiles are profound challenges for employment equality protections. Employers

can now find out online about potential workers’ race and religious beliefs, clothing, age, sex, disability, and much more. This does make it difficult for policymakers, legislators and lawyers to ensure that neutral hiring takes place, in line with the *Employment Equality Acts*.

As yet, we have had no cases in Ireland challenging a recruitment process on the basis that it was tainted by online information, but it has been the subject of litigation in the US. In *Gaskell v University of Kentucky*, the university was forced to settle for over \$100,000 when a search team for a senior university position was found to have been discussing the plaintiff’s online religious view on creationism, and potentially discriminating on the ground of religious belief.

Behaviour outside work

Dublin Bus v McCamley shows the problems that social-media use can create for employers. *McCamley* arose in the context of inter-union disputes in Dublin Bus. McCamley, a SIPTU representative, had derogatory remarks about him, linked to his nationality and religion, posted on Facebook by another colleague, who was associated with the NBRU. McCamley referred a complaint to his manager. The immediate manager took the view that, as the matter had taken place outside the workplace, the company could not take any action.

On appeal, however, the head of HR determined that rule 18 of the respondent’s rule handbook, which provided that “employees shall not conduct themselves in any manner prejudicial to reputation and welfare of fellow employees”, covered the situation. Therefore, the person who made the comment was disciplined and the sanction was imposed. McCamley then made a complaint under the *Employment Equality Acts 1998-2015* of harassment on grounds of race and religion.

The Labour Court, on appeal from the Equality Tribunal (which had found against McCamley), first determined that the online postings did in fact constitute harassment under section 14A(1) of the acts. The next question was whether the employer was liable under the acts. Dublin Bus had accepted that the offending comments were posted in relation to the complainant and that the person who posted those comments was an employee. Dublin Bus argued, however, that as the comments were posted outside the

workplace, any harassment did not take place in the course of McCamley’s employment and that the offending conduct was unrelated to McCamley’s employment.

The court considered whether the offending Facebook posts constituted activity that arose in the course of the employee’s employment. The court noted that, under the act, the employer was directly liable for harassment of one employee by another and, in a very important part of the determination, noted that, under the *Employment Equality Acts*: “In the case of harassment committed by an employee on another employee, there is no requirement to show that the wrongdoer was acting in the course, or within the scope, of his or her employment. Hence, it matters not that the harasser was off-duty or at home when he posted the offending material. It is, however, essential that the victim suffered the harassment in the course of his or her employment. It follows that, in the instant case, the focus of the court’s enquiry must be

“ There are huge questions to be asked as to whether an employer has the ability to control an employee’s behaviour outside of work ”

on whether the complainant suffered the harmful effects of the conduct complained of while in the course of his employment.”

The Labour Court ruled that it was well established that the scope of the sexual harassment and harassment provisions extended beyond the workplace – for example, to conferences and training that occurred outside the workplace. It might also

extend to work-related social events. What mattered was that the actions had a direct link between the comments and the workplace.

In this case, because the comments were directed at McCamley in his capacity as a worker representative in the workplace, the employer was liable under the *Employment Equality Acts* for the Facebook postings, unless it had a defence: “It follows that the posting of the offending comments constituted harassment of the complainant within the meaning of section 14A(7) of the act. Consequently, the employer is rendered liable for that harassment unless it can avail of the defence provided by section 14A(2) of the act.”

In order to avail of the defence, the Labour Court ruled that the employer must demonstrate that preventative measures were taken before the offending conduct occurred. The taking of *post hoc* action in response to a complaint does not make out the defence.

The Labour Court ruled that the fact that there was a policy against harassment or


sexual harassment at work, which had been widely publicised and had been used on this occasion to discipline an employee, provided a defence. This was the case, even though the policy was somewhat deficient, in that it did not specifically deal with preventing harassment through the use of social media, but the policy had since been updated to specifically cover social media.

The difficulties that the lack of a social media policy can give rise to can be seen in *Bank of Ireland v O'Reilly* (2015). In this long-running unfair dismissal case, action was taken against an employee who forwarded allegedly pornographic emails to other employees. On appeal to the High Court, he ultimately succeeded in obtaining reinstatement for unfair dismissal. The lack of any policy to allow the disciplining of employees for inappropriate internet use, despite the employer having been aware for a long time of the issue of abuse of the internet, was a key factor in leading the High Court to find the dismissal unfair.

What are the lessons to be learned from these cases?

- Posts outside the workplace can be the responsibility of the employer if they harass, discriminate, abuse or disparage a worker,
- The fact that the posts are made after hours, at home, or in a worker's private time does not mean that they are not work-related posts, especially if they refer to workplace issues,
- A company can be held to be directly liable under equality legislation if it has not taken preventative measures in advance and if it does not have policies in place that cover the relevant social media abuses,
- An employer cannot discipline an employee for internet or social-media abuse unless this is prohibited by a policy or communicated to employees.

In conclusion, the *McCamley* case illustrates the increasing impact of social media in the workplace and the need to have appropriate policies in place. Employers and employees will both be required to take action to ensure that this new digital revolution can be managed and negotiated in the workplace. The contract of

employment and clear employment policies are the grounding structures of the employment relationship. These must be in place if employers are to successfully defend claims brought against them in the workplace – and if employees are to know  what is required of them.

look it up

Cases:

- *Bank of Ireland v O'Reilly* [2015] IEHC 241
- *O'Connell v Ergo* (DEC-E2014-005), Equality Tribunal
- *Net Affinity v Conaghan* [2011] IEHC 160
- *Crisp v Apple Retail (UK) Ltd* (ET/1500258/11)
- *Gaskell v University of Kentucky* (US District Court, eastern District, no 5:2009cv00244)
- *McCamley v Dublin Bus* (EDA 164), Labour Court, February 2016



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RIGHTS *and privileges*

The terms 'legal professional privilege' and 'solicitor/client confidentiality' are often used interchangeably. However, they are not synonymous.

Michelle Lynch discusses the distinction



Michelle Lynch is a policy development executive with the Law Society

Solicitor/client confidentiality and legal professional privilege are two of the fundamental foundations of the administration of justice and the protection of the rule of law. Clients must be able to disclose information freely and candidly to their solicitor, without fear that it will be revealed without their consent. The terms are often used interchangeably but, as the Law Society's *Guide to Good Professional Conduct for Solicitors* advises, "there is a distinction between the law of legal professional privilege and the professional duty to keep clients' affairs confidential".

Thus, legal professional privilege is not synonymous with confidentiality. Legal professional privilege is a right conferred by law to protect communications containing legal advice between a solicitor and their client from being disclosed to any other parties. While the right enjoys a high level of protection and is not subject to general judicial discretion, it is subject to several recognised exceptions.

Conversely, the obligation of solicitor/client confidentiality is not a legal right. It stems from the fiduciary relationship between a solicitor and their client, which gives rise to a professional duty or obligation on the solicitor not to communicate any information disclosed by the client to a third party. There are a number of instances where, when the balance of justice requires it, the obligation can be overridden by the court.

Legal professional privilege

The origin of legal professional privilege has been traced back as far as the 16th century. In *R v Derby Magistrates' Court, ex parte B* (1995), Taylor CJ further observed that the fundamental principles of privilege had been judicially developed over the course of the 19th century. This was demonstrated in the 1833 decisions of *Greenough v Gaskell* and *Bolton v Liverpool Corp*, where Lord Brougham found that the privilege was necessary to uphold the interests of justice and that people must be able to consult a legal professional without fear or restraint.

Initially, the scope of the right was restricted to communications between a client and lawyer following the initiation of litigation. However, this has been evolved over time by the courts to include confidential communications between solicitor and client for the purpose of legal advice. The interpretation of what a communication encompasses has also been extended to cover other forms of information.



at a glance

- Merely because a communication is confidential, it does not mean it will enjoy legal privilege
- Practitioners are under a duty to inform clients that they can claim privilege and can assert it on behalf of their client
- The obligation of confidentiality extends beyond the termination of the solicitor/client relationship



Practitioners should be mindful that confidential information does not automatically attract legal professional privilege

PHOTO: WIKIMEDIA COMMONS

Heffernan, in *Legal Professional Privilege* (2011), suggests that it is arguable that legal professional privilege now enjoys almost constitutional protection, as alluded to in *Smurfit Paribas Bank Ltd v AIB Export Finance Ltd* (1990). It was not expressly stated that legal professional privilege enjoys such constitutional protection per se, but Finlay CJ acclaimed the special contribution that privilege makes to the administration of justice.

Further, in *Martin and Doorley v Legal Aid Board* (2007), an assumption was made in the parties' submissions that privilege was protected under article 34 of the Constitution. As the status of privilege was not directly dealt with in the hearing itself, it

should be noted that its precise Constitutional standing remains unclear.

Legal professional privilege is also protected under article 8 of the *European Convention on Human Rights*, which protects the right to respect for private and family life. A recent judgment of the European Court of Human Rights in *Versini-Campinchi and Crasnianski v France* highlights the status of legal professional privilege at a European level. In that case, the Chamber found that the interception, transcription, and use of recordings of conversations between a lawyer and her client were permissible in disciplinary proceedings involving a breach of professional confidentiality, where it was suspected that

the lawyer was herself guilty of an offence and such interception had been ordered by the investigating judge.

Scope

Practitioners should be aware that, for a communication to attract privilege, it must be confidential in nature. However, merely because a communication is confidential, it does not mean it will enjoy legal privilege, unless other conditions of privilege are established. This will depend upon the context and purpose for which confidential communications between a solicitor and client have been made. The communication must be confidential, it must be made within

FOCAL POINT

security and data protection

With regard to both legal professional privilege and solicitor/client confidentiality, there is an obligation on practitioners to ensure that client information is safely secured and stored within the physical office, as well as within IT systems. Practitioners should ensure that files and information are safely secured within the office and that steps are taken by all staff to ensure that clients' personal information is not disclosed, particularly in shared offices. Measures should also be taken to ensure that IT systems have adequate security and that information cannot be accessed by external sources. Security advice issued from the Technology Committee in May 2013 outlining the steps that should be taken by solicitors to ensure the safety of

client information and can be accessed at the [committee's page](#) on [lawsociety.ie](#).

Legal professional privilege will act as a bar to data protection access requests where the requestor is a third party, as the privilege is owned by the client, as set down under section 5(g) of the *Data Protection Acts*.

With regard to solicitor/client confidentiality, difficulties can arise where third parties make a data protection request involving confidential information between a solicitor and their client. Such requests must be assessed on the basis of whether confidential information contains any personal data of the requestor.

For further information, including case studies, see the guidance note at [lawsociety.ie/Solicitors/Regulations/Data-Protection](#).

a professional legal relationship between a solicitor and their client, in their professional capacity, and be made for the purpose of giving or receiving legal advice.

Significantly, privilege belongs to the client, and it must be asserted to have effect. Practitioners are under a duty to inform clients that they can claim privilege and can assert it on behalf of their client, unless instructed to the contrary.

In *Smurfit Paribas Bank*, Finlay CJ affirmed that privilege should only be granted in circumstances "which have been identified as securing an objective which in the public interest in the proper conduct of the administration of justice can be said to outweigh the disadvantages arising from the restriction of disclosure of all the facts".

There are two main categories of privilege relevant to practitioners – 'legal advice privilege' and 'litigation privilege'. Legal advice privilege covers confidential communications between the client and professional legal adviser, made for the purpose of obtaining legal advice. Litigation privilege must be in contemplation of litigation for privilege to attach to certain communications between the solicitor or client and third party or matters generated by the client in contemplation of litigation.

Practitioners should also consider their obligations under anti-money-laundering legislation and how this affects their right to legal professional privilege and their obligation to preserve client confidentiality. The Law Society's detailed guidance can

be accessed at [lawsociety.ie/Solicitors/Regulations/Anti-Money-Laundering](#).

Exceptions

There are a number of exceptions to privilege and instances where it can be lost. These include the following:

- Communications made for a fraudulent or criminal activity in the context of legal advice privilege and litigation privilege,
- Conduct that is injurious to the administration of justice, such as instituting frivolous and vexatious proceedings,
- Where statute distinctly overrides it,
- Where privilege is waived – whether express,

implied, deliberate or inadvertent, whole or in part – it cannot be reasserted,

- Communications between a solicitor and client concerning persons who have a joint interest with the client in the subject matter of the communications or between joint claimants under the same claim,
- In the case of a joint retainer where communications to a solicitor for all clients jointly must be disclosed to all of them, unless there is a communication made to a solicitor in their exclusive capacity as solicitor for one party only,
- In the case of records of public proceedings, public documents, pleadings, including copies once filed,
- Communications between a corporate client and its in-house counsel in the context of *Akzo Nobel v European Commission* (2010).

Solicitor/client confidentiality

Solicitor/client confidentiality has been recognised as far back as the 1800s where, in *Carter v Palmer* (1842), the court found that counsel should be prevented from acquiring charges on his former client's estate based on confidential information he had gained during their professional relationship. Practitioners should be aware that the obligation of confidentiality extends beyond the termination of the solicitor/client relationship. This was established as far back as 1837, where it was found in *Davies v Clough* (1837) that confidential information acquired by a solicitor during a professional relationship may not be used against the client

There are a number of exceptions to the duty of confidentiality, including where a legal obligation exists or where there is an overriding public interest

FOCAL POINT

professional conduct comparison

LEGAL PROFESSIONAL PRIVILEGE	SOLICITOR/CLIENT CONFIDENTIALITY
Legal right	No specific right, but relationship gives rise to duty/obligation
Recognised exceptions exist, but it is not open to general judicial discretion	Overridden in certain circumstances where justice requires it – such as client commits perjury
Privilege belongs to the client and must be asserted to take effect	Broader concept and survives beyond the termination of solicitor-client relationship

should they act against them in the future.

The obligation of confidentiality can be considered to arise from the fiduciary nature of the relationship between solicitor and client preventing disclosure of confidential information about the client to a third party. It is a much wider concept than legal professional privilege, as it applies outside the context of legal proceedings and encompasses all communications that pass between a solicitor and their client.

The importance of the distinction between the duty of solicitor/client confidentiality and legal professional privilege was emphasised in *Martin v Legal Aid Board*. The court examined the constitutionality of a provision of the *Civil Legal Aid Act 2005* requiring solicitors to provide information to the Legal Aid Board, notwithstanding a duty of confidentiality or legal professional privilege. Laffoy J held that, while legal professional privilege ceased to operate once litigation had ceased, the duty of confidentiality remained.

There are a number of exceptions to the duty of confidentiality, including where a legal obligation exists or where there is an overriding public interest, as outlined by Moriarty J in *Inspector of Taxes v A Firm of Solicitors* (2013). In that instance, the judge found that the overriding public interest of ensuring that a lengthy Revenue investigation be finalised and taxes due discharged outweighed the confidentiality


of the information. Moriarty J neatly outlined the status of confidentiality in the following terms, when he stated that “no duty of confidentiality is absolute, and the present circumstances amply justify it being overridden”.

Exceptions

The following are some of the circumstances where the duty of confidentiality may be overridden:

- Where statute overrides it,
- Where court order/warrant compels it,
- Where the solicitor is aware of strong evidence of fraud by a client,
- Where a client has committed perjury, disclosure may be required in the public interest,
- Where there is a sufficiently serious risk to the well-being of a client or a third party, including mental illness and suicidal intention,
- Where there are threats of death or serious injury,
- Where there is a sufficiently serious risk of abuse, neglect or ill-treatment of the client, or risk of abuse of a third party, including cases involving abuse or neglect of children.

While the similarities between solicitor/client confidentiality and legal professional privilege can undoubtedly at times prove challenging for practitioners, it is vital that care is

exercised when assessing whether information and material can be categorised as falling under solicitor/client confidentiality or legal professional privilege. Practitioners should be mindful that confidential information does not automatically attract legal professional privilege – it will be dependent on the context and purpose of communications and whether other features of privilege have been established. 

look it up

Cases:

- *Akzo Nobel v European Commission* [2010] 5 CMLR 19
- *Bolton v Liverpool Corp* [1833] Eng R 409; (1833) 39 ER 614
- *Carter v Palmer* (1842) 8 CI & F 657
- *Davies v Clough* (1837) 8 Sim 262
- *Greenough v Gaskell* [1824-34] All ER 767
- *Inspector of Taxes v A Firm of Solicitors* [2013] IEHC 67; [2013] 2 ILRM 1)
- *Martin and Doorley v Legal Aid Board* [2007] IEHC 76; [2007] 2 IR 759
- *R v Derby Magistrates' Court, ex parte B* [1995] UKHL 18 ([1995] 4 All ER 526)
- *Smurfit Paribas Bank Ltd v AIB Export Finance Ltd* [1990] 1 IR 469
- *Versini-Campinchi and Crasnianski v France* (ECtHR, application no 49176/11)

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CARPE diem?



Helen Johnson is a Sligo-based barrister who specialises in intellectual property law



Jane Susan Bourke is a solicitor, trademark attorney, and member of the Law Society's Technology Committee

In their second article on the impact of Brexit on intellectual property, **Helen Johnson** and **Jane Bourke** focus on protected geographical indications, trademarks and designs, trade secrets, litigation and commercial contracts

An apple a day might not keep the taxes at bay, but there was much joy in August with the registration of Irish protected food names Oriel Salt and Oriel Sea Minerals – thanks to the water currents, mineral content and water purity at Port Oriel in Co Louth. They join the cheese Imokilly Regato as Irish Protected Designations of Origin (PDOs) and now enjoy the same protection as Champagne, Stilton, Cornish Pasties, Feta Cheese and Parma Ham. Ireland now has seven protected food names – both PDOs and Protected Geographical Indications (PGIs) – and new applications have been filed this summer for Wexford Blackcurrants and Sneem Black Pudding.

The protection of names of certain agricultural goods, foodstuffs, wines and spirits at EU level, which is governed by several EU regulations, may become vulnerable once Britain exits. PDO, PGI and Traditional Speciality Guaranteed (TSG) designations ensure the protection of food names for those goods produced, prepared and/or processed in a specific geographical area or place.

Examples of protected Irish PGIs include the Waterford Blaa, Connemara Hill Lamb, and Timoleague Brown Pudding. Britain has over 70 protected foodstuffs, including Jersey Royal Potatoes, Traditional Farmfresh Turkey, West County Lamb, Wensleydale Cheese and Lough Neagh Eel.

Protected food names can take up to five years to register, yet EU-wide protection will cease once Britain

leaves. While there are several international agreements in place regarding the use of such names, how will Brexit ensure the protection of British foodstuffs and regulate the use of EU-protected names in Britain once they depart the union?

Producers fear that any talks to ensure ongoing protection in the EU and Britain may become lost in the Brexit negotiations. Lest producers see mass-production of their specialised goods, as well as imitations or cheaper versions flooding the market, alternative agreements may be required, together with domestic legislation, such that Britain complies with its obligations under the *Agreement on Trade-related Aspects of Intellectual Property Rights*

at a glance

- The protection of names of certain agricultural goods, foodstuffs, wines and spirits at EU level may become vulnerable once Britain exits
- There is a danger that any talks to ensure ongoing protection in the EU and Britain may become lost in the Brexit negotiations
- If Britain amends its intellectual property laws in the future, practitioners will have to painfully review, revise and negotiate all IP-related agreements, be they licences, distribution agreements, franchises, settlement, coexistence or prior-rights agreements

“ Once Britain exits, unregistered community designs would no longer be protected in Britain, one of the world’s fashion capitals ”



Hubert knew there were carp around here somewhere



Carp of the day

(TRIPS). *Irish Whiskey* is a registered EU geographical indication (GI) and, accordingly, its protection may become rudderless in Britain upon exit, as may *Irish Poteen*. Muster some solace from the fact that ‘Guinness’ – being owned by British multinational powerhouse Diageo – is sufficiently protected by trademark registrations in Ireland, Britain, at pan-European level, and internationally – in several jurisdictions.

Trademarks and designs

Trademarks are brand names or identifiers under which entities trade, and registrations can take the form of words, logos, signs, slogans, shapes, colours, smells and even sounds. To be capable of registration, a trademark must be distinctive and non-descriptive. Designs are defined under Irish legislation as “the appearance of the whole or a part of a product resulting from the features of, in particular, the lines, contours, colour, shape, texture or materials of the product itself or its ornamentation”, and a registration protects these. To be registered, a design must be new and have individual character.

Trademarks and designs can be registered nationally, at pan-European level at the [European Union Intellectual Property Office \(EUIPO\)](#), or internationally in jurisdictions of the owner’s choice under the [World Intellectual Property Organization \(WIPO\)](#) administered Madrid system and the [Hague Agreement](#) respectively.

The EUIPO (formerly OHIM) acts as the European headquarters for registering EU trademarks (EUTMs) and EU designs (registered community designs or RCDs).

Under current EU trademark legislation, an EUTM can be registered through just one application. Once registered, an EUTM is protected in all 28 EU member states for a ten-year period, and registration through EUIPO is an efficient and cost-effective way of protecting brands and designs. Rights can be enforced in all EU member states – a market of almost 500 million consumers. While registration of an EUTM may be renewed indefinitely, trademarks are vulnerable to attack and can be revoked if not used within a five-year period.

On the eve of its 20th birthday, there was a sizeable overhaul of the EUTM and related legislation at the EUIPO in March 2016 – yet it may face further upheaval once Britain exits. The EUTM system provides automatic registered protection for accession states that join, but it has never been faced with a member state leaving. However, Ireland was faced with a similar situation when we left Britain in 1921. At that time, transitional provisions were introduced that facilitated the recognition of registered British trademark rights in Ireland. As Ireland has done this before, it may be well-placed to assist the EU-British exit talks vis-à-vis trademark protection.

Existing registered rights

The questions regarding trademark protection arising from Brexit are myriad. How will existing registered rights be

treated in Britain, and will we see a form of grandfathering? Could EUTMs be converted to national British trademarks, thus retaining rights in both jurisdictions? What of an EUTM used in Britain alone – could it face revocation on the grounds of non-use elsewhere in the EU upon exit? As the six counties in the north form part of the island of Ireland, it has often been the case that goodwill spills over the border. Only time will tell how Brexit will affect exports to our neighbours and where it will leave Irish brands.

Trademark proprietors should be advised to register trademarks in both Britain and the EU, thus avoiding conversion issues in the future. It is worth bearing in mind that rights holders can still rely on unregistered rights in Britain and Ireland. Accordingly, it will still be possible to protect brands through the tort of passing-off.

RCDs are protected in EU member states for a five-year period. Design renewals are capped at 25 years. It is also possible to rely on [unregistered community design \(UCD\)](#). These designs are protected for a three-year period, coming into existence automatically upon creation, and protect only against copying.

The UCD is most useful in the fashion industry, due to the fact that clothing is seasonal and styles ever-changing. Once Britain exits, UCDs would no longer be

protected in Britain, one of the world’s fashion capitals. While Britain has its own national unregistered design right that will be unaffected by Brexit – and which lasts for the shorter of a specified ten to 15-year period – its scope is narrower than the UCD, as it excludes protection for ‘surface decoration’.

In terms of protecting designs, although there is a

grace period of one year for filing from the time the design was made public, it appears that holders of designs that have been in the public domain for over 12 months cannot now file for protection in Britain, as designs must be new at the time of filing. As with trademarks, and to protect their position, holders of new designs who wish to have registered protection may consider filing applications at the EUIPO as well as Britain’s [Intellectual Property Office \(IPO\)](#).

While Britain navigates its exit from the EU, several questions will remain unanswered. In the aftermath of the Brexit

Trademark proprietors should be advised to register trademarks in both Britain and the EU, thus avoiding conversion issues in the future

vote, the IPO published a helpful online post *IP and Brexit: the facts*. The office confirmed that the British government is exploring various options for the future of British trademarks and designs in the EU. In the meantime, it made the valid point that British businesses will still be able to avail of EU registrations.

Exhaustion

While the owner of an EU trademark can prevent protected goods from entering the EU, once genuine branded goods have entered the EEA with the trademark proprietor's consent, the subsequent circulation or sale of said goods in that market cannot be prohibited by the owner of the EU mark (unless legitimate reasons apply). This is known as the doctrine of exhaustion, with rights being 'exhausted' after the first sale. By way of an example, if one were to go to Northern Ireland and purchase several Superdry T-shirts, these could be legitimately resold in the Republic, as they were put on the market in the North and the rights were thereby exhausted.

However, if one were to go to Boston and make an equivalent purchase with a view to returning to sell them in Ireland, as there is no international exhaustion and as these goods were not put on the market in the EEA with the consent of Superdry, their sale could be prohibited here.

Depending on whether or not Britain remains in the EEA after it exits the EU, the fate of goods put on the market in Britain may be sealed. If Britain sees fit to remain in the EEA, then those goods put on the market in the EEA may be exported to Britain and the trademark owner will be left with no recourse due to the exhaustion doctrine. However, if Britain does not rejoin the EEA, trademark proprietors will be able to stop exports out of or into Britain, as exhaustion will not apply.

Faking it

According to a 2013 OECD report, up to 5% of imports to the EU are fake. The *Anti-Counterfeiting Group* in Britain noted that the global value of counterfeit and pirated goods that year was \$461 billion – a sharp rise on the \$250 billion value placed on such goods five years previously. Only last month, *BBC News* reported that clothing and accessories, mobile phone accessories,

and perfume and cosmetics topped the list of confiscated goods in Britain, with goods coming from China, Hong Kong, Pakistan, India and Turkey. In 2014, a year that saw over 35.5 million articles detained by EU customs for infringing IPRs, cigarettes, toys and medicines topped the list.

In terms of policing counterfeit goods that land on our shores, the Irish Revenue provides a service whereby rights-holders can make an application for action to Customs, which remains in force for 12 months, to "prevent the import or export of suspect IPR infringing goods". An application for action stems from [EU Regulation 608/2013](#) and the corresponding Irish regulations ([SI 562 of 2013](#)). An applicant must show that they hold the right in question and give a detailed description of the goods. The Revenue notes that then "customs staff may:

- Detain suspect infringing goods,
- Contact the right holder, who will confirm if the goods infringe an IPR,
- Arrange for the destruction of any infringing goods (the right holder may be asked to pay destruction costs)."

Given the isolated geographical position that Ireland will find itself in post Brexit, there could be difficulty in policing Irish or EU-bound counterfeit goods once Britain leaves

The importance of registered IPRs in the anti-counterfeiting fight cannot be undermined, but we must be mindful of how Brexit may affect the enforcement of this regulation between Irish and British trade. Given the isolated geographical position that Ireland will find itself in post-Brexit, there could be difficulty in policing Irish or EU-bound counterfeit goods once Britain leaves.

IP contracts

The purpose of EU legislation is to harmonise laws throughout the union. In the event that Britain amends its intellectual property laws in the future, practitioners will have to painfully review, revise and negotiate all IP-related agreements, be they licences, distribution agreements, franchises, settlement, coexistence or prior-rights agreements.

Commercial relationships managed through franchise agreements and license agreements would also be affected by Britain's exit. Existing contracts will need to be reviewed to assess whether definitions are now obsolete. In many cases, contracts may require amendment, not least with regard

to territorial, jurisdictional and dispute resolution clauses, or they might need to be renegotiated in their entirety. It is important to consider the fact that Brexit could trigger *force majeure* provisions and may be used to prematurely terminate those contracts that are particularly onerous.

'I'll never tell' – trade secrets

To date, trade secrets have not been put on a legislative footing but have been governed by the common law duty of confidence, a breach of which involves a misuse of confidential information. Disgruntled parties may also rely on the *European Convention on Human Rights*. To succeed in any claim for breach of confidence, precedent states that three elements are required:

- The information must have the necessary quality of confidence about it (that is, it is not something that is in the public domain or within public knowledge),
- The information must have been imparted in circumstances where there was an obligation of confidence imported (that is, employer/employee relationship, doctor/patient, lawyer/client or under contract, for example), and
- There must be unauthorised use of that information to the detriment of the party communicating it.

Remedies available for a breach of confidence include an injunction to prevent further misuse or breaches of that information and damages. Legislation will be forthcoming, as the *Trade Secrets Directive (2016/943)* relating to undisclosed know-how and business information was adopted on 26 May 2016. By virtue of the new directive, businesses may enforce their rights and seek equivalent remedies across the EU. Now, however, as the deadline for transposition is 9 June 2018, Britain will probably not be obliged to implement this directive. But because much of the directive would involve the codification of existing common law in Britain, might it still elect to implement similar legislation in order to retain access to the EU market? Commentators note that the impact of the directive is minimal, given the far-off transposition date, and they appear to favour the approach that 'if it ain't broke, don't fix it'.

Litigation

Once Britain exits, it will no longer be bound by EU law, will not be obliged to interpret its domestic legislation in line with EU law, nor will it be subject to rulings of



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the CJEU – although it is probable that there will be a transitional period that will see EU cases yet to be resolved continuing to run after Britain exits the EU. In terms of reliefs available for IP infringement upon exit, pan-European remedies will be no longer available. Indeed, the effectiveness of current pan-EU injunctions, court orders, coexistence and/or settlement agreements, which are binding the EU, will be questionable once Britain exits. It may be the case that a British injunction will have to be sought and/or agreements amended to protect a client's position upon exit.

The applicability of the recast *Brussels Regulation* regarding the recognition and enforcement of judgments will no longer apply to Britain, and it may be no longer be the case that IP proceedings before a British court could trigger a stay on identical proceedings elsewhere in the EU or vice versa. Might this make Britain a more desirable location for 'forum shopping'? Procedural issues, such as the service of documents outside the EU jurisdiction into Britain, will also likely need to be reviewed. Britain may join the *Lugano Convention*, similar to Brussels, such that little may change, or it may become a signatory to the *Hague Convention*, which recognises exclusive jurisdiction clauses.

To boldly go

Where do we go from here? Theresa May is coming under pressure to trigger [article 50](#) from within her own party and from EU Commission President Jean-Claude



Juncker. Once triggered, Britain and the 27 remaining member states will face a period of uncertainty. Naturally, Brexit will have an effect on pan-European trademark and design rights, which will be in a state of flux, but it is envisaged that transitional provisions will be put in place in terms of British protection for holders of EU rights. It is likely that pan-European trademark and design rights holders will have to enforce

their rights in the EU and Britain separately, thus increasing costs. Similarly, depending on the ultimate outcome of the UP, patent holders may be forced to litigate before the UPC and before a British court to enforce their patent rights in Europe.

Sooner or later, the impact of Brexit on the treatment of pan-European IP rights and the resulting challenges will have to be discussed. Coupled with our reliance on direct foreign investment and the importance we place on our knowledge-based economy, it is imperative that we are at the table when such discussions commence. Ireland should be well-versed to contribute to the talks, given that it faced a similar situation when it gained independence from Britain. As the last-remaining English-speaking EU country, we must make our presence felt and apply ourselves in IP matters at EU level. Carpe diem!

look it up

Legislation:

- [Agreement on Trade-Related Aspects of Intellectual Property Rights](#)
- [Brussels Regulation](#) (recast)
- [EU Regulation 608/2013](#)
- [European Convention on Human Rights](#)
- [European Union \(Customs enforcement of Intellectual Property Rights\) Regulations 2013](#) (SI 562 of 2013)
- [Hague Convention](#)
- [Lugano Convention](#)
- [Trade Secrets Directive](#) (2016/943)



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A certain TAX APPEAL



Julie Burke is a tax partner at Ronan Daly Jermyn



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A number of key changes have been introduced to the tax appeals process. Practitioners need to be aware of these changes in order to best protect their clients' interests.

Julie Burke and Clare McGuinness do the sums

A new tax appeals system was introduced in the *Finance (Tax Appeals) Act 2015*, which was commenced with effect from 21 March 2016. A new body known as the Tax Appeals Commission (TAC) has been established, replacing the existing Office of the Appeal Commissioners. As a result of the changes, a settlement opportunity exists for certain taxpayers whose appeal was in existence on 21 March 2016 but had not yet been referred by Revenue to the Appeal Commissioners. This settlement opportunity was outlined in *Revenue eBrief no 37/2016* (12 April 2016) and set out the timeframe for dealing with this process.

Key changes

The changes detailed below do not apply to first-stage appeals regarding customs duties and VRT.

- New procedures have been introduced for the appointment, tenure, and removal of commissioners (two new commissioners, both former barristers, have been appointed, Mark O'Mahony and Lorna Gallagher),
- A formal procedure has been introduced for the appointment of a judge of the Circuit Court to act as a temporary commissioner in certain circumstances,
- All appeals are to be made directly to the TAC and not to Revenue,
- The time limit for making of an appeal has been standardised to 30 days for all tax heads (with limited exceptions),
- The commissioners will have sole responsibility for accepting or refusing appeals,
- There is no longer a right to a rehearing for taxpayers before the Circuit Court,
- The procedure for appealing to the High Court on a point of law has been significantly amended, with the agreement of the parties no longer a requirement,

- The commissioners are required to publish anonymised versions of all of their determinations,
- The default position is that hearings will be held in public unless the appellant requests that the hearing be held in private,
- The commissioners may determine an appeal without an oral hearing,
- Evidence may now be taken in writing as well as by oral testimony,
- Revenue may give evidence in support of increasing an assessment,
- There is no longer a requirement to express dissatisfaction if a taxpayer is aggrieved with the determination in order to protect their right of appeal to the High Court on a point of law.

Transition to new process

The general rule for the transition of existing appeals (made before 21 March 2016) to the new appeals system is that such appeals will be transferred to the stage in the new

at a glance

- A new tax appeals system was introduced with effect from 21 March 2016
- A new body known as the Tax Appeals Commission has been established, replacing the existing Office of the Appeal Commissioners
- Under the old system, an appellant who was dissatisfied with a determination of the commissioners could request a full rehearing of the appeal at the Circuit Court. Such an opportunity is not available under the new appeals process, with the exception of appellants whose hearing began or had been completed before 21 March



system that corresponds to the stage that the appeal had reached in the old system.

Where an appeal was in existence on 21 March 2016, but had not yet been referred by Revenue to the Appeal Commissioners, Revenue has a statutory obligation to refer such appeals to the TAC “as soon as practicable”. In such cases, Revenue had indicated that they were issuing a standard letter to appellants (copied to their agent) in April 2016, notifying the appellant of this statutory requirement and requesting the appellant to indicate whether he/she wished to settle the appeal by agreement with Revenue or to have the appeal referred to the TAC for hearing. This letter allowed 30 days

for the appellant to indicate his/her wishes. If the appellant requested that the case be transferred to the TAC, or if Revenue didn’t receive a response within the 30 days, the case would be referred to the TAC.

For cases that indicated a desire to settle the matter, Revenue allowed a three-month window for discussions. Any unsettled cases will have been transmitted to the TAC in September 2016. Clearly, there is nothing to prevent discussions between Revenue and the taxpayer/agent continuing after this point; however, the timing of the appeal hearing will be a matter for the TAC.

This settlement opportunity represents an invaluable chance for taxpayers to engage with

Revenue to determine if it is possible to finally resolve their tax affairs in a satisfactory fashion in advance of an appeal hearing. In light of the very large number of cases that are believed to fall into this category, if a settlement is not reached, there will be an inevitable delay (most likely of several years) for a hearing date at the TAC. As a result, if a tax liability is ultimately confirmed, as statutory interest is continuing to accrue, this would make the liability unmanageable for most taxpayers.

Incomplete appeals

In cases where a commissioner has retired without either completing the hearing of an appeal hearing (that is, part hearing)



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or without making a determination in an appeal that was heard by him, then the new commissioner may either rehear the appeal or proceed to adjudicate and determine the appeal without a rehearing.

Under the old system, an appellant who was dissatisfied with a determination of the commissioners could request a full rehearing of the appeal at the Circuit Court. Such an opportunity is not available under the new appeals process, with the exception of appellants whose hearing before the commissioners had begun or had been completed before 21 March 2016.

Appeals to the High Court against a determination of the commissioners are made by stating a case for the opinion of the High Court on a point of law. Under the old appeals process, the 'case stated' was drafted and agreed by both parties before being submitted to the commissioners for sign-off.

In respect of cases stated that have not been signed-off on 21 March 2016, the parties can opt to have the appeal reheard by a new commissioner or to have the case stated completed. Both of the parties must opt for a rehearing for this to happen.

Where the parties are still attempting to agree the terms of the case stated between them, TAC may give a direction allowing additional time to do this. If the parties do not comply with this direction, a new commissioner is to complete the case stated. The commissioner also has the discretion to amend a case stated that has been submitted by the parties.

Appeals after 21 March

From 21 March 2016, taxpayers are required to submit their appeals directly to the TAC rather than Revenue, using the Notice of Appeal Form (or Notice of Late Appeal Form if relevant), which can be found on the TAC website, www.taxappeals.ie. The type of information required includes:

- Tax type,
- Amounts at issue,
- Relevant legislation,
- Relevant case law,
- Grounds of appeal,
- A copy of the assessment/decision under appeal should also be included.

It is critical that both practitioners and taxpayers fully understand that they cannot rely on any grounds of appeal that are not specified in this notice unless the commissioners are satisfied that the ground could not have been reasonably stated in the notice – this means that the importance of the Notice of Appeal Form should not be overlooked, as it will form the basis of any arguments that can be raised at a subsequent appeal hearing. If an agent submits the appeal, a written authorisation from the taxpayer must accompany the Notice of Appeal.

The TAC will send a copy of the Notice of Appeal, together with the accompanying documentation to Revenue, which then has 30 days to lodge an objection stating its reasons. Even if Revenue does not object, the commissioners may refuse the appeal if they believe that the appeal is not valid or that it is without substance or foundation.

Rules of procedure

The TAC published *Rules of Procedure* following its establishment on 21 March 2016. The rules largely follow the wording of the *Finance (Tax Appeals) Act* and cover a range of

matters, including the making of directions and pre-hearing procedures.

The commissioners can direct the parties to provide them with certain specified information (referred to as a 'statement of case') within a specified time period (usually three to six weeks). The information required to be included in a statement of case will typically include:

- An outline of the relevant facts,
- A list of, and copies of, any written documents upon which the party intends to rely or to produce in the proceedings,
- Details of any witness who may be called to give evidence,
- The legislation and case law to be relied upon,
- Whether the party assents to the appeal being determined without a hearing,
- The likely duration of a hearing, and
- Whether the party considers that the matter under appeal is one that could be settled by way of an agreement with the other party.

The commissioners may hold a case-management conference with a view to completion of the proceedings in a fair and expeditious manner. Such a meeting will

usually take place following the receipt of the statement of case, and at least 14 days' notice will be given to the parties.

In certain circumstances, the commissioners can adjudicate on a matter under appeal without a hearing – in such a case, the commissioners must notify the parties of their intention, and the parties may then request a hearing. When determining an appeal without a hearing, the commissioners may take into account:


- The notice of appeal, statement of case, or any other written material provided by a party,
- 'Holding of discussions' with a party, or
- Any other means they consider appropriate.

The commissioners may wish to determine the new appeal in light of the previous determination on a common or related issue without holding a hearing. In such a case, the commissioners must send a (redacted) copy of any relevant determination(s) to the parties. While a party may object to the commissioners' proposed course of action, it is ultimately a matter for the commissioners.

Hearing

Broadly speaking, the new procedure for hearing is similar to the previous system, with one key distinction – the taxpayer may not apply for a rehearing of the matter if dissatisfied with the determination. Therefore, significant attention must be paid to establishing the key facts and relevant law at the hearing.

The only remedy available to an unsuccessful taxpayer or the Revenue Commissioners is by way of a case stated on a point of law to the High Court. The commissioners must complete and sign the case stated within three months of the request from the unsuccessful party and provide a copy to both parties. While representations may be made by both parties in respect of the draft case stated, the commissioners will not be bound by these.

Practitioners need to be aware of the key changes to the system to best protect their clients' interests, particularly with regard to cases that fall within the transitional regime. The appeal process – from the very outset of drafting the Notice of Appeal, up to and including the hearing – affords a taxpayer a single opportunity to establish all of the relevant facts to ground the appeal, as the only right of redress for a taxpayer will be an otherwise costly appeal by way of a case stated to the High Court. 

The importance of the Notice of Appeal Form should not be overlooked, as it will form the basis of any arguments that can be raised at a subsequent appeal hearing

Pitched BATTLE



Alban O'Callaghan is a trainee solicitor at McKeever Rowan and wishes to thank Robert Browne (partner, McKeever Rowan) for reviewing this article

What is the standard of care owed to those entering the sporting arena – and when do acts committed on the field of play become acts of negligence or criminal assault?

Alban O'Callaghan draws the red card

“Out of the blue, this guy came running onto the pitch, came up behind my son, thumped my son in the back of the head just below the right ear, and then followed up with a punch to his eye. He left him on the ground dazed and confused. It was a full-blooded punch.” So begins the tale of the father of a 13-year-old explaining how a man in his late 40s attacked his son after a **pitch confrontation**.

In the world of competitive sport, events may occur during a match that do not exactly conform to the **Queensberry Rules**. It is often the case that a tackle to one person is considered an assault to another. This is inherent in nearly all sports and is generally regarded as coming under the legal principle of *volenti non fit injuria* – the voluntary assumption of risk. However, there are certain acts that happen during the course of a contest that depart from the rules of the game entirely.

What is the standard of care owed to sporting participants throughout the course of a match? What constitutes an act that falls so outside the rules of the game to render it an act of negligence or even criminal assault?

The game plan

It has been argued that the standard of care is subjective, and largely hinges on the type of sport in question and the level of skill associated with it. This approach places emphasis on what was reasonable under the

circumstances, as recognised in *Bolam v Friern Hospital Management Committee* (1957), and raises the issue of ‘playing culture’ and the uncertainty it attracts – in that conduct that may *not* be permitted under the laws of the game may still be accepted as being within the boundaries of what is deemed reasonable. Furthermore, there is a variation of levels under which this can be judged, meaning that a higher degree of care is required for a higher-level match (*Condon v Basi* [1985]).

In *Basi*, a footballer playing in a local league match suffered a broken leg as a result of a tackle. The court had to consider the standard of care expected of a football player. The court decided that one of the criteria in this regard was the level of expertise a player had – and the defendant was held to have acted recklessly, even for

at a glance

- Sports participation and the voluntary assumption of risk
- The standard of care owed to those taking part in matches
- What constitutes an act that falls so far outside the rules of the game to render it an act of negligence or criminal assault?
- Five principles by which liability may be adjudged
- The duty of care that exists between the athlete, coach and referees

One of the criteria in this regard was the level of expertise a player had – and the defendant was held to have acted recklessly, even for the standard of a local league player



the standard of a local league player.

This issue of playing culture has been considered several times before the English courts, most notably in *R v Bradshaw* (1878), *R v Billingham* (1978) and *R v Blissett* (1992), each of which implicitly recognised the existence of playing culture and the manner in which the rules and practices of a game can dictate what conduct is legally acceptable.

Caldwell v Maguire and Fitzgerald (2001) set out five principles by which liability may be adjudged. The case concerned a claim by a professional jockey against two other jockeys. The plaintiff, both defendants, and a fourth jockey who was not a party to the proceedings had been taking part in a race in Hexham in England. The two defendants, in effect, cut off the fourth jockey's line of riding, causing his horse to veer off course, which in turn caused the plaintiff to fall and break his back and end his career. The defendants were found guilty of careless riding and banned from racing for three days.

The crying game

The English Court of Appeal found that there had been no negligent conduct on the part of the defendants and approved five principles as a means of assessing the liability of a defendant for negligently or recklessly

inflicting injury on another contestant:

- Each contestant in a lawful sporting contest owes a duty of care to the other participants,
- This duty is to exercise all care that is objectively reasonable under the circumstances, so as to avoid the infliction of injury on other participants,
- These circumstances rest on the contest, its objects, the demand made of the contestants, and the skill, standards and judgement that may be reasonably expected from such contestants,
- The threshold for liability of the given sport would be high so as to render a lapse in judgement insufficient to establish a breach of the duty of care, and
- Without proof of an act that was reckless for the other contestant's safety, it may be difficult to prove a breach of the duty of care.

Upon application of these factors, the defendants were held to have made errors of judgement and, as such, had not actually acted

with reckless disregard for the plaintiff's safety.

This issue was again considered in *R v Barnes* (2004), which concerned a two-footed tackle by the defendant during the course of an amateur football match. The defendant was subsequently charged with unlawfully and maliciously inflicting grievous bodily harm on the victim. While Barnes admitted to tackling with two feet, he maintained that it was a fair sliding tackle.

The Court of Appeal also adopted several guidelines previously considered in the Canadian cases of *R v Ciccarelli* (1989) and *R v Cey* (1989), which concerned violent conduct during an ice hockey game to determine this, including the particular sport involved, the standard involved, the nature of the act, the force applied, as well as the defendant's state of mind. The Court of Appeal upheld the defendant's appeal and held that criminal prosecutions should be reserved for situations where the conduct is sufficiently grave to be properly categorised as criminal. Furthermore, the court recognised that, although the act complained of was outside

When a referee undertakes to perform this function, it is reasonable that the players may rely upon him or her to discharge this duty with reasonable care

FOCAL POINT

ah ref! duty of care and referees

What of the duty of care that exists between the athlete, coach and referees? If a player's actions during a match can be pardoned due to being 'in the heat of battle', how far does this extend to a non-playing participant who is nevertheless involved in the match?

This was considered in the United States' Supreme Court decision in *Cerny v Cedar Bluffs Junior/Senior High School* (2001). This case concerned a game of American football, during which the plaintiff hit his head off the ground while attempting to make a tackle. The player was disorientated, short of breath, and had a tingling sensation in his neck. He removed himself from the game but returned later and hit his head again, this time off an opposing player, while making a tackle. He subsequently brought a personal injury action against the school and its coaching staff, alleging negligence on their part. Both coaches held coaching endorsements in this instance. It was held that the appropriate standard by which to assess a coach's actions was that of the reasonable man with regard to having such coaching endorsements.

This issue arose recently in *Neville v St Michael's College and St Vincent's University Hospital* (2014). In this case, a student enrolled in St Michael's College sustained a head injury during rugby training in November 2009, which caused him to lose consciousness. He was admitted to St Vincent's Hospital and diagnosed four days later with sinusitis and discharged home without a scan being performed, despite the request for one by his mother. He subsequently returned to school on the understanding that he was not to take part in contact sports. Despite this arrangement, the plaintiff took part in the last ten minutes of a rugby match and sustained a second blow to the head. He lost consciousness and was brought to hospital where a scan revealed that he had sustained permanent brain damage. Ultimately, liability was admitted in respect of the plaintiff's claim.

The liability of referees was considered in the case of *Vowles v Evans* (2003), which related to an injury sustained as a result of a collapsed scrum in amateur rugby in Wales. The plaintiff was playing in the front row when another

player, who was vastly inexperienced in that position, replaced another more experienced player. The scrum ultimately collapsed. The plaintiff broke his neck and was paralysed. The claimant alleged that the referee had breached his duty of care and had violated one of the rules of the game by failing to make adequate enquiries of the replacement player to determine if he was suitable to play in that position. It was argued by the plaintiff that the replacement player should have been identified as unsuitable for the front row by the referee.

The Court of Appeal held that, when a referee undertakes to perform this very function, it is reasonable that the players may rely upon him or her to discharge this duty with reasonable care. The referee was found liable in this regard, and the Welsh Rugby Union were held vicariously liable. Of note in this decision is that the referee had time to consider his decision to allow the player to play in the front row, yet still proceeded to do so, thus rendering the argument that it was a lapse in judgement difficult to agree with.


the laws of the game, it could be expected and thus might be consented to.

In *Cey* (1989), the defendant was found to have acted within the playing culture of the sport when he pushed the victim into the side of an ice rink, causing facial injuries. However, in another Canadian case, *R v Ciccirelli* (1989), the defendant struck another player several times with his stick during a break in play. This was held to constitute unusual practice for a game even as physical as ice hockey, and thus was held to fall outside of the playing culture.

This matter has been considered in Ireland several times, most notably in *DPP v Greaney* and *DPP v McCartan* (2004), two District Court prosecutions that concerned acts committed by the respective defendants during Gaelic football matches. In *Greaney*, the defendant received a nine-month suspended prison sentence following an incident in a junior football match in which he struck another player off the ball, causing the other player to sustain brain damage. In *McCartan*, the defendant was found guilty of assault after breaking another player's jaw during a match following an off-the-ball altercation.

In line with the English decisions above, the court in *McCartan* implicitly acknowledged the playing culture in which this incident had occurred, and how it "overcame [McCartan's] own scruples".

It is clear that there is no one formula to determine the liability for acts committed during a sporting contest that result in injury. However, the nature of the sporting contest, the demands made of its participants, and the level to which it is played will all be taken into account. Crucially, it can be seen that the threshold of liability is considerably high, and a mere lapse of judgement will not suffice in bringing a claim. There must be a significant

level of intent from the accused to inflict injury on the opposing player. The approach adopted in the Canadian decisions of *R v Cey* and *R v Ciccirelli* appears to me to be the most practical, due to their recognition of players' consent to actions that fall outside the rules, while being able to distinguish acts that are so removed from the normal course of a game, in terms of their force and intent, so as to render them criminally liable. 

look it up

Cases:

- *Benjamin Roger Smoldon v Thomas Whitworth and Michael Nolan* [1996] EWCA Civ 1225
- *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582, [1957] 2 All ER 118
- *Caldwell v Maguire & Fitzgerald* [2001] EWCA Civ 1054
- *Cerny v Cedar Bluffs Junior/Senior High School* (Supreme Court of Nebraska, 29 June 2001)
- *Condon v Basi* [1985] EWCA Civ 12
- *DPP v McCartan* (District Court, unreported, 1 November 2004)
- *Neville v St Michael's College and St Vincent's University Hospital* (High Court, unreported,

24 March 2014)

- *R v Barnes* [2004] EWCA Crim 3246
- *R v Cey* (Court of Appeal for Saskatchewan, 8 May 1989)
- *R v Ciccirelli* [1989] 54 CCC (3d) 121 (Ont Dist Ct)
- *Vowles v Evans* [2003] EWCA Civ 318

Literature:

- Findlay, Hilary (2002), 'Violence in sport, part I – it's your responsibility too'
- Findlay, Hilary (2003), 'Violence in sport, part II – dealing with violence as a legal issue'
- Zvulony & Co (2010), 'Assault and battery on the hockey rink'

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Songs of the FIELDS



Ciaran O'Mara is a partner at O'Mara Geraghty McCourt. The author wishes to thank Mary Gaynor (head of library and information services at the Law Society) for her invaluable input and research for this article

In the second of a two-part series, **Ciaran O'Mara** highlights a further three of the six Irish solicitors, from both North and South, who died at the Battle of the Somme in 1916

The solicitors' world of 1916 is almost unrecognisable from that of today. For a start, it was entirely male. It was only in 1919 that the legal restriction disqualifying women from becoming solicitors was abolished. Today, the profession has a female majority. The number of solicitors was tiny in 1916 compared with today. Only 1,440 solicitors had practising certificates in all of Ireland, and only 370 were members of the Law Society. Today, there are almost 13,000 solicitors practising in all of Ireland, of which 10,361 are in the 26 counties. So the profession was little more than one-tenth of its current size a century ago.

There were no large law firms specialising in commercial work. One young Arthur Cox, who would go on to found what is now Ireland's largest firm, had qualified in 1915 and was working as an assistant solicitor. The profession comprised Catholics and Protestants in roughly equal number and, without doubt, was loyal to the British Empire, even if most Catholic solicitors wanted home rule within the Union. There were even two Irish Parliamentary Party MPs on the Council of the Law Society. It is hard to imagine a sitting TD being on the Council today!

The only solicitors I could trace who were active separatists were William Corrigan (recently featured in the April *Gazette*, p30); Henry Dixon, a much older man who was a member of the IRB and Sinn Féin (who did not take part in the Rising, but was rounded up afterwards and interned in Frongoch); and Sean O hUadhaigh, a Gaelic League enthusiast who had changed his name by deed poll in 1910 from John Woods (and who would become Kevin Barry's solicitor in 1920 and be the chief mover in changing the name of Kingstown to Dun Laoghaire).

The Law Society put its full weight behind recruit-

ment to the British forces in 1914. It maintained a Roll of Honour for those who died in the war and kept a record of all the military awards that the various Allied countries had given to Irish solicitors. The annual reports show that 155 solicitors and 83 apprentices joined the British armed forces in the war. These are astounding numbers for such a small profession. Remember – these were all volunteers.

In England and Wales, where there was conscription, nearly a quarter of all solicitors served in the First World War. Of those, 588 were killed and 669 seriously wounded (these figures together make up nearly a tenth of all practitioners at the time, which was around 15,000). The casualties were proportionately worse for articled clerks. More than half of articled clerks served and, of those, 358 were killed and 458 were seriously wounded (together making up perhaps a third of all articled clerks).

William Alan Smiles

William Alan Smiles was the son of a leading Belfast industrialist, William Holmes Smiles, who founded the Belfast Rope Works in 1878. These supplied Harland

at a glance

- The Law Society put its full weight behind recruitment to the British forces in 1914
- 155 Irish solicitors and 83 apprentices joined the British armed forces in the First World War, of whom 38 died
- In England and Wales, where there was conscription, nearly a quarter of all solicitors served. Of the roughly 15,000-strong profession there at that time, 588 were killed and 669 seriously wounded



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and Wolff shipyard and were the largest rope works of their kind in the world at the time. Mr Smiles senior also founded the famous Royal County Down Golf Club in Newcastle, Co Down. He died in 1904. The Smiles family – with 11 children (eight boys and three girls) – lived at Westbank House on the Palmerston Road, Sydenham, East Belfast. William's mother was half-sister to Mrs Beeton, the famous Victorian cookery expert.

William was born on 29 April 1882 and served his apprenticeship with Alexander McDowell, Royal Avenue, Belfast. His name went on the Roll of Solicitors on 11 January 1905. In the 1915 *Law Directory*, he has an address at Ocean Buildings, Belfast. He appears to have practised on his own at Belfast and Larne. He became deputy crown solicitor for Co Mayo in 1908.

William was interested in sailing and joined the County Antrim Yacht Club, based at Whitehead on the north side of Belfast Lough, in June 1909. He is commemorated on a plaque in their clubhouse.

He applied for an army commission on 15 August, 1914, on the outbreak of the war. He is recorded as having a height of 6 feet, 2 inches and a weight of 140 pounds. He was commissioned to the 9th Royal Irish Rifles on 23 September 1914, promoted to full lieutenant on 23 November, and then captain on 1 January 1915. He then joined C Company 2nd Royal Irish Rifles on 13 March 1916.

He was killed in action on 9 July 1916. It was reported that his body was seen in a German second-line trench with shrapnel wounds to his back and that he died instantly. The gross value of his estate was £1,382. His other brother, Second Lieutenant Samuel Smiles, came from South America to join the army. He received his commission in December 1916 from Queens OTC, and went to the front in May 1917 with the 1st Battalion Royal Irish Rifles. He was killed on 16 August 1917 at Passchendaele and is buried in Tyne Cot Cemetery Belgium.

Philip James Furlong

Philip Furlong was born on 5 May 1888 and lived at 50 Leinster Road in Rathmines, Dublin, with his family. He was the youngest son of Thomas J Furlong, solicitor, who had his practice at Eustace Street in Dublin. Philip went to St Mary's College in Rathmines and to UCD, where

he studied law. He also seems to have had an association with the Catholic University School, Leeson Street, and played for their cricket team. He was apprenticed to his father on 18 March 1909, but he had not qualified when the war started. Furlong did not join an Irish regiment – instead, he joined the 19th Battalion (3rd City) (Liverpool Pals) King's Liverpool Regiment, which was formed in Liverpool on 29 August 1914 by Lord Derby. There were huge numbers of Irish in Liverpool, and the regiment had whole battalions of Irish-born or descended soldiers. Furlong obtained his commission in April 1915. He and his unit arrived in France and Flanders in March 1916 and took part in the Battle of the Somme.

Furlong was reported missing and wounded on the left of the 89th Brigade's attack towards Apple Head Copse near Guillemont on 30 July 1916. In 1919, his death was confirmed. His commanding officer wrote: "He was an excellent soldier and comrade, and during the day did great work."

One of his men wrote to his family: "I do grieve for you losing such a fine brother; he was greatly admired by officers and men of the 19th King's (Liverpool Regt), and it was a great pleasure for me

to have been his servant whilst in France. He was very popular and was commanding 8th Platoon. On Sunday morning, 30 July at 4.45am, Mr Furlong led his men over the top in the second great battle of the Somme. They left the trench in front of Trones Wood in a thick mist, their objective being an orchard south of Guillemont (2,500 yards away). They gained their objective, Mr Furlong being still with what few of them were left. When the mist cleared, they found that the troops who should have advanced on their flank were unable to support them, and they were being surrounded by parties of the enemy. They then fell back on to a trench (200 yards) to attempt to get behind the enemy and drive them out; the Germans got there first and started sniping from their flank. It was here that Mr Furlong was hit by rifle or machine gun, either in the shoulder or chest. There were so many hit at the same time, and the Germans were peppering us so badly, that it was impossible to assist the wounded at all. Mr Furlong was wounded and then supposed to have been taken prisoner, as the enemy occupied the trench in which he was left immediately afterwards;

when the enemy were ultimately driven out of the trench, there was no trace of Mr Furlong."

The regiment war diary records "the objectives reached but with heavy losses – gains had to be evacuated owing to no reinforcements. At 12 noon, roll call was seven officers and 43 men; 436 casualties."

William Whaley

William Whaley was born in Waringstown in 1874, son of James and Susan Whaley. He attended Lurgan College in the late 1880s and had left by 1891. He went on the Roll book at the Law Society in Dublin on 25 August 1904 upon qualifying as a solicitor. There is no record of his practising in any of the *Law Directories* for the period 1904-1916, and he was not a member of the Law Society. However, he shows up in 1914 extracting probate as the solicitor to the estate of a deceased client in Co Down, so he appears to have been practising.

The 1911 census records him as being Presbyterian, single, and living with his parents and three sisters in Waringstown. His occupation is recorded as that of solicitor. According to his obituary in *The Irish Times*, he was a descendant of a wealthy landowner in Dublin, George Whaley, who had been a major donor to charities in the 19th century.

Whaley enlisted in the 7th Royal Irish Fusiliers in Armagh in 1914 and was killed in action on 5 September 1916 at the Battle of Ginchy. He was a corporal in E Company, 7th Battalion, Royal Irish Fusiliers.

Some 150 men of Waringstown served during the Great War. The total male population of Waringstown at the start of the war was 1,723. Of the 150 who served, 107 had been members of the Ulster Volunteer Force. Whaley seems not to have been in the UVF.

Whaley was involved between 3 and 9 September 1916 in the battles for Guillemont and Ginchy, in which the 47-49th Brigades, 16th (Irish) Division, were prominent. On 3 September, the 47th Brigade made a significant advance but lost 1,147 out of the 2,400 attackers. Whaley's unit at the time of his death, the 8th Battalion, Royal Irish Fusiliers, had four officers killed and five wounded, 36 men killed, 95 wounded and 40 missing.

Whaley's obituary and photograph appeared in *The Irish Times* on 21 November 1916. There is no known grave, but he is commemorated on the Thiepval Memorial, Somme, France.

There were so many hit at the same time, and the Germans were peppering us so badly, that it was impossible to assist the wounded at all

THE LAW OF COMPANIES

4TH EDITION

By Thomas B Courtney

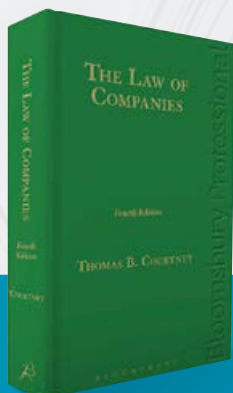
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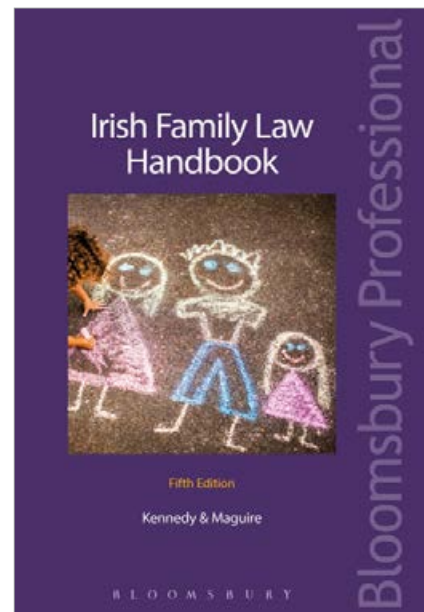
Irish Family Law Handbook (5th edition)

Deirdre Kennedy and Elizabeth Maguire. Bloomsbury Professional (2016), www.bloomsburyprofessional.com. ISBN: 978-1-78451-587-4. Price: €175.

This work is a weighty tome, running to 722 pages. The format of both this and the 2011 edition is similar, with a useful index system at the back, set out by descriptive word and subcategory. Text is clearly laid out, with headings in bold that jump off the page.

Since the last edition, there has been a softening of the strict legal definition of 'family'. New legislation contained in this text includes the *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010*, the *Children and Family Relationships Act 2015*, the *Marriage Act 2015*, and the *Gender Recognition Act 2016*. The text details the constitutional amendments that now provide that marriage may be contracted between two people of the same sex and dissolved by divorce. Also set out is the amended article 42(A), which provides constitutional recognition of the best interests and voice of the child. Legislation relating to tax and enforcement, including European law, are also indexed.

The principal function of this book is to recite and update legislation, rather than to discuss or apply it to case law. There is, however, a great advantage to having exact legislation and forms enunciated in one



volume. This up-to-date handbook will prove a welcome addition to the library of any legal practitioner or student of law.

Aoife Byrne is a solicitor who specialises in family law.

Cyber Law and Employment

Pauline Walley and Cliona Kimber. Round Hall (2016), www.roundhall.ie. ISBN: 978-0-41403-696-3. Price: €325.

This huge book (well over 1,000 pages) deals with a very recent phenomenon, cyberspace, and is limited to its impact on the workplace.

As the authors point out, email – the bane of many a solicitor's life – came into widespread use only in the late 1990s. Google was still operating from a garage in early 1999. Social media has undergone profound change since then. Facebook was founded in 2004. Bebo has come and gone, and some commentators are predicting that Twitter is last year's thing.

However, cyberspace is now all pervasive. It affects every aspect of our lives and on the legal landscape.

A central thesis of this book is that the law has failed to keep up with technological change,



thereby doing a disservice to those who suffer at the hands of the darker side of the internet, be it through hate speech, bullying, harassment,

defamation, or breach of privacy. As a result, lawyers and judges often have to shoe-horn 19th and 20th century precepts and laws into 21st century problems.

However, the law is beginning to catch up in some areas, and the pace of that change has, on a few occasions, outstripped this book, where the law is stated as at 1 January 2016. Thus, the decision of the European Court of Human Rights in *Barbulescu v Romania* to uphold the dismissal of a worker who had been monitored using an office computer for personal use comes too late to be included.

By contrast, *Schrems v Data Protection Commissioner*, which had such a profound impact on the transfer of data between the EU and the US, is analysed in detail, even though the decision only came last October. It does, however, fail to make the table of cases.

The authors sometimes give the impression that they have looked at even lawful material on the

internet and don't like what they see. It contains material that is described as "crude, offensive, foul, vituperative, in bad taste or just plain awful". It is axiomatic that many people are much ruder on the internet and in email than they would be face to face. Those difficulties are heightened by posters gaining anonymity behind *noms de guerre*. The efforts of lawyers and the courts to lift this veil through *Norwich Pharmacal* orders are covered with considerable clarity.

Largely, I suspect, because cyber-law and regulation is in its early stages, the analysis can sometimes be overly academic. No blame can be attached to the authors in this regard. They have identified the issues, the applicable law, the gaps that exist, and have presented a legal roadmap. They are to be congratulated.

Michael Kealey is legal counsel with Associated Newspapers.

Children and Family Relationships Law in Ireland: Practice and Procedure

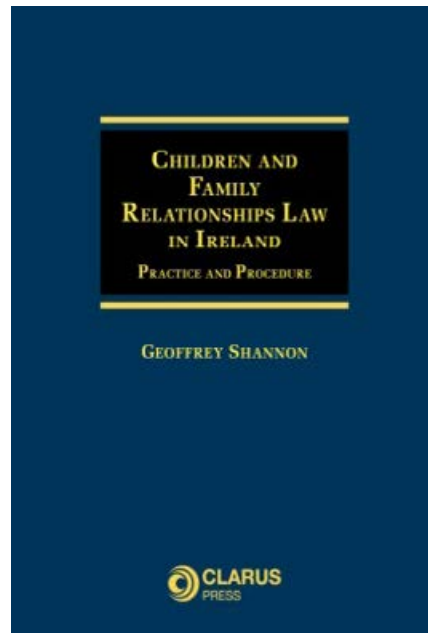
Geoffrey Shannon. Clarus Press (2016), www.claruspress.ie. ISBN: 978-1-905536-74-0. Price: €199.


It is entirely appropriate that Geoffrey Shannon should write the definitive guide to the *Child and Family Relationships Act 2015* and, as this volume attests, there is no one more suited to this task. Given that the act was part introduced in January 2016, it was no mean feat to produce this volume within six months.

Shannon's achievement is to place the 2015 act in the context of domestic and international child law, which informs the practitioner in Part 1 of the book. He steadily and in detail examines the provisions of the act dealing with parentage, guardianship, custody and access, dispute resolution and enforcement, adoption, maintenance, and civil partnership.

In Part 2, he presents an annotated version of the act, which is of great help to those attempting to decode and interpret what is a complex and detailed piece of legislation. One of the problems with the act is that it amends other acts, but it is not a consolidation or complete repeal of other acts, and so has to be read in conjunction with the amended acts and, in particular, the *Guardianship of Infants Act 1964*. Shannon's annotated act explains in detail the provisions of every single section of the 2015 act and clarifies the many cloudy issues arising in the new act.

Over time, once the laws become more familiar to solicitors and clients, the most useful part of this text will be Part 3, in which



Shannon links the provisions of the 2015 act with the newly created *Rules of the District, Circuit and Superior Courts*. These rules of court are presented in an annotated manner and are of immediate benefit, as they deal clearly and authoritatively with issues such as the new procedures for issuing proceedings under the 2015 act in  the Circuit Court.

Keith Walsh is principal of Keith Walsh Solicitors

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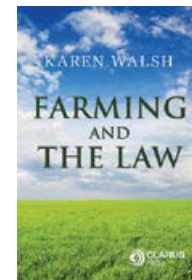


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DERMOT 'DOC' LAVERY

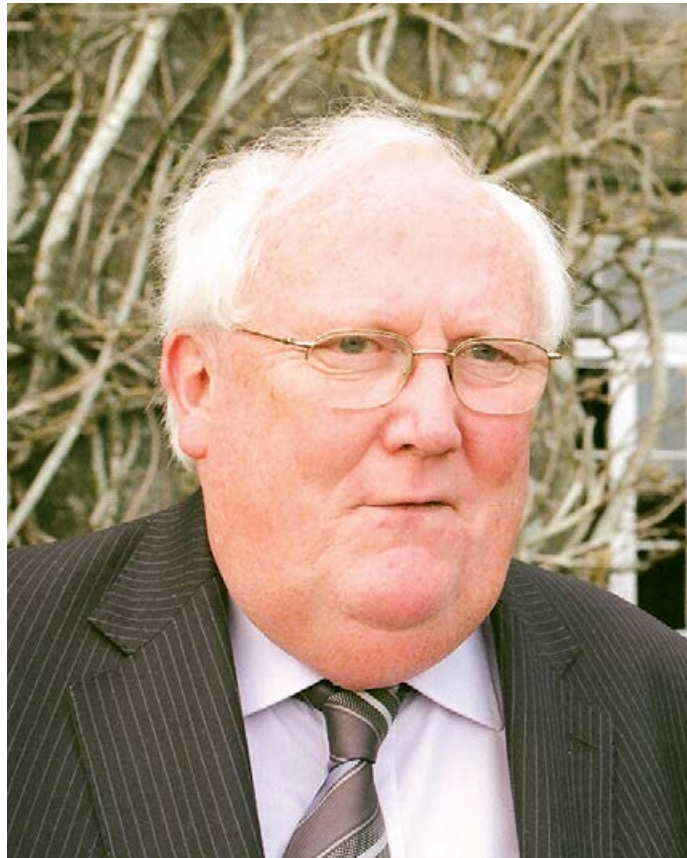
1944 – 2016

On 25 August, our profession lost one of its leading lights – an outstanding advocate, a fearless defender of the rights of citizens and the Constitution, a lawyer's lawyer and a people's person – with the passing of Dermot 'Doc' Lavery.

He was educated in St Mary's College, Dundalk; Clongowes Wood; and University College Dublin. He was immensely proud of his association with those institutions. It should be presumed that they felt the same!

Qualifying as a solicitor in 1969, he took up employment initially in Kilkenny. By this stage, many of Doc's hallmark traits were already well established. His hatred for injustice, his original and razor-sharp wit, and his passion for rugby football combined to bring him to a national audience. On the occasion of an Irish match against apartheid-era South Africa (which he reviled), Dermot wrote to *The Irish Times* in his capacity as captain of the Kilkenny Seconds. He said that, given the unacceptable nature of the match, neither he nor any other member of the Kilkenny Second XV were available for selection.

Thus cruelly denied a sporting career, he stuck to the law and returned to Dundalk. While he carried out a mixed practice, his skill as an advocate ensured that he was in great demand as a criminal defence lawyer. Practising in that arena in the 1970s and '80s brought particular challenges, as an excess of zeal on the part of the authorities was tolerated, if not in fact promoted by organs of the State. It fell to Dermot and a handful of others to defend the Constitution and us all.



He was justifiably revered by professional colleagues (including his opponents), who drew courage from his strength and who always had a friendly, wise and non-judgemental peer to consult. It is in his encouragement of younger practitioners that Doc's contribution to our profession will have its most lasting effect. Many a young solicitor received vital words of advice and encouragement when presenting their cases, or when licking their wounds when a case did not go well. His capacity for constructive criticism, delivered with empathy, diluted the gloom for many a colleague as they went

about the task of filling out the appeal papers.

He was, as befits any revolutionary republican socialist, able to play many parts. An amateur actor better than many professionals, audiences flocked to see him and share in his *joie de vivre*. An exceptional after-dinner speaker, he was in great demand in the many milieu he inhabited. He missed out on more enjoyable meals than most, knowing he had still to perform and, while not a man to complain, he was known to observe, on occasion, that giving the speech is a very great honour, but nobody really wants to do it...

His natural flamboyance made him an ideal spokesperson, and

he served in many leadership roles. He was chosen by his colleagues to be president of the Co Louth Sessional Bar Association, but pride of place goes to the period he served as president of Dundalk Rugby Football Club, whose membership mourn his passing in a very particular way.

So much for 'Doc Public'; there was, however, also 'Doc Private', who performed countless unseen acts of kindness for those less well-off than he.

He worked tirelessly on behalf of the Solicitors' Benevolent Association, most recently in compèring the Co Monaghan Solicitors' Annual CPD fundraiser event, ensuring that the tedium of the latest legislative developments was never more than one Doc intervention away from uproarious laughter.

In recent years, he was joined in the practice by his sons Niall and Peter, who, while faced with massive shoes to fill, are equal to the task. He is also survived by his dear daughter Kate and seven grandchildren.

Above all, his world revolved around 'Dotings', his wonderful and very much-loved wife Geraldine. His loss is an unspeakable blow to her.

Doc is fondly remembered, not only by family, friends and colleagues, but by the whole community, as he enriched the lives of so many in a lifetime of courage, principle, compassion and, above all, humour. Every one of us has our own hilarious Doc memories and, in their future retelling, this legend of our profession will become familiar to generations yet to come.

JMG

SAFE HARBOUR TO SCHREMS TO PRIVACY SHIELD

The field of data protection law has been anything but uneventful over the last 12 months. The uncertainty started on 6 October 2015 when the CJEU handed down its landmark ruling in Case C-362/14, *Maximilian Schrems v Data Protection Commissioner*. In short, this judgment invalidated the *Safe Harbour Agreement*, which had facilitated transatlantic data transfers between the EU and the USA for 15 years, from 2000 until 2015.

Four months after the CJEU ruling, on 2 February 2016, the European Commission and the US unveiled a new framework for transatlantic transfers of personal data – the *EU-US Privacy Shield*. However, serious concerns were raised about the original version of the Privacy Shield, by both the influential *Article 29 Working Party* (WP29) and the *European Data Protection Supervisor* (EDPS) in the former's *Opinion 01/2016* (13 April 2016) and the latter's *Opinion 4/2016* (30 May 2016).

Taking those concerns on board (along with a resolution of the European Parliament), the European Commission clarified and improved various aspects of the Privacy Shield and adopted a final version of it on 12 July. In effect, the Privacy Shield is a substitute data transfer mechanism for the now defunct *Safe Harbour Agreement*.

But perhaps more important to the future of transatlantic business and data flows was the decision by the WP29 on 26 July to withhold judgment on the adequacy of the replacement framework until at least the summer of 2017. While the WP29's public pronouncement has no legal effect, it is still very significant, as it removes the considerable uncertainty that had built up around the new data

transfer mechanism since the beginning of the year. In addition, it clears the path to participation for companies that had adopted a wait and see approach since the ruling in *Schrems*.

WP29 statement on final version

While the WP29 welcomed the improvements made in the final version of the Privacy Shield, it continued to have a number of concerns about the new legal mechanism. Those concerns revolve around certain commercial aspects and the access by US public authorities to data transferred from the EU. With regard to commercial aspects, the WP29 regretted the lack of specific rules on automated decisions and of a general right to object. It was also critical of the lack of clarity in relation to how the *Privacy Shield Principles* will apply to data processors. As regards the issue

of access to transferred data, the WP29 stated that it would have expected stricter guarantees concerning the independence and the powers of the ombudsman. Referring to bulk collection of personal data, the WP29 noted the commitment of the *Office of the Director of National Intelligence* not to conduct mass and indiscriminate collection of personal data but, nonetheless, remained critical of the lack of concrete assurances (from the US) that such practice does not take place.

The WP29 therefore went on to state that the first annual re-

view of the Privacy Shield would be a "key moment for the robustness and efficiency of the Privacy Shield mechanism to be further assessed". In the first annual review, all members of the joint review team will have the possibility to directly access all the information necessary for the performance of their review, including elements allowing a proper evaluation of the necessity and proportionality of the collection and access to data transferred by public authorities.

The WP29 statement goes on to say that, in the first annual review, the national representatives of the WP29 would not only assess if the remaining issues have been solved, but also if the safeguards provided under the Privacy Shield are "workable and effective". Somewhat ominously, the statement also confirmed that the first joint review might also impact transfer tools such as bind-

ing corporate rules and standard contractual clauses (SCCs).

In the final part of its statement, the WP29 confirmed that the data protection authorities within WP29 would commit themselves to proactively and independently assisting the data subjects with exercising their rights under the Privacy Shield mechanism, in particular when dealing with complaints. The WP29 would also provide information to data controllers about their obligations under the Privacy Shield, comments on the citizens' guide, and suggestions for the composition of

the EU centralised body and for the practical organisation of the joint review.

In effect, the WP29 statement buys the Privacy Shield enough time to get up and running. However, needless to say, it does not insulate the Privacy Shield from possible attack by individual data subjects who believe that their human rights may have been affected by the US public authorities.

Privacy Shield documents

On 1 August, the US Department of Commerce started to accept certifications for the Privacy Shield. Once the certification is effected, the department verifies that the certifier's privacy policies comply with the high data protection standards required by the Privacy Shield.

The Privacy Shield documents comprise a 44-page *adequacy decision* and 104 pages of *annexes* that contain key information concerning the standards and enforcement mechanisms. Annex II contains the essential Privacy Shield principles and a set of supplemental principles that clarify certain points and provide useful examples for putting Privacy Shield into practice.

While the principles set out in the Privacy Shield will be quite similar to those in the (now invalidated) *Safe Harbour Agreement*, they do contain a lot more detail and occasionally demand more stringent standards and actions than the *Safe Harbour* principles.

The final version of the Privacy Shield includes additional clarifications on the bulk collection of data, a strengthening of the ombudsman's powers, and the creation of more explicit obligations on companies in relation to limits on the retention and onward transfer of data. In addition, there

While the adoption of the revised Privacy Shield in July has been welcomed by many quarters and will help to bring some certainty to the issue of EU/US data transfers, there is a real risk that it may be subject to a legal challenge



Shield wall: take that, NSA! Wait – who has the spears?

have been written assurances from the US government that access by public authorities for purposes of law enforcement and national security would be subject to clear limitations, safeguards, and oversight mechanisms.

Privacy Shield principles

The key principles of the EU-US Privacy Shield are:

- *Strong obligations on companies handling data* – the Privacy Shield increases obligations on companies, particularly in relation to the publication of privacy statements and the onward transfer of data to third parties. Where the third party acts as a data controller, there is a requirement on the transferor company to enter into a contract with the transferee company that specifies that the information will only be processed for “limited and specified purposes consistent with the consent provided by the individual” and that the transferee will comply with the principles across the board.
- *Safeguards and transparency*

obligations in relation to US government access – the US authorities have given assurances that access by public bodies will be subject to clear limitations and oversight mechanisms. There will be no indiscriminate mass surveillance of personal data, and the Director of National Intelligence stated that the bulk collection of data will only be used according to specific pre-conditions. EU citizens will benefit from enhanced redress mechanisms including a Privacy Shield ombudsman within the US Department of State.

- *Effective protection of individual rights* – comprising several accessible and affordable options. These include (as a first step) direct resolution of a complaint by a Privacy Shield company, free-of-charge ADR (including through national data protection authorities working with the Federal Trade Commission), and arbitration before the Privacy Shield Panel, which could award non-monetary equitable relief (such as correction, access, deletion).

- *An annual joint review mechanism* – this will ensure that there is monitoring of the function of the Privacy Shield with a particular focus on commitments and assurances given in relation to access to data for law enforcement and national security purposes. The monitoring will be carried out by the European Commission and the US Department of Commerce, with the assistance of national intelligence experts from the US and European data protection authorities.

Legal challenges?

While the adoption of the revised Privacy Shield in July has been welcomed by many quarters and will help to bring some certainty to the issue of EU/US data transfers, there is a real risk that it may be subject to a legal challenge.

This is due to the fact that some privacy campaigners (and EU data protection authorities) believe that it does not go far enough in terms of the protection of rights and, in particular, the prevention of indiscriminate mass surveil-

lance by the US authorities.

Given that doubts persist about the Privacy Shield, it may be advisable for companies that intend to rely on it to hedge their bets and incorporate one of the other legal mechanisms for data transfer – such as SCCs and binding corporate rules – into their overall strategy for data compliance.

Lastly, another important consideration is the *General Data Protection Regulation* (2016/679) that is now looming on the horizon. Companies controlling or processing the data of EU citizens must comply with the regulation from 25 May 2018 onwards. It is likely that the Privacy Shield will need to be revised in order to address the requirements of the regulation and that the latter will cast a shadow over the long-term future of the Privacy Shield, given the strengthening of individual rights that it entails.

The Irish dimension

In May, the Irish Data Protection Commissioner issued a draft decision, acknowledging that Maximilian Schrems had raised

“well-founded objections” to the validity of SCCs (also known as ‘model clauses’ or ‘model contracts’). In the same month, a notice appeared on its website that hinted that the commissioner would like the Commercial Court to refer the issue of the legal status of data transfers under SCCs to the CJEU in Luxembourg.

While these SCCs were previously approved by various European Commission decisions (in 2001, 2004 and 2010), new concerns about their validity emerged since the *Schrems* ruling last year.

In the Commercial Court, Mr Justice Brian McGovern fixed

the hearing relating to the validity of SCCs for 7 February 2017 while, on 17 October 2016, there will be a hearing about Mr Schrems’ application for a protective costs order, aimed at ensuring he will not be exposed to any liability for legal costs.

On 19 July, in an interesting development, McGovern J joined the US government as *amicus curiae* to the action, stating that it has a “significant and *bona fide* interest” in the outcome. In addition, several US software companies and privacy lobby groups were also accepted as *amici curiae*, most notably the Business Software Alliance (whose application was supported by the

American Chamber of Commerce Ireland) and the US-based privacy watchdog, the Electronic Privacy Information Centre, on the basis that it could offer a ‘counter-balancing perspective’ from that of the US government concerning the position of the US. Digital Europe was also joined on the basis that it is the principal representative body on EU policy for members of the digital technology industry in Europe.

Not all applicants for the status of *amicus curiae* were successful. Applications from, among others, the Irish Human Rights and Equality Commission, IBEC,

the Irish Council for Civil Liberties, and the Electronic Frontier Foundation were all rejected. In refusing to join the IHREC, McGovern J said that the Data Protection Commissioner has a particular statutory remit in relation to issues of data protection and is the designated national supervisory authority for monitoring the application of the relevant EU directive in relation to protecting the data privacy of individuals.

Dr Mark Hyland is lecturer in law at Bangor University Law School, Wales.

Recent developments in European law

EQUAL TREATMENT

Case C-54/16, *Samira Achbita and Centrum voor gelijkheid van kansen en voor racismebestrijding v G4S Secure Solutions NV*, 31 May 2016

Samira Achbita works as a receptionist for the Belgian company G4S. She is Muslim. After three years working for the company, she insisted that she be allowed to work wearing a headscarf. G4S prohibits the wearing of any visible religious, political, or philosophical symbols.

She brought an action seeking damages, supported by the Belgian Centre for Equal Opportunities and Combating Racism. Her action was unsuccessful, and an appeal was taken to the Belgian Court of Cassation. It sought a ruling from the CJEU seeking clarification of the prohibition under EU law of discrimination on the grounds of religion or belief.

Advocate General Kokott took the view that G4S had not directly discriminated, as they had a gen-

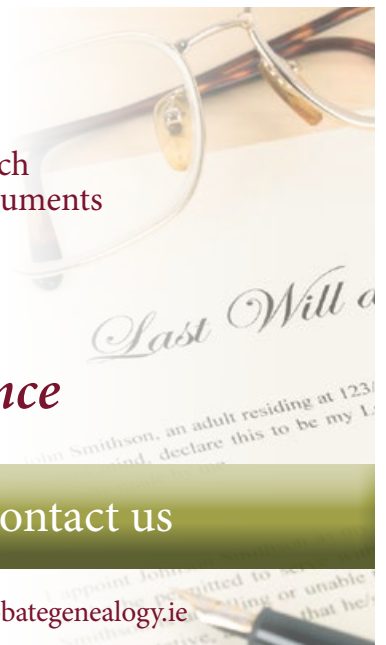
eral rule in place applying to all political, philosophical and religious symbols. There is no less favourable treatment based on religion. The ban can be considered as indirect discrimination based on religion. It may be justified to enforce a legitimate policy of religious and ideological neutrality, insofar as the principle of proportionality is observed. National authorities have a measure of discretion in applying the proportionality test. It is ultimately for the Bel-

gian courts to strike a fair balance between the conflicting interests. In the view of the advocate general, the ban at issue is appropriate for achieving the legitimate objective of ensuring religious and ideological neutrality. It is necessary to implement that policy. From the perspective of proportionality, the ban does not unduly prejudice the legitimate interests of the female employee concerned and must therefore be regarded as proportionate.



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VKI/AMAZON: DO YOU NEED TO UPDATE YOUR B2C TERMS AND CONDITIONS?

In Case C-191/15, *Verein für Konsumenteninformation v Amazon EU Sarl*, the CJEU again considered the interplay between applicable laws in a consumer context and data protection laws. The case turned on which member state's data protection law should apply where a company established in one member state provides services to consumers in other member states. It forms a part of a recent line of case law addressing the challenges of jurisdiction in an increasingly digital EU marketplace.

Amazon, a company with a branch in Luxembourg, conducted sales with Austrian consumers remotely through a website (with a German language page) called amazon.de. Amazon had no registered office or branch in Austria. The website's standard terms permitted Amazon to use personal data supplied by the consumers when purchasing and provided that the governing law was that of Luxembourg. A local consumer protection organisation Verein für Konsumenteninformation (VKI), applied for an injunction in the Austrian courts to try to prevent the use of these standard terms. After a number of appeals, the Austrian Supreme Court stayed proceedings and referred several questions to the CJEU for a preliminary ruling.

The CJEU held that a standard term that chooses a supplier's member state law as the governing law, and not that of the consumer, was in this case, unfair to consumers. The court also held that both *Rome Regulations I and II* should be interpreted as meaning that the law applicable where an injunction action is brought



EU consumer customers – always entitled to mandatory protections where they live (and that would include Austria's favourite son – if he lived there)


against the use of unfair contractual terms between member states must be determined in accordance with the *Rome II Convention*. Article 6(1) of the *Rome II Convention* provides that the law applicable to a non-contractual obligation arising out of an act of unfair competition shall be the law of the country where the interests of consumers are, or are likely to be, affected. Here, that is Austria. The CJEU also held that the law applicable to an assessment of a specific contractual term should be determined in accordance with the *Rome I Convention*, whether that assessment is made due to an individual or collective action.

The court stated that, where a contract has not been individually negotiated (that is, standard form agreements), a governing law term is unfair insofar as it may lead the consumer “into error” by giving him or her the impression that only the law of the supplier member state governs the contract

and does not go on to explain to the consumer that under *Rome I*, he or she also has the additional benefit of mandatory provisions of law. The determination of which laws are mandatory laws for this purpose is an issue for the national court to determine. These provisions are article 6(2) and article 4 of the *Rome I Convention*, which provide that law applicable to a tortious obligation shall be the law of the country in which the damage occurs. In this case, that is not Luxembourg.

The CJEU also considered the impact of article 4(1)(a) of the *Data Protection Directive* for Amazon. Directive 95/46/EC provides that member states apply their own data protection laws to the processing of personal data where data processing is carried out in the context of the activities of an establishment of the data controller in the territory of the member state. The referring court asked whether this meant that the

processing of personal data in the context of e-commerce should be governed by the law of the member state to which that undertaking directs its commercial activities, or where the undertaking itself was established. The court provided further guidance as to how the law should be applied, but ultimately referred that decision back to the national court. It did, however, note that the opinion of the advocate general in the case on that point was that, if the national court concluded that the establishment in the context of which Amazon carried out its processing was located in Germany, it would be for German law to govern that processing. This approach is in line with previous guidance from the CJEU in Case C-230/14 *Weltimmo*, where it held that ‘establishment’ extended to “any real and effective activity, even a minimal one, exercised through stable arrangements”. It also held in *Weltimmo* that the processing of personal data does not have to be carried out by the establishment, simply “in the context of activities” of the establishment.

The case is one of a long line in which standard terms of business are being challenged. If you are trading cross-border in the EU, then you should ensure your standard terms are regularly reviewed, so that they communicate in plain language to consumers. In particular, they must make clear to your EU consumer customers that they are always entitled to mandatory protections which apply  where they live.

Jeanne Kelly is a partner in the Commercial Department of Mason Hayes & Curran.

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- **Title deeds** – €294 per deed (incl VAT at 23%)
- **Employment/miscellaneous** – €147 (incl VAT at 23%)

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ALL NOTICES MUST BE PAID FOR PRIOR TO PUBLICATION. CHEQUES SHOULD BE MADE PAYABLE TO LAW SOCIETY OF IRELAND. Deadline for November 2016 *Gazette*: 17 October. For further information, contact the *Gazette* office on tel: 01 672 4828.

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

WILLS

Brooksbank, James Noel (deceased), late of Leicestershire Hospice, Groby Road, Leicester, LE3 9QE, United Kingdom, formerly of 370 Fosse Road South, Leicester, LE3 1BU, United Kingdom, and Moher, Lakin, Strokestown, Co Roscommon, who died on 14 December 2015. Would any person having knowledge of the whereabouts of any will executed by the said deceased, or if any firm is holding same, please contact Maria Lakes, solicitor, Tracey Solicitors, 34 Westmoreland Street, Dublin 2; tel: 01 649 9900, email: ml@traceysolicitors.ie

Connolly, John (deceased), late of Ballymaddock, Stradbally, Co Laois, who died on 20 March 2016.

Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact JP Fitzpatrick & Company, Solicitors, Landscape House, Abbeyleix Road, Portlaoise, Co Laois; tel: 057 866 1788, email: jo@portlaoisesolicitors.ie

Corby, Brigid (deceased), late of Sadlierswells, Tipperary, and 18 Colliers Avenue, Ranelagh, Dublin 6, who died on 27 August 2016. Would any person having knowledge of a will made by the above-named deceased, or if any firm is holding same, please contact Catherine Corby, Amberhurst, Greenhills, Crecora, Co Limerick

Geoghegan, Diarmuid Pdraig (deceased), late of 23 The Lawn, Westgrove, Donnybrook Hill, Douglas, Cork, who died on 31 May 2016. 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 Estella Rogan, Branigan & Matthews, Solicitors, 33 Laurence Street, Drogheda, Co Louth; DX 23002 Drogheda; tel: 041 983 8726, email: estella@branmatt.ie

Finn, Michael (deceased), late of 1 Cloonahinchin, Ballymote, Co Sligo, who died on 15 July 2016. Would any person having knowledge of the whereabouts of any will executed by the said deceased

please contact William G Henry & Co, Solicitors, Emmet Street, Ballymote, Co Sligo; tel: 071 918 9962, email: wghmary@gmail.com

Healy, Donal (deceased), late of Rosehill House, Ballinvarosig, Carrigaline, Co Cork, who died on March 2016. Would any person having knowledge of the location of a will made by the above-named deceased please contact Dennis Healy & Company, Solicitors, 16 South Mall, Cork; tel: 021 427 9444, email: dennishealysols@eircom.net

Kingston, Gabrielle (deceased), late of 45 St Albans Park, Sydney Parade, Dublin 4, who died on 9 November 2015. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact John Costello, solicitor, Orpen Franks, 28-30 Burlington Road, Dublin 4; tel: 01 637 6262, email: john.costello@orpenfranks.ie

McCann, Una (deceased), late of 134 Botanic Avenue, Glasnevin, Dublin 9, Co Dublin. Would any person having any information with regards to the whereabouts of a will of the above-named deceased please contact Butler Monk Solicitors, 12 Camden Row, Dublin 8; tel: 01 479 3299, email: info@butlermonk.ie

McCann, Philomena (deceased), late of 134 Botanic Avenue,

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Glasnevin, Dublin 9, Co Dublin. Would any person having any information with regards to the whereabouts of a will of the above-named deceased please contact Butler Monk Solicitors, 12 Camden Row, Dublin 8; tel: 01 479 3299, email: info@butlermonk.ie

McLean, John (George) (deceased), late of Colinvale Court Private Nursing Home, Glen Road, Belfast, formerly of 21 Walasey Park, Belfast, also believed to have resided in Dublin between 2000-2015 approximately. Mr McLean was born on 8 May 1938 and died on 3 September 2015. Would any person having any information with regards to the whereabouts of a will of the above-named deceased please contact Elliott Duffy Garrett, Solicitors, Royston House, 34 Upper Queen Street, Belfast BT1 6FD; DX 400 NR Belfast; tel: 0044 (0)28 9024 5034, fax: 0044 (0)28 9024 1337; www.edglegal.com; reference: MCLE3-2

O'Donnell, otherwise Albuquerque, Gretta (deceased), late of 71 Stonebridge Park, Rochfortbridge, Co Westmeath, formerly Mahonstown, Gaybrook, Mullingar, Co Westmeath, and formerly 15 Broadfield View, Naas, Co Kildare. Would any person holding or having knowledge of any will made by the above-named deceased who died on 21 June 2016, please contact John Wallace, NJ Downes & Company, Solicitors, Dominick Street, Mullingar, Co Westmeath; tel: 044 934 8646, fax: 044 934 3447, email: jwallace@njdownes.ie

O'Rourke (aka Rourke), Joseph, late of Lisclonney, Shannon Harbour, Birr, Co Offaly, and Banagher Street, Cloghan, Co Offaly, who died on 9 December 2015. 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 James Mahon, O'Donovan Mahon Cowen, Solicitors, William Street, Tullamore, Co Offaly; DX 43003 Tullamore; tel: 057 934 1866, email: james@odmsolicitors.ie

TITLE DEEDS

In the matter of the Landlord and Tenant Acts 1967-2005 and in the matter of the rear of 11 Cowper Road, Dublin 6, held under an indenture of assignment dated 23 November 1965, made between Elizabeth O'Connor of the first part and Irish Permanent Building Society of the second part and Owen Valentine of the third part, being part of the property demised by an indenture of lease dated 3 February 1876, made between William Francis Cowper Temple of the one part and Robert Eames of the other part for the term of 150 years from 25 March 1876, **and the rear of 10 Cowper Road, Dublin 6**, held under indenture of assignment dated 30 August 1955 and made between Workmans Benefit Building Society of the one part and Owen Valentine of the other part, and being part of the property demised by an indenture of lease dated 3 February 1876 and made between William Francis Cowper Temple of the one part and Robert Eames of the other part for the term of 150 years from 25 March 1876.

Take notice that Maeve Valentine intends to submit an application to the county registrar for the city of Dublin for acquisition of the freehold interest 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 aforesaid premises to the below named within 21 days from the date of this notice. In default of any such notice being received, the applicant intends 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: 7 October 2016

Signed: Townley Kingston Solicitors (solicitors for the applicant), 205 Q House, Furze Road, Sandyford, Dublin 18

In the matter of the Landlord and Tenant Acts 1967-2005 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978 and in the matter of 122 Upper Drumcondra Road in the city of Dublin

Take notice any person having any interest in the freehold estate of the following property: all that and those the dwellinghouse and premises at no 122 Upper Drumcondra Road in the city of Dublin. Take notice that Eamonn Plunkett and Irene Plunkett intend to submit an application to the county registrar for the county/city of Dublin for the acquisition of the freehold interest 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 aforesaid premises to the below named within 21 days from the date of this notice.

In default of any such notice being received, the applicants intend to proceed with the application before the county registrar at the end of 21 days

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from the date of this notice and will apply to the county registrar for the county/city of Dublin for directions as may be appropriate on the basis that the persons beneficially entitled to the superior interest including the freehold reversion in each of the aforesaid premises are unknown or unascertained.

Date: 7 October 2016

Signed: Duncan Greban & Partners (solicitors for the applicants), Gainsboro House, 24 Suffolk Street, Dublin 2

In the matter of the Landlord and Tenant Acts 1967-2005 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978 and in the matter of an application by Anne Willoughby

Take notice that any person having any interest in the freehold estate of the following properties: nos 15 and 16 Parnell Street in the city of Waterford.

Take notice that Anne Willoughby intends to submit an application to the county registrar for the county of Waterford for the

- Valuation advice on purchases/disposals of ground rents
- Preparation of valuation reports
- Appearance before County Registrar



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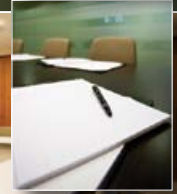
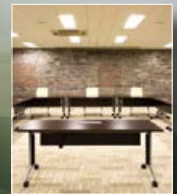
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acquisition of the freehold interest in the aforesaid properties, and any party asserting that they hold a superior interest in the aforesaid premises (or any of them) are called upon to furnish evidence of the title to either or both of the aforementioned premises to the below named within 21 days from the date of this notice.

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

Date: 7 October 2016

Signed: Alan Harrison, Harrison Solicitors, Heritage House, Dundrum Office Park, Dundrum, Dublin

In the matter of the Landlord and Tenant Acts 1967-2005 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978: an application by Pat Gannon Auctioneers Limited

Take notice any person having any interest in the following property: all that and those the premises demised by an indenture of lease dated 7 September 1967 made between Marie White of the one part and James Murphy of the other part for a term of 99 years from 1 November 1965 at an annual rent of £20, and therein described as all that and those the dwellinghouse, shop and premises with the yard and out offices thereto attached situate at and known as no 55 John Street, Kilkenny, and now in the possession of James Murphy, situate in Upper John Street in the city of Kilkenny, and which said premises are now known as 55 John Street Upper, Kilkenny, in the county of Kilkenny.

Take notice that Pat Gannon Auctioneers Limited (the

applicant), being the party or person currently entitled to the lessee's interest in the said lease, intends to apply to the county registrar for the county of Kilkenny for the acquisition of the freehold interest in the aforesaid property, and any party asserting that they hold a freehold or a superior interest in the aforesaid property (or in any part or parts thereof) are called upon to identify themselves and to furnish evidence of such title to the aforementioned premises to the below-named solicitors for the applicant within 21 days from the date of this notice.

In default of any such notice being received, the said applicant (Pat Gannon Auctioneers Limited) intends to proceed with an application before the county registrar for the county of Kilkenny at the end of the 21 days from the date of this notice and will apply for such directions as may be appropriate on the basis that the persons beneficially entitled to the superior interest including the freehold reversion in the above premises are unknown and unascertained.

Date: 7 October 2016

Signed: M J Crotty & Son (solicitors for the applicant), 45 Parliament Street, Kilkenny

In the matter of the Landlord and Tenant Acts 1967-2005 and in the matter of the part of the premises situate at the rear of 12 Bath Avenue Place, Donnybrook, Dublin 4, held under indenture of conveyance and assignment dated 4 September 1991 between Helen Armonici of the one part and Stanley Faulkner of the other part, being part of the premises demised by indenture of lease dated 5 August 1944, between James J Horan of the one part and Sheila Goff and Evelyn Margaret de Podesta of the other part for the term of 99 years from 29 September 1943.

Take notice that Stanley Faulkner intends to submit an application to the county registrar for the city of Dublin for the acquisition of the freehold interest in the aforesaid

property, and any party asserting that they hold a superior interest in the aforesaid premises are called upon to furnish evidence of the title to the aforesaid premises to the below named within 21 days of the date of this notice.

In default of any such notice being received, the applicant intends 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 interest, including the freehold reversion of the aforesaid premises are unknown or unascertained.

Date: 7 October 2016

Signed: Black and Company (solicitors for the applicant), 28 South Frederick Street, Dublin 2

In the matter of the Landlord and Tenant Acts 1967-2005 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978 and in the matter of the Player's Lounge, 47-49 Fairview Strand, Fairview, Dublin 3: an application by Rita Markey

Take notice any person having any interest in the freehold estate (or any intermediate interest) of the property known as the Player's Lounge, 47-49 Fairview Strand, Fairview, Dublin 3, held under an indenture of lease dated 21 March 1894 made between William Esmond Reigh of the one part and Thomas Donnelly of the other

part and therein described as all that messuage or tenement situate and known as no 7 Fairview Strand at Fairview, Clontarf, in the barony of Coolock and county of Dublin, together with the yard, garden, and out offices lying thereto, which premises are particularly described in the map next thereto and thereon coloured blue and pink.

Take notice that the applicant intends to submit an application to the county registrar for the city of Dublin for the acquisition of the freehold interest 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 applicant intends to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the city of Dublin for directions as may be appropriate on the basis that the persons beneficially entitled to the superior interest including the freehold reversion in each of the aforesaid premises are unknown or unascertained.

Date: 7 October 2016

Signed: Beauchamps (solicitors for the applicant), Riverside Two, Sir John Rogerson's Quay, Dublin 2

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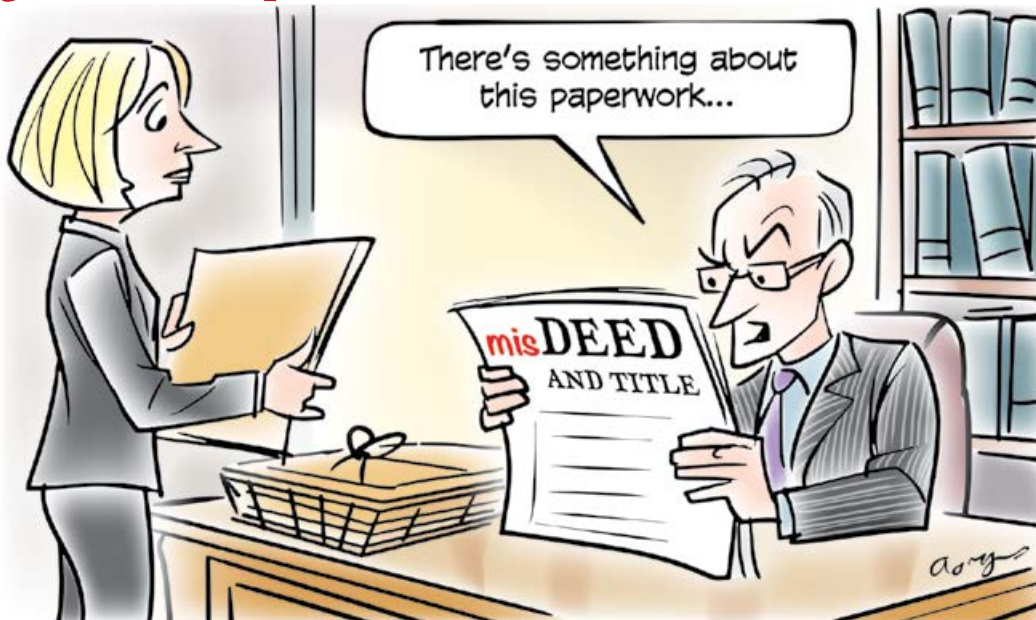
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Have yis no homes to go to?

A man in Carlisle in northern England recently discovered that he has been living in the flat next door to the one he actually bought – and is now caught up in a legal nightmare as he tries to sell it, *The Independent* reports.

Chris Meyer, who has been living in the flat for six years, only discovered the mistake after he tried to sell his three-bedroom

apartment. The solicitor for the purchaser contacted him to say there was a problem.

Speaking to a local newspaper, Meyer said: “Basically, I live in number 8 and thought I had bought number 8. But Land Registry documents show that I actually own number 9. The man who thought he’d bought number 7 actually owns my flat. It’s the same for ten of the

15 flats. It’s a complete mess. Not surprisingly, my buyer pulled out.

“This should never have happened. The firm have said that it was up to me to check the documents, but I paid them to do the conveyancing so that nothing like this would happen. That’s why you get a solicitor for these things. I just want somebody to fix this problem.”

Arrested sylvan development

A tree ‘arrested’ by a drunken British soldier in 1898 is still clapped in irons in India.

The walnut tree, at the Khyber Rifles Officers’ Mess at Landi Kotal, was ordered to be arrested by one clearly befuddled James Squid, who was convinced it was

trying to escape to Peshawar.

A plaque on the tree reads: “I am under arrest. One evening, a British officer, heavily drunk, thought that I was moving from my original location and ordered the mess sergeant to arrest me. Since then, I am under arrest.”



Robots, May, Slaughter – there’s a shocker...

Magic circle firm Slaughter and May has become the latest to adopt artificial intelligence, *Legal Check* reports.

The system – called Luminance – was created by a combined team of lawyers and mathematicians.

Aiming to transform the legal due-diligence process, Luminance will be able to read (and apparently understand) hundreds of pages of complex legal documentation every minute. According to Luminance’s CEO, the system

will be “trained to think like a lawyer ... This will transform document analysis and enhance the entire transaction process for law firms and their clients.”

Fellow magic circle players Clifford Chance and Linklaters have signed similar deals.

Time to rethink their social media policy

Two brothers who mocked a judge on Facebook because she did not send them to prison were later recalled and handed two years each, *The Independent* reports.

Just 40 minutes after Daniel Sledden (27) received a suspended jail term from Judge Beverley Lunt earlier this month, he posted “Cannot believe my luck 2 year suspended sentence beats the 3 year jail yes pal! Beverley Lunt go [expletives deleted].”

His brother Samuel (22) wrote: “What a day it’s been Burnley crown court! Up ur **** aha nice 2 year suspended...”

The defendants, from Lancashire, were called back to Preston Crown Court for a review of their sentence once the remarks had been brought to the attention of the judge.

She had previously heard that they felt remorse for the offences they had committed. “Each of the posts indicate they have not changed at all,” the judge said. “They have not taken on board anything or learned any responsibility ... Their tenor was boastful and jeering, and the only reasonable inference was that they thought they had somehow fooled and misled the court.”

Defence lawyer Daniel Prowse said the comments were made when both were “sufficiently emotionally affected” in the immediate aftermath of escaping an immediate prison term.

Arguing that it was not necessary to revoke the suspended jail terms, he said the subsequent reporting of the case had led to them becoming “national, if not international, figures of ridicule”.

“They, frankly, will never live this down,” he said.



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TIME TO MOVE?

Aviation Finance Partner

€130k - €200k - Bens

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

Debt Capital Markets Partner

€130k - €200k + Bens

Having enjoyed considerable growth over the last three years, the financial services department of this Big 6 law firm seeks to appoint a partner/ partner designate to its debt capital markets practice. The firm acts for both borrowers and lenders with key mandates typically emanating from borrower clients. Suitable candidates will currently be operating at partner level in a large commercial firm in Dublin or London. Senior associates from a Magic Circle background will also be considered.

Data Privacy Associate / Partner

€90k - €160k + Bens

The data privacy group of this Big 6 firm, which acts for the world's leading technology and social media organisations seeks to appoint a talented associate/ partner. The team solves complex cross-border privacy law problems, designs cutting edge products in a legally compliant way and manages regulatory interactions and privacy related disputes. Suitable candidates will have gained 5+ years' data privacy experience with a top team in Dublin, London or other common law jurisdiction.

Financial Regulation Partner

€110k - €150k + Bens

This top ten firm has successfully grown its banking department over the last 3 years and now seeks to appoint a partner to spearhead the development of a financial services regulatory law unit. A newly created role within the firm, the appointee will be expected to leverage established client relationships as well as developing new ones. Suitable candidates will currently be operating at a senior level in private practice, or in-house with a financial institution in Dublin or London.

Real Estate Associate

€80k - €110k + Bens

The real estate group of this Big 6 firm, which continues to dominate the headline commercial real estate deals in Ireland, seeks to hire a talented associate. The team acts for high profile domestic and international clients on a broad range of work including land acquisition and development, commercial real estate and L&T. Suitable candidates will have gained 2-4 years' relevant experience in commercial property with a commercial law firm in Dublin, Cork, Belfast or with a City of London firm.

M&A Associate

€75k - €110k + Bens

The busy corporate M&A department of this Big 6 firm has acted on many of the headline domestic and global deals in Ireland over the last five years. The team works on a broad range of work including M&A, JVs, private equity and reorganisations. With busy workflow, the firm seeks to hire a talented junior to mid-level associate to join their team. Suitable candidates will have gained 2 - 5 years' corporate M&A experience with a Big 6, mid-tier or international firm in Dublin or with a City of London firm.

Insurance Associate

€90k - €110k + Bens

The corporate insurance group of this Big 6 law firm seeks to appoint an associate with partnership potential. The team, which has had considerable success in winning major insurance clients, leads on a broad range of work including cross border mergers, JVs, market entry, regulatory and licencing issues, and commercial agreements. Suitable candidates will have gained 5 years' insurance law experience with a top law firm in Dublin or London.


Funds Associate

€75k - €110k + Bens

This leading Big 6 Irish law firm seeks to appoint a talented associate to its highly regarded funds department. The team, which has seen double digit year on year revenue growth, advises major institutional investors on a broad range of UCITs and alternative products as well as fund regulatory matters. Suitable candidates will have gained a minimum of 2-5 years' Irish funds experience with a Big 6, mid-tier or international firm in Dublin, London or offshore.



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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.

Company Secretary/Senior Manager

Our client is a privately owned company secretarial and trust company based in the IFSC with a strong Irish client base and extensive experience in dealing directly with overseas clients. Reporting directly to the MD and managing a team of two initially, this role will have long term equity potential upon graduating to position of Director for Dublin.

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:

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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 AIT 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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