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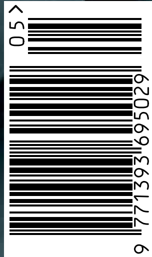

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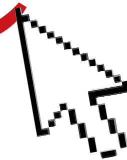

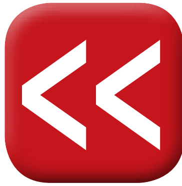

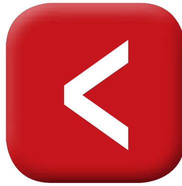

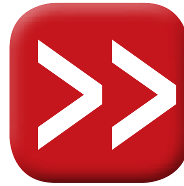

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TAKING A STAND FOR EQUALITY

On 22 May, we will be asked whether a new clause should be inserted into article 41 of the Constitution to allow two people to marry each other, regardless of their sex.

The Society's Human Rights Committee examined the issue in a position paper presented to the Council at its April meeting. There followed a passionate and in-depth debate to determine, firstly, whether the Law Society should take a public position on the referendum and, secondly, what that position should be. After due consideration of arguments on both sides, the Council voted 22 to 9 in favour of the Law Society publicly supporting the marriage referendum.

A public position or not?

As indicated above, the hour-long debate was in two parts. The contention centred on whether or not the Society should take a public position on this issue. Arguments were made that the issue was a social rather than a legal one, that it was "too political", and that many members of the profession would view it as "not the Society's business".

From the contrary position, however, it was strongly contended that marriage equality was an issue of fundamental human rights, that solicitors had expertise to contribute to this debate, and that the Council had a duty to show leadership on this issue, as it had in relation to previous proposed constitutional amendments.

The latter arguments prevailed. The decision for a public position having been taken by 22 votes to 9, the support for a 'yes' position was so overwhelming in the Council that no further vote was needed.

Yes to marriage equality

Currently, same-sex couples can only enter civil partnerships and, while these unions share many features with civil marriage, there are, in fact, many statutory differences between them. In basic legal terms, civil marriage and civil partnership are not the same and do not afford an equal level of rights and protections to opposite-sex and same-sex couples.

The inalienable and imprescriptible rights of the family are protected by the State in its Constitution and authority. This protection has traditionally been interpreted by the courts as being dependent on whether the family is marital or non-marital. This means, under current law, that there is a significant difference in the level of recognition and protection afforded by the State to same-sex couples compared with opposite-sex couples.

Society changes, and eventually the law catches up. With the passage of the divorce referendum in 1995, the State and societal definition of legal marriage changed. It's time for the definition to change again.

The solicitors' profession operates within a legal system based on two inherent principles – first, that all citizens should be equal before the law and, second, the rights of all citizens ought to be vindicated and protected.

Solicitors have an ethical obligation to ensure that, wherever possible, the nation's legal framework provides the best means to support and protect the fundamental rights of all citizens.

The Law Society has spoken out in relation to constitutional referenda in the recent past when these have had the potential to greatly affect our legal system. These have included expressing "grave concerns" with the constitutional referendum on parliamentary enquiries and judicial pay in October 2011. We also supported a yes vote in the children's rights referendum in November 2012.

The current referendum also clearly concerns the vindication of fundamental personal rights under the Constitution – that is, the right to equality of same-sex couples in the context of legal marriage and their fundamental civil right to marry. There is no legal justification for denying equality to same-sex couples in relation to the civil institution of marriage.

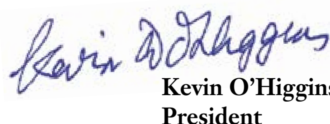
How you vote, of course, is com-pletely a matter for your personal judgement and choice. Nevertheless, before voting, we encourage you to consider the position paper of the Society's Human Rights Committee, endorsed by the Council and available on the Society's website, with its sound legal arguments that connect marriage equality to fundamental human and civil rights.

> **Solicitors have an ethical obligation to ensure that the nation's legal framework provides the best means to support and protect the fundamental rights of all citizens**

Sad note

On a sad note, I want to refer to the passing of two remarkable solicitors: Maurice Curran and Mary Redmond. Maurice was a founding partner of Mason Hayes & Curran, now the profession's fifth biggest firm. Mary was a pioneer of employment law and founder of the charity The Wheel.

Ar dheis Dé go raibh siad.



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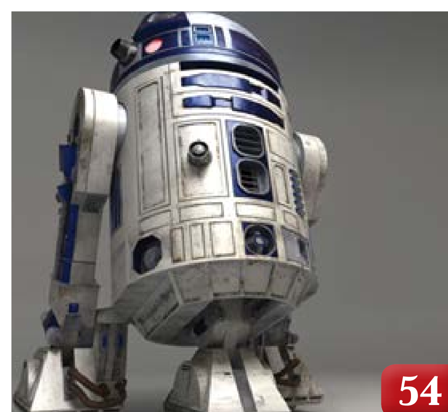

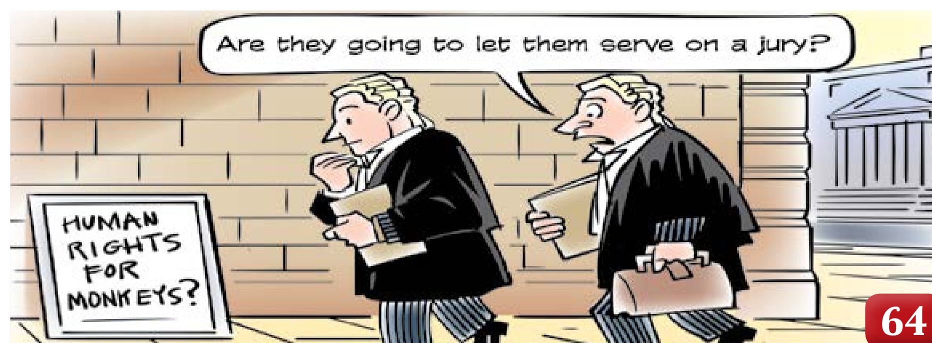

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nationwide

News from around the country

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

GALWAY

'Graveyard of ambition' – surely not!

At the official opening of Berwick Solicitors' new offices at 16 Eyre Square, Galway, were *(l to r)*: Judge Raymond Groarke (president of the Circuit Court), James Seymour (GSBA president), Judge Mary Fahy, Judge Geoffrey Browne, Caroline Phelan, Judge John Hannan, Marie Whelan (attorney general), Stephanie Hannan, Aisling Wall BL, David Higgins (Council member, Law Society) and Judge Francis Comerford

Galway may be referred to as 'the graveyard of ambition', but Galway Solicitors' Bar Association (GSBA) president James Seymour begs to differ. The GSBA has had a busy year so far and, by the end of April, will have provided 16 hours of free CPD to its members.

Its Easter social at the Front Door Pub was well attended, while the CPD seminar on 24 April 2015 at Galway Courthouse was a great success. The speakers included Michael Prendergast BL (on 'The practicalities of patenting'), Joe Arkins, liquidator ('Preparation for and attendance at a creditors meeting'), Michael O'Connor BL ('Time limits in probate') and Mary Moran Long BL ('*FOI Act 2014*').

The GSBA is working on two more CPD events, for May and June, and will provide details shortly.

The GSBA held a special dinner to mark the elevation of two of their colleagues to the Circuit Court, namely Judge Francis Comerford and Judge John Hannan, at the Meyrick Hotel, Eyre Square, Galway on 20 March.

LOUTH

New kids in 'de towin'

County Louth Solicitors Bar Association President Conor MacGuill told 'Nationwide' of the not-so-obvious connections between members of the association and their colleagues in Galway: Judge Flann Brennan, who is assigned to District No 6, will be marking 30 years on the bench this year – and is James Seymour's uncle.

The entire officer board of the association was returned at its recent AGM, including President MacGuill, John McGahon (treasurer), Nicola Kelly (secretary) and Richard McDonnell (PRO). These men on the border – desperados (to namecheck a famous Eagles hit) – are transcending boundaries with a June seminar in arbitration and alternative dispute resolution in conjunction with the Newry and Banbridge Solicitors' Association and the northern and southern branches of the Chartered Institute of Arbitrators. It will be one of the events to mark the latter's centenary year.

The association is shortly convening a seminar on aspects of the practice of criminal law in conjunction with the Dublin Solicitors' Bar Association and Belfast Solicitors' Association, where issues of mutual concern to practitioners on each side of the border will be discussed. More news next time from the new kid in 'de towin', as they say in Dundalk.

MAYO

Mayo solicitors mourn much-loved colleague

Almost all of the Mayo Solicitors' Bar Association (MSBA) and a number of judges, including Mr Justice Michael Peart, recently said a final farewell to Patsy Murphy, distinguished solicitor and former county registrar in Ballinrobe, Co Mayo. In a long life, well lived, he was a man who truly had no enemies – only friends. His wife Mary (née Houlihan) predeceased him, and he is survived by his four children, two of whom followed him into the legal profession: Sandra Gilmartin (a solicitor in practice with her husband Charles Gilmartin), and his son, also Patrick (a barrister who practices on the western circuit). *Ní fheicimid a leithéid ann arís.*

DUBLIN

Happy endings

They say that love ends in marriage, and we hope this isn't true for former DSBA presidents Orla Coyne and Richard Bennett, who tied the knot recently – but not to each other.

Orla married her slightly less well-known beau, Patrick Groarke, while Richard wed his glamourous partner Carla O'Brien.

Senior judicial appointees honoured

The Law Society recently hosted a dinner to honour four members of the solicitors' profession who were appointed to senior judicial positions towards the end of 2014 – two to the High Court and two to the Court of Appeal. Seated are *(l to r)*: Mr Justice Garrett Sheehan (Court of Appeal), Mr Justice Donald Binchy (High Court), Kevin O'Higgins (Law Society president), Mr Justice Robert Eagar (High Court) and Mr Justice Michael Peart (Court of Appeal). Standing *(l to r)*: John D Shaw (past-president), Ken Murphy (director general), Jimmy McCourt (past-president), Stuart Gilhooly (Council member), Mary Keane (deputy director general), John P Shaw (past-president), Chris Callan (Council member) and Michael Quinlan (Council member)

Legal accountants elect new chairperson

Miriam Carroll was elected chairperson of the Institute of Legal Accountants of Ireland (ILAI) at its recent AGM, which was held at Blackhall Place. Miriam is a well-known legal accounting practitioner in the east and southeast. More recently qualified solicitors will know her from her involvement with the Law School.

The institute was founded in 1986 to maintain standards for legal accounting in Ireland. Its membership currently includes accountants, practice managers, solicitors, bookkeepers and technology suppliers. It has close links to the Law Society.

The ILAI holds a two-day annual conference in September each year. The conference offers a comprehensive programme of topical presentations and events relevant to those working in legal accounting and practice administration and provides a useful forum for exchange of views between members.

ILIA President Miriam Carroll

In addition to its AGM, which is held every January, the ILAI holds another annual members' meeting in May. These meetings normally include a presentation on a current topic of interest. All institute events attract CPD points.

The institute has links to the Institute of Legal Cashiers and Administrators in England and Wales, and to the Society of Law Accountants in Scotland. New members – particularly solicitors – are always welcome, and membership details can be found at www.ILAI.ie.

News from the Society's committees and task forces

HUMAN RIGHTS COMMITTEE

Annual Human Rights Lecture

The Human Rights Committee is delighted to announce that the European Ombudsman, Emily O'Reilly, will deliver the Law Society of Ireland's 11th Annual Human Rights Lecture on Friday 5 June 2015.

Emily O'Reilly became European Ombudsman in 2013. She is an author, former journalist and broadcaster. She was Ireland's first female ombudsman in 2003 and, in 2007, was also appointed Commissioner for Environmental Information and Freedom of Information Commissioner.

She is a graduate of both UCD and TCD and was conferred with an honorary doctorates in law in both 2008 and 2014 for her work in promoting human rights throughout her career as a journalist and through her work as ombudsman.

Further details of the lecture will be announced in May and will be available at www.lawsociety.ie.

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New merger control rules for the hotel sector

Mason Hayes & Curran is advising hotel buyers and sellers of the need to comply with new merger control regulations. In addition, the firm says that they should also allow for sufficient time to clear the new merger regime.

Since October 2014, almost one-third of the total number of merger notifications to the Competition and Consumer Protection Commission has been in the hotel sector. This includes significant transactions like Dalata's purchase of White's Hotel in Wexford, the Clayton Hotel and Pillo Hotel (both in Galway), as well as Lone Star Funds' purchase of the Jury's Inn chain of 31 hotels in Ireland, Britain and Prague.

If there is a change of control and financial thresholds are met, changes to legislation require a 'merger control filing' to be made by the relevant parties in a transaction. The financial thresholds specify that the combined turnover in the Republic of Ireland of the parties is not less than €50 million, and turnover in the Republic of Ireland of each of at least two of the parties is not less than €3 million.

Maureen O'Neill (partner in the firm's EU and antitrust team) says: "The new regulations are affecting a large amount of the commercial activity in the hotel sector. Even if a deal is only worth six to seven figures, it is the turnover of the companies involved that is of relevance to the new rules on mergers. Experience shows that the new regime is taking 30 days to clear, so all parties will need to ensure that they factor this into their negotiations to prevent delays."

"While parties might say 'it's an acquisition not a merger,' in law an acquisition can be considered a merger," says Maureen. "Those parties involved shouldn't forget that there are criminal sanctions for failure to file the relevant documentation of €3,000 on summary conviction or €250,000 on conviction on indictment."

Diploma Centre shortlisted for three awards

The Law Society's Diploma Centre team has been shortlisted for a number of awards, including:

- **The Irish Law Awards – shortlisted in the 'Service Provider to the Legal Profession Award' category,**
- **Postgradireland Postgraduate Course of the Year Awards – finalist for 'Best New Course Award',**
- **Irish Institute of Training and Development – shortlisted for 'Innovative Use of Technology Award'.**

We wish the team well at these forthcoming awards ceremonies.

Malawi fundraiser by the sea

Irish Rule of Law International (IRLI) will be holding its annual 'Malawi by the Sea' dinner at 7pm on Friday 12 June this year. This is the main fundraising event for the Malawi Access to Justice Programme, which IRLI has been implementing in Lilongwe since 2011.

All proceeds from the event will go towards supporting the team of Irish volunteer lawyers who are working with the Legal Aid Department, Office of the Director of Public Prosecutions, Malawi Police Service and members of the Malawi judiciary to address the challenges of overcrowding in the country's prisons.

The team works with local partners to provide access to justice to the poorest and most vulnerable members of the community. For more information, visit www.irishruleoflaw.ie.

Tickets are €70 for a three-course meal, including wine, in the beautiful surrounds of the National Yacht Club, Dun Laoghaire. Tickets must be purchased in advance and can be bought by contacting IRLI's coordinator Emma Dwyer by email: edwyer@irishruleoflaw.ie.

Prof Gerry Whyte to deliver Ballymun course

Unravelling the complexities of Ireland's welfare system will be the aim of a Ballymun Community Law Centre course on the social welfare code.

The course will be delivered by one of the country's leading authorities on social welfare law, Prof Gerry Whyte of TCD's Law School. He is the author of the seminal work *Social Inclusion and the Legal System: Public Interest Law in Ireland*.

Starting on 30 June 2015, the course will take place on Tuesdays and Thursdays from 2pm to 4pm over three weeks. The fee is €50 (no charge for social welfare recipients).

Topics to be covered include jobseekers' payments, family payments, sickness and disability payments, old age pensions, means testing, and social welfare appeals.

If interested, contact Christina Beresford, Ballymun Community Law Centre, Unit 1A, Shangan Neighbourhood Centre, Shangan Road, Ballymun, Dublin 9; tel: 01 862 5805, email: info@bclc.ie, or visit www.bclc.ie.

FOCUS ON MEMBER SERVICES

Law Society Retirement Trust Scheme

A Law Society survey carried out in June 2014 found that 41% of respondents are not contributing to a pension. With the State pension (contributory) currently paying just under €12,000 per annum, members need to give careful consideration to how they will fund their retirement years.

The Law Society Retirement Trust Scheme allows members to save for retirement in a way that offers tax relief, tax-free investment returns, strong governance, and clarity of charging.

It is available to Law Society members under 75 years of age who are sole practitioners, partners, or employees whose employer does not provide a company pension.

There is an annual management charge that varies depending on the fund you choose, with the maximum charge at 1% for any fund currently available. Charges are not deducted on contributions as they go in, and there are no flat policy fees, commissions, or exit charges.

The scheme has two levels of governance, with a professional trustee ensuring that all decisions reflect the best interests of the membership, and a committee of the Law Society monitoring the running of the scheme.

Members can choose from any combination of the following funds:

- Managed fund,
- All-equity fund,
- Long bond fund, and
- Cash fund.

You can start or stop saving at any time, as well as make regular or once-off contributions.

Members receive an annual benefit statement and a mid-year summary in advance of the tax deadlines in October. Online access is available through Mercer OneView.

You can join the scheme by completing the application form available from Mercer.

You can read more about the scheme at www.lawsociety.ie/memberbenefits. You can also contact Mercer's JustASK helpline at 1890 275 275 or its dedicated email service, justASK@mercer.com.

Get to grips with the *Companies Act*

At the launch of KnowledgeBase last March were *(l to r)* Mark Stewart, Maeve Harrington and Peter Stewart

New start-up KnowledgeBase has developed an innovative online platform to provide solicitors with a comprehensive and interactive guide to the *Companies Act 2014*.

The act in its entirety is presented in an intuitive and easy-to-access manner. All changes are clearly explained. Navigation includes a refined search facility. Commentary and online tutorials focus on the key changes contained within the act.

In addition, a comprehensive e-learning platform has been developed, comprising video clips, succinct text, and end-of-module quick quizzes (incorporating true or false answers). The platform allows users to easily review their progress, to determine which modules have been completed, and how many remain.

KnowledgeBase is available for a one-off cost of €350 in year one, followed by an annual management fee of €50 every year thereafter. Discounts are available for multiple users.

For more information, visit www.knowledgebase.ie.

New US ambassador is lawyer

Until his appointment by President Obama as the new US Ambassador to Ireland in October 2014, Kevin O'Malley practised as a trial lawyer in St Louis, Missouri. He is a proud member of the legal profession and was very pleased to accept an invitation to a dinner at Blackhall Place in his honour and that of his wife Dena on 15 April 2015. Pictured *(l to r)*: Dena O'Malley, Kevin O'Higgins (president), Kevin O'Malley (US Ambassador to Ireland) and Dr Gaye Martin-O'Higgins. *(Standing, l to r)*: Ken Murphy (director general), Mary Keane (deputy director general), Yvonne Chapman and Simon Murphy (senior vice-president)

Society challenges MPS on the cost of clinical negligence

The Law Society has tackled, head-on, assertions made by the Medical Protection Society (MPS) about the cost of clinical negligence in Ireland. The MPS set out its claims in a report entitled *Challenging the Cost of Clinical Negligence – The Case for Reform*.

The MPS asserted that there had been an increase in both the number and the size of claims in the period 2012-14.

However, the Society's Small Expert Group on Medical Negligence Litigation Reform (SEG) appraised the MPS report, asking whether there was a "deteriorating claims environment in Ireland".

The MPS had asserted that the "actuarial estimates of the cost of indemnity for claims per member had increased by over 90% over the last two years". It attributed this to "large increases in both the rate at which private hospital consultants were being sued, and the average size of those claims".

Missing figures

In response, the SEG pointed out that the MPS had quoted no figures at all in their November 2014 report. In a submission to the Oireachtas Health and Children Committee on 22 January 2015, however, the MPS did provide some figures – but they did not support the allegation that there had been a significant increase in claims in the past two years.

In fact, they showed the opposite: claims against consultants had actually decreased by about 20% over the past two years, dropping from 120 in 2012, to 102 in 2014.

The published figures of the major indemnifier of such claims in Ireland, the State Claims Agency (SCA), did not support the MPS assertion. In 2012, the SCA received 772 claims. This dropped by 51 to 721 claims in 2013, and fell by over 100 to 609 in 2014.

The SEG commented that the "MPS does not provide any statistics and studies that demonstrate or explain a substantial increase in the size/severity of claims in this period."

Compensation culture

MPS had attributed the supposed increase in the number and size of claims against private health professionals to a number of factors, including "a compensation culture in Ireland", "the economic downturn", "an increase in patient expectations", and a plethora of issues relating to the way in which these claims are litigated.

Strongly criticising the MPS, the SEG report said: "The MPS characterises Ireland as suffering from 'a growing compensation culture' and submits that the economic downturn has spurred claimants to pursue claims that they would not otherwise have taken. There is no basis for the use of such pejorative terms, especially when referring to injured patients who properly should be entitled to seek to have their rights vindicated."

THERE'S AN APP FOR THAT

Hitting all the right notes

APP: ONE NOTE **PRICE:** FREE

This month, I am mostly loving *OneNote* (free to download) for iPad, *writes Dorothy Walsh*. It can be used in conjunction with a Microsoft *OneDrive* account and, as with most apps, the work we do in *OneNote* can be saved to cloud-based *OneDrive*, synced with all devices and shared with, and accessed by, other people.

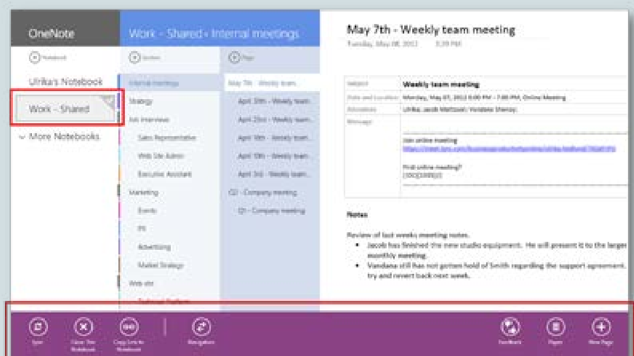
The app is essentially an electronic notebook – a very sophisticated one that gives and gives the more you use it. I absolutely love it, and I am really enjoying learning how to use the app to its fullest. At the moment, I'm using *OneNote* to create notebooks for carrying out research and compiling booklets in relation to employment law.

I was always used to organising my study notes or case research using the old-school refill pad, highlighters and an abundance of sticky post-its. I now have my study notes and case research in various notebooks – on screen on my iPad or MacBook – with all of the highlighting and post-it style graphics. I find it an excellent way of organising work by creating a notebook and having various sections within it dedicated to different elements of my work.

Back to my recently created notebook for employment law. Within that notebook, I have various sections or tabs with different issues discussed in each – TUPE, equality and constructive dismissal, for example. Within each tab, I can create pages and subdivide the topics further.

In my 'equality' tab, I have pages for age discrimination, gender and maternity protection, among others. It's such a great way to organise the topics I'm studying or researching. The comfortable, familiar windows-based interface means that I can see everything at once. I was also able to share the notebook with a colleague who was carrying out the research with me, and we were both able to work on the page or tab – her work all the time distinguishable from mine. It's a brilliant collaboration and study-group tool.

In using *OneNote*, I find that study and case research has been made so much more interesting. I was always reluctant to give up my paper, pens, highlighters and post-its, but using *OneNote* has created a situation where I can actually see myself moving away from my beloved refill pads and pens altogether – something I never thought I would say and actually really mean! *OneNote* gets five stars from me.



Number of practising solicitors up 9% in 20 largest firms

The 20 largest firms in the jurisdiction, measured by the number of practising solicitors, grew by 9% in 2014. Of these 20 firms, 19 increased their solicitor numbers during the year, *writes Mark McDermott*.

For the first time, the numbers of firms each boasting more than 200 practising solicitors rose to four. The '200 club' – comprising Arthur Cox, Matheson and A&L Goodbody – were joined at the end of 2014 by McCann FitzGerald, which added 20 solicitors, bringing its total to 204.

In the largest 20, only two firms employed between 100 and 200 practitioners each, Mason Hayes & Curran and William Fry.

The largest growth in practising solicitor numbers in a single firm was recorded by Mason Hayes & Curran, which jumped by 31 to a total of 178 solicitors. Only two other firms in the top six increased their number by more than 20, namely Matheson (27) and McCann FitzGerald.

Five firms added ten or more practitioners to their ranks, including Arthur Cox (11), A&L Goodbody (16), Maples and Calder (13), Eversheds (12) and Walkers Ireland (10).

In percentage terms, the firm with the biggest expansion was Walkers Ireland, recording a significant increase of 46.7% (from 21 to 31 practitioners).

On 31 December 2014, the 20 largest firms had 2,158 practising certificates between them (up from 1,978 in 2013). This 2,158 represented 23.4% of the 9,224 practising certificate total issued for the whole profession on that date.

The 'Big Six' firms between them had 1,355 practitioners in 2014 (1,247 in 2013). The remaining 14 largest firms shared a total of 803 practitioners between them (736 in 2013).

There was little change in the ranking order of the largest 20 firms in 2014. Arthur Cox with 269 practitioners remains the largest firm – but only just. Breathing down its neck with only four solicitors less is Matheson (265 in total), while A&L Goodbody is hot on Matheson's heels at 262 solicitors.

As previously, 18 of the 20 largest firms are Dublin-based. The only exceptions to the capital's dominance are Cork firm Ronan Daly Jermyn (which also has offices in Dublin and Galway) and Holmes O'Malley Sexton (of Limerick and Dublin).

Although the Law Society issues all practising certificates and has its own records, the Society took the precaution of confirming the relevant number with each individual firm before publishing its statistics, to avoid any oversights or double counting.

Law firm practising solicitor numbers (as of 31/12/2014)

2014 ranking	2013 ranking	Firm name	Total no of solicitors with practising certificates 31/12/2014	Total no of solicitors with practising certificates 31/12/2013	Diff +/- over 2013
1	1	Arthur Cox	269	258	11
2	3	Matheson	265	238	27
3	2	A&L Goodbody	262	246	16
4	4	McCann FitzGerald	204	184	20
5	6	Mason Hayes & Curran	178	147	31
6	5	William Fry	177	174	3
7	7	ByrneWallace	96	93	3
8	8	Maples and Calder	94	81	13
9	10	Eversheds	84	72	12
10	9	Dillon Eustace	78	74	4
11	12	Ronan Daly Jermyn	75	68	7
12	11	Beauchamps	72	68	4
13	13	Eugene F Collins	57	55	2
14	14	LK Shields Solicitors	49	50	-1
15	15	Hayes Solicitors	36	36	0
16	17	Holmes O'Malley Sexton	36	29	7
17	16	DAC Beachcroft Dublin	34	32	2
18	18	Whitney Moore	32	28	4
19	22	Walkers Ireland	31	21	10
20	20	Philip Lee	29	24	5

These figures represent the total number of solicitors with a practising certificate, advised to the Law Society, up to and including 31/12/2014. The total firm figure represent a firm's primary and sub-offices on the Law Society database.

Our simply special social strategy is a sound success

It's been a year since we officially launched our social media strategy, *writes Liam Keegan, the Society's social media coordinator*.

Since last May, our Twitter, Facebook, LinkedIn, YouTube and Google+ channels have provided some memorable moments – as well as a few challenges.

We knew that social media would play a significant part in the development of our communications, as emphasised in the *Future of the Law Society Task Force Report*. Still, the task of growing our social media presence in 2014 from virtually zero was exciting – though admittedly daunting.

According to Ipsos MRBI (2014), 60% of Irish people had a Facebook account in 2014, and 72% of those users checked the site every day. Twitter had 28% of the Irish population among its users, with 37% of those users checking the site every day. Given its size and ubiquity in modern society, social media was clearly a ship we could not let sail past.

But, as with every opportunity, a multitude of challenges presented themselves. How would we integrate these new tools into our historic organisation? What would the benefits be, if any? Would solicitors, trainees and the public engage with us through these channels?

Unlike traditional forms of media, social media is not a one-to-many communication. It's a community of voices with equal weight and value. As the voice for the solicitors' profession in Ireland, we needed to be heard on social media, but just as importantly, we needed to listen. We wanted to do more than just set up a Twitter account and tweet our day-to-day goings on. Our strategy was to create value for our members, trainees and the public through fostering social media engagement and interaction.

Across 14 channels on Twitter, Facebook, LinkedIn, YouTube and Google+, we grew from under 2,000 followers to over 11,000 followers in under 12 months. Some standout events really engaged our followers, such as the Justice Media Awards 2014, our performance at moot competitions, and the Calcutta Run.

When we announced on Twitter that we were the first country to achieve gender balance in the legal profession, our message was shared and 'retweeted' all the way from Poland to Australia. It was also the most 'liked' post of the year on our Facebook page.

Live tweeting has allowed us to share minute-by-minute updates from events such as the annual conference, our parchment ceremonies, the Calcutta Run launch and education seminars. This means those who are unable to attend our events can follow developments on social media.

Social media has enabled members to engage with each other, too. Our LinkedIn members-only group provides solicitors with a platform to have discussions exclusively with other solicitors and to share their interests and queries with fellow colleagues and with the Society.

We will continue to share our voice on social media, listen to yours, and continue to adapt in an evolving world to meet your needs. If you haven't already connected with us on social media, please join us and visit the links in the panel.

Law Society of Ireland
12 February

In a first for any legal profession in the world, female Irish solicitors now outnumber male solicitors practising in Ireland.

The Director General of the Law Society of Ireland, Ken Murphy, said, "There were exactly 4,623 female practising solicitors and exactly 4,609 male practising solicitors at the close of 2014. It was just 92 years ago that the first woman solicitor was admitted to the profession. Since then the race to equality has been incredible."

To read more, visit the link below.

Irish solicitors' profession reaches major landmark in gender balance -...
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Law Society Ireland

Landmark for gender balance in Irish solicitors' profession - Female solicitors now outnumber male solicitors. Read: ow.ly/IVKLT

You Tube

Law Society Ireland @LawSocIreland

The Criminal Law Committee held its final meeting of a busy 2014. Read about their 2014 work: ow.ly/DKfKq ow.ly/i/7rLbc

View on web

LawSociety Education @LawSocEdu · Apr 21

Congratulations to our team on winning the Environmental Moot Court Competition @stetsonlaw in Gulfport, Florida.

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Society's service statement unveiled to members and public

"The best way to find yourself is to lose yourself in the service of others."

It may have been the 2013 report and recommendations of the Future of the Law Society Task Force that prompted the Law Society to unveil its service statement this month, rather than the words often attributed to Gandhi, but the Society can certainly draw inspiration from them.

The report recommended a reinvention of sorts for the Law Society, with increased emphasis on its representation of members. The introduction of a service statement is another step in the Society's mission to "serve, represent and support its members and the public".

It follows hot on the heels of last year's member-focused developments, such as the establishment of two new departments (Policy and Public Affairs, and Representation and Member Services), the development of a new communications strategy, a new brand and tone of voice, the redesign of our website, and the delivery of a new social media strategy.

The service statement is reflective of one of the Law Society's most important values: to be of service. It directs that we must always respond to enquiries from members and the public promptly and efficiently. Any time a member contacts the Law Society, they should feel that they have received quality service, delivered in a straightforward way that is helpful, respectful, clear and concise. We welcome feedback from our members, and our website has a facility to assist you submit feedback about the service you have received: www.lawsociety.ie/Contact-Us/.

Contact with members takes many forms and includes social media interaction. Since the introduction of its social media strategy in May 2014, the Law Society social media channels are leading the way with an ever-increasing audience and a maximum four-hour turnaround in responding to enquiries.

Some of the more common enquiries we receive are requests for legal advice. Of course, the Law Society cannot give legal advice. In fact, we are not insured to give legal advice, and we always encourage members of the public to contact a solicitor in these cases.

Likewise, the Law Society is unable to provide legal advice to our members. We do, however, provide guidance on issues such as advertising regulations, anti-money-laundering, and data-protection obligations for solicitors. Our *Gazette*, website, and library are also valuable research tools for solicitors. Furthermore, the Society committees offer guidance on current topical issues. However, committee members cannot offer opinions on individual cases, as this may be straying in to the territory of providing legal advice.

In an effort to focus its resources on delivering an exceptional service to our members, the Law Society is keen to reduce the number of enquiries that fall outside our remit, particularly from members of the public. For example, members should not refer their clients to the Law Society on issues that originate with the solicitor.

Across all channels of communication – phone, email, letter, fax, and social media – the Law Society receives in excess of 160,000 enquiries annually from members and the public, and providing a responsive, courteous and efficient service is our principal aim with each and every one.

Service statement (abridged version)

"The Law Society of Ireland is committed to providing a high standard of service to our members, students, stakeholders, and members of the public at all times. We act with the highest possible standards of integrity, fairness, and independence as we work to fulfil our vision and mission in accordance with our values.

We will:

- **Treat enquiries with courtesy and respect and aim to be helpful at all times,**
- **Work to make all of our communications straightforward, clear, and concise, and**
- **Respond to all enquiries promptly."**

You will find the full service statement on the Law Society's website at www.lawsociety.ie/service.

At a meeting of the County Louth Solicitors' Bar Association at the courthouse, Dundalk, on 25 March 2015 were *(front, l to r)*: Paula Tiernan, Derek Williams, Kevin O'Higgins (Law Society president), Conor MacGuill (president, County Louth Solicitors' Bar Association), Ken Murphy (director general), John McGahon (honorary treasurer) and Catherine Allison. *(Second row, l to r)*: John Kieran, Donal O'Hagan, Roger MacGinley, Dermot Lavery, Sarah McDonnell, Ciara Hughes, Paul Eaton, Niall Lavery and Olivia McArdle. *(Third row, l to r)*: Caroline McArdle, Don McDonough, John Woods, Larry Steen, James Murphy, Niall O'Hagan, Sinead Creighton, Eithne Harte and Martin Mulligan. *(Fourth row, l to r)*: Paul McArdle, Seamus Roe, Elaine Grills, Niall Breen, Gary Matthews, Tara Matthews, Noelle Cantrelle, Tim Aherne and Sharon McArdle. *(Fifth row, l to r)*: Peter Lavery, Brian Berrills, Stephen Reel, Caroline Berrills, Catherine Taaffe, Aoife McGuinness, Francis Bellew, Tom Hardy, Barry O'Hagan and Brendan Walsh

At the meeting of Kildare Bar Association on 8 April 2015 at the Keadeen Hotel, Naas, were *(front, l to r)*: Stephen Walsh, Cyril Osborne, Andrew Coonan, Niall Farrell, Kevin O'Higgins (president, Law Society), Ken Murphy (director general), David Osborne (secretary), Helen Coughlan (CPD officer) and Miriam McColgan. *(Back, l to r)*: Mary Bennett, Mark Stafford, Peter Flanagan, Jennifer O'Sullivan, Andrew Cody, Matthew Byrne, Alan Power, Avril Delaney, Sarah Hogan, Jean Sharkey, Elaine Farrell and Marianne Thynne

Kenyan Vetting Board on fact-finding mission to Ireland

The Kenyan delegation that met Law Society represenatives included Sharad Rao (chairman), Roseline Odede (vice-chair), Justus Munyithya, Prof Ngotho wa Kariukir, Meuledi Iseme, Abdirashid Abdullahi, Lady Justice Alice E Mpagi-Bahigeine, former Chief Justice Barnabas A Samatta (board members) and Reuben Chirchir (secretary and chief executive officer to the board)

On 15 April, the Law Society was honoured to receive members of the Kenyan Magistrates and Judges Vetting Board, *writes Katherine Kane*. The board was visiting Ireland as part of a fact-finding mission that included Belgium, the Netherlands and Britain. During their visit to Blackhall Place, they met with Law Society President Kevin O'Higgins, director general Ken Murphy, Dr Geoffrey Shannon (deputy director of education) and members of the EU and International Affairs Committee.

The aim of the Vetting Board was to see what it could learn from the judicial systems of the visited countries, and to explore how their systems and structures might inform the future work of the board and the judicial system in Kenya.

Although the board learned much about the judicial appointment process in Ireland, members of the EU and International Affairs Committee learned even more about the inspiring work of the Vetting Board.

Groundbreaking role

Its unique work is fascinating and groundbreaking. It was established as a result of the Kenyan Constitution of 2010. By this date, the public had lost confidence in the independence of the judiciary. Incompetence and corruption had denied many citizens access to justice. Therefore, it was proposed that the key step for reforming and restoring confidence in the judiciary was the vetting of all in-office judges and magistrates.

This process is unique to Kenya, and there are no precedents available from other jurisdictions to provide a comparative dimension or to assist the board in establishing its processes.

In general terms, the Vetting Board is guided by the principles and standards of judicial independence, natural justice, and international best practices. In determining the suitability of a judge, the board must also consider:

- Constitutional criteria for appointment,
- Past work record, including prior judicial pronouncements,
- Criminal cases or prosecutions against the judge or magistrate concerned, and
- Complaints or other relevant information received from any person or body.

Members of the public are actively encouraged to send their complaints to the Vetting Board.

The board takes into account professional competence, written and oral communication skills, integrity, fairness, temperament, good judgment, legal and life experience, and demonstrable commitment to public and community service.

Totally transparent

The vetting process itself is totally transparent, and parts of it are even televised. The board members gave an insight into the challenges they have faced in vetting a judiciary with a history of corruption. Kenya is a huge country, and the board has to consider the interests of over 40 ethnic groups.

It started the process by vetting the Court of Appeal, where four out of its nine judges were deemed to be unfit. They have gone on to vet hundreds of magistrates and judges. For more information about their work, see www.jmvb.or.ke.

Stage a unique opportunity to develop relationships

The *Stage International* is a two-month internship programme hosted by the prestigious Ordre des Avocats de Paris, *writes Norma O'Sullivan*. Having successfully interviewed with the Law Society's EU and International Affairs Committee, I was selected as the Irish delegate to the *Stage*, which has been running since 1991. With lawyers attending from over 40 countries, the *Stage* is a unique opportunity to develop business and personal relationships with young lawyers from different legal and cultural systems around the world.

The *Stage* consists of one month of classes and one month's placement in a law firm. Classes were held in the Ecole de Formation du Barreau (EFB), the closest equivalent of which would be the Law Society of Ireland and King's Inns combined.

Classes were through French on a range of topics such as ethics, IP, family law, employment, and the organisation of the French legal system. The classroom provided an opportunity to exchange views and make global comparisons between the legal systems of a diverse range of countries.

The second month was spent in a law firm. I was fortunate, not only that my employer, KPMG Legal Services, Dublin, was very understanding of the wonderful learning and networking opportunity the *Stage* presented by facilitating my two-month leave of absence, but also that they arranged for me to be placed with Fidal, a leading French commercial law firm. I was assigned to the M&A department and, during my time there, had the opportunity to attend sale negotiations, review due diligence, research contract provisions, and draft an English share purchase agreement based on the firm's house precedent.

I would highly recommend the *Stage* to anyone with a solid level of French and an interest in a legal and cultural exchange in Paris. My passion for French culture and French legal affairs stems from my undergraduate degree in Law and French from University College Cork, which included a year studying French civil law in Montpellier, in addition to a '*stage*' in the General Court of the European Union, Luxembourg. As part of my training contract with Philip Lee Solicitors, I was seconded to their Brussels office for a period of four months.

I would like to sincerely thank both the EU and International Affairs Committee and KPMG for helping me to realise a long-held dream to work in a law firm in Paris.

Silver celebrations for Irish Legal History Society

Mrs Patricia Corbett (head of Hillsborough Castle) and David Lindsay (Lord Lieutenant for Co Down) received members of the council of the Irish Legal History Society at Hillsborough Castle on 6 February. With Mrs Corbett and Mr Lindsay are *(from l to r)* Sir Anthony Hart, Dr David Capper, Felix M Larkin, Dr Christopher Warleigh-Lack (curator of Hillsborough Castle), Daire Hogan, Paul Egan, Robert D Marshall, Prof Colum Kenny, Dr Robin Hickey, Dr Kenneth Ferguson, Prof James McGuire, Dr Thomas Mohr, John Martin QC and Prof Desmond Greer QC

The Irish Legal History Society completed its 25th anniversary celebrations on 6 February with a visit to Hillsborough Castle, where the 23 volumes published by the society since 1988 were accepted by Patricia Corbett (head of Hillsborough Castle) and David Lindsay (Lord Lieutenant for Co Down) on behalf of Queen Elizabeth for the castle library. The event, which mirrored the presentation of the publications to President Higgins at Áras an Uachtaráin last May, coincided with Accession Day, and took place in the State Drawing Room, where the Queen and President McAleese first met.

The 23 volumes presented by the society to the Queen's Library at Hillsborough Castle were displayed in the State Drawing Room on the table at which the *Anglo Irish Agreement* was signed in 1985. Seen here with the collection are Patricia Corbett (head of Hillsborough Castle), Robert D Marshall (president, Irish Legal History Society) and Prof Colum Kenny and Daire Hogan (editors of the 25th anniversary volume *Changes in Law and Practice*)

The president of the society, Robert D Marshall, expressed the pleasure of the council in presenting the books. The members of the society came together, he said, as jurists, practising lawyers, historians and lawyers in the universities, and as scholars to explore a shared legal history, grounded not only on the common law but on earlier Celtic traditions.

In accepting the volumes, Mrs Corbett noted that Hillsborough Castle was the official royal residence of the sovereign in Northern Ireland and in the care of the Historic Royal Palaces trust. The state rooms were open to members of the public, who would be able to see the volumes, which would be shelved in Lady Grey's Study. It was in that room that Prime Minister Blair, President George W Bush and Taoiseach Bertie Ahern met in 2003 to discuss, among other issues, the Anglo-Irish talks.

For the presentation, the volumes were displayed on the Georgian library table, at which the *Anglo-Irish Agreement* was signed in 1985. In thanking the society on behalf of the queen for its gift, Mrs Corbett said: "Our shared histories have been the focus of the 23 volumes, which bring us together here today. This body of work represents an endeavour over the last 25 years by many scholars to explore the shared legal history of Ireland."

Legal world unites behind Calcutta Run launch

"It's great to see the entire legal industry united behind the Calcutta Run – the legal fundraiser. It's a great example – and I think a unique one – of an industry pooling its resources to achieve a much greater impact. I would love to see that followed in other industries that are anxious to achieve scale in their corporate social responsibility activities." So said GOAL CEO Barry Andrews at the launch of the Calcutta Run on 26 March. GOAL and the Peter McVerry Trust are the main recipients of the legal fundraiser.

Cillian MacDomhnaill, one of the Calcutta Run's founders, said that the fundraiser emphasised the importance of the 'supporter firm' initiative. "Donations from firms, with the assistance of 'firm champions' driving the event internally, are key to achieving the ambitious target of €200,000 in 2015," he said.

At the official launch of the Calcutta Run 2015 were *(l to r)* Pat Doyle (CEO, Peter McVerry Trust), Eoin MacNeill (partner, A&L Goodbody), John Cronin (chairman, McCannFitzGerald), Barry Andrews (CEO, GOAL) and Kevin O'Higgins

Many firms have already confirmed their commitment to the Calcutta Run by arranging fundraising events, making donations, and encouraging staff to sign up. Some firms have already met their target of more than 40 participants. Several firms have set up online fundraising pages on the Calcutta Run idonate.ie page and are encouraging their clients, staff and suppliers to support the initiative.

Law Society President Kevin O'Higgins is encouraging firms to ensure high attendance and to take advantage of the many aspects of the run that guarantee a great day out.

On 16 May, participants can choose from a variety of challenges, including a 10k route, a less strenuous 5k route, the DX Firm Challenge and, for the first time this year, a cycling element. In addition, the Finish Line Festival is now an established gathering for those taking part.

To sign up, visit www.calcuttarun.com, where useful training, nutrition and sports injury prevention tips are provided. To receive further information on the supporter firm initiative, DX Firm Challenge or the cycling element, email hilary@calcuttarun.com.

The *Magna Carta* was a parchment too

The British Ambassador to Ireland, Dominick Chilcott, was the guest speaker at the parchment ceremony in Blackhall Place on 26 March 2015. In addition to reviewing the deep ties between Ireland and Britain, he gave an erudite exposition of the great foundation stones of the rule of law – the *Magna Carta*, which is 800 years old this year. Pictured are *(l to r)*: Ken Murphy (director general), Nicholas Kearns (President of the High Court), Dominick Chilcott (British Ambassador), Mary Collins (judge of the District Court) and Kevin O'Higgins (president)

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letters

Assisted Decision-Making Bill must be enacted

From: Dr Eilionóir Flynn, acting director, Centre for Disability Law and Policy, NUI Galway

On the eight-year anniversary of Ireland signing the *UN Convention on the Rights of Person with Disabilities*, we urge the government to bring forward a key piece of legislation that is needed before Ireland can ratify the convention: the *Assisted Decision-Making (Capacity) Bill 2013*.

The bill was published in July 2013 and introduces many important reforms. However, almost two years after its initial publication, the bill has still not progressed to committee stage in the Dáil. Today, thousands of people in residential centres, hospitals, and in their own homes are having decisions about their lives and care made for them, not by them. Decisions like what to eat or what they may spend their money on, as well as very serious decisions like what invasive health procedures they should have.

The bill must be enacted without further delay to address these ongoing human rights violations. We, the undersigned, have developed a series of recommendations for amendments to the bill that would ensure the human rights of people with disabilities are protected. These reforms are based on best international practice and the guiding ethos of the *UN Disability Convention*. Introducing these changes to the bill would enable the Government to honour its Programme for Government commitment to introduce capacity legislation in line with the convention. They would also mean a huge and very real improvement to people's lives.

We call on the Government to give fresh consideration to our proposed amendments (see www.nuigalway.ie/cdlp/documents/amendments_to_bill.pdf) and then to quickly enact this bill.

It is time to finally give people with disabilities a voice in – and control over – their own lives. They deserve dignity and respect.

Eilionóir Flynn (Centre for Disability Law and Policy), Colm O'Gorman (Amnesty International Ireland), John Dolan (Disability Federation Ireland), Paddy Connolly (Inclusion Ireland), Mags Rogers (Neurological Alliance of Ireland), Joan Doran (Irish Mental Health Lawyers Association), Tina Leonard (Alzheimer Society of Ireland), Grainne McGettrick (Acquired Brain Injury Ireland), Shari McDaid (Mental Health Reform), Eamon Timmins (Age Action), Maria Walls (National Advocacy Service), Mary O'Hora (St Patrick's Mental Health Services), Jim Walsh (Irish Advocacy Network), Brian O'Donnell (National Federation of Voluntary Bodies Providing Services to People with Intellectual Disabilities), Fiona Walsh (Tallaght Trialogue), Rosy Wilson (Recovery Experts by Experience), David Joyce (Irish Congress of Trade Unions)

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viewpoint

MARRIAGE IS NOT THE MEASURE OF EQUALITY

Any change to the definition of marriage needs to be reflected upon carefully, with due consideration of all the legal and social consequences, argues Eileen King

Eileen King is a solicitor and spokesperson for Mothers and Fathers Matter

The marriage referendum is about a proposal to amend the article of the Constitution entitled 'The family'. Article 41 would be amended by the insertion of a new section, 41.4, as follows: "Marriage may be contracted in accordance with law by two persons without distinction as to their sex."

Ireland would be the first country in the world to provide for same-sex marriage in its Constitution. The full legal effects and significance have yet to be properly considered.

Under article 41.3.1, "the State pledges itself to guard with special care the institution of marriage, on which the family is founded, and to protect it against attack". While marriage is not specifically defined, the Irish courts have consistently interpreted marriage to be the union of a man and a woman.

Arguably, the right to marry is not created by the Constitution but merely recognised by it. In *McGee v Attorney General* ([1974] IR 284), it was noted that "articles 41, 42 and 43 … indicate that justice is placed above the law and acknowledges that natural rights, or human rights, are not created by law but that the Constitution confirms their existence and gives them protection".

The definition of marriage at common law was stated in *Hyde v Hyde* (1866) by Lord Penzance as "the voluntary union for life of one man and one woman, to the exclusion of all others". This was restated by Costello J in 1995 in the Irish case *B v R* (unreported), where it was held that "marriage was and is regarded as the voluntary and permanent union of one man and one woman to the exclusion of all others for life".

In creating a new right for same-sex couples to marry, the State is redefining what marriage is and, in that context, the family on which it is founded. This would give same-sex couples a constitutional right to procreate (*Murray v Ireland* [1991] ILRM 465). Procreation in the usual sense is not possible in this instance, which could lead to the right being invoked in ways not currently envisaged by the *Children and Family Relationships Act 2015* or by legislation that is proposed in relation to surrogacy. These issues have not yet been raised in the debate surrounding same-sex marriage.

> **'Article 40 states: 'All citizens shall, as human persons, be held equal before the law.' This guarantees equality of citizenship – not equality of relationship. To say otherwise is a misapplication of the principle of equality'**

Redesigning parenthood

The *Children and Family Relationships Act 2015* has, in many respects, redesigned the architecture of parenthood, creating new parenting rights for same-sex and cohabiting couples. If the amendment is passed, it will make it impossible for any legislature in the future to vindicate, where possible, a child's right to be raised by a mother and a father and to have them recognised in law as his/her parents – to do so would be repugnant to the Constitution.

This would have serious consequences for children in the areas of *in vitro* fertilisation (IVF), donor-assisted human reproduction, and surrogacy. In adoption law, the new amendment would prohibit the Oireachtas from recognising any interest of a jointly adopted child to have both a mother and a father. The amendment would make it virtually impossible, constitutionally, for future legislators to reconsider that aspect of the act. Similarly, any attempt by the Oireachtas to limit donor-assisted human reproduction to married men and women only – in order to vindicate a child's right to a mother and father – would almost certainly be unconstitutional.

Some children would be created with the express purpose of denying them a right of access to, or knowledge of, one or both of their biological parents. This is very different to the case for recognising those situations whereby circumstance has given rise to the absence of one or both of a child's biological parents. In those situations, it is perhaps incumbent upon the legislature to seek to provide for that child a replacement, as near as possible, to what was lost.

In surrogacy, the policy approach adopted by many European countries – total restriction – would be more vulnerable to constitutional challenge; the result of giving same-sex couples a constitutional right to procreate.

Not a human or legal right

The amendment is seeking to enshrine an entirely new concept of marriage into Irish law. Some assert this as a matter of right. However, there is no human right to same-sex marriage. The UN's Human Rights Committee has also rejected this claim (*Joslin v New Zealand*, Communication No 902/1999, UN Doc A/57/40 at 214).

The *Universal Declaration of Human Rights* confirms, at article 16, that "men and women of full age, without any limitation due to race, nationality or

religion, have the right to marry and to found a family".

The *European Convention on Human Rights*, at article 12, states "men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right".

In addition, the European Court of Human Rights has ruled that there is no legal right to same-sex marriage (*Schalk and Kopf v Austria* [application no 30141/04] 22 June 2010; *Hamalainen v Finland* [application no 37359/09] 16 July 2014). Thus, it would appear far from settled that there is a European consensus, much less a global consensus on the matter.

In addition, there are those who think it a requirement of equality that same-sex couples should be allowed to marry in the same way as opposite-sex couples. Article 40 of the Irish Constitution states that "all citizens shall, as human persons, be held equal before the law". This guarantees equality of citizenship – not equality of relationship. To say otherwise is a misapplication of the principle of equality.

> **Some children would be created with the express purpose of denying them a right of access to, or knowledge of, one or both of their biological parents**

In 2011, the *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010* granted rights to same-sex couples, particularly in the areas of taxation, inheritance, and next-of-kin rights. This gave legal recognition to same-sex couples in the form of a partnership.

In, *De Burca v Attorney General* ([1976] IR 38), Walsh, J said: "Article 40 does not require identical treatment of all persons without recognition of differences in relevant circumstances."

Likewise, Denham CJ held in *MD (a Minor) v Ireland* ([2012] 1 IR 697 at 714) that "not only must the law treat comparable situations equally, it must not treat different situations in the same way, in the absence of justification".

Marriage is not the measure of equality. It was never intended to be. Treating the union in marriage of a man and a woman differently from same-sex relationships is not inequality. It is the way in which we recognise true diversity, acknowledging our differences in a way that makes us truly equal. The referendum would make marriage genderless and strip from it what makes it unique. This change needs to be reflected upon carefully, with due consideration of all the legal and social consequences.

FOCAL POINT

referendum wording

"Marriage may be contracted in accordance with law by two people without distinction as to their sex"

viewpoint

THE MEANING OF MARRIAGE – PAST, PRESENT AND FUTURE

Debate on the marriage referendum appears to be taking place without any real discussion as to what is meant by marriage and who can marry, say Muriel Walls and Michelle Dunne

Muriel Walls is a partner in Walls & Toomey and has been a specialist family lawyer for over 30 years. She is a member of the Lawyers4Yes committee

Michelle Dunne is a trainee solicitor with Walls & Toomey. She is a member of the Lawyers4Yes committee

In early 1970s Ireland, a girl of 12 and a boy of 14 could marry. A husband could also sue for damages if his wife left him for another man. A wife had a domicile of dependency on her husband. She had no automatic entitlement to maintenance, no security in the family home, and no protection from domestic violence. Marital rape was not a crime. There was no judicial separation and no divorce. Children born outside of marriage were given the stinging title of 'illegitimate'.

Thankfully, since that time, most of the above has changed. Our family law code, although always in need of updating, is modern and effective and deals with the challenges that face families and society today, especially with the passing of the *Children and Family Relationships Act*. During the two divorce referendum debates, there was very little discussion about marriage itself. The same seems to be happening again, without real discussion as to what we mean by marriage and who can marry.

Freedom to marry/right to marry

In the celebrated decision in the 1967 case of *Loving v Virginia* (388 US 1), the US Supreme Court declared unconstitutional the ban on interracial marriages in that state. The court declared that the "freedom to marry has long been recognised as one of the vital personal rights essential to the orderly pursuit of happiness by free men".

The right of a person to marry has been recognised as one of the unenumerated personal rights protected by article 40.3 of the Constitution. The insertion of the proposed new article 41.4 will, therefore, extend the personal right to marry to all citizens, regardless of sexual orientation.

In the current debate, it has been suggested that gay and lesbian citizens already have the right to marry, because they may marry someone of the opposite gender. This argument is anathema to the fundamental nature of homosexual people. In order for this right to marry to be meaningful to lesbians and gay men, and consistent with their human dignity, it must encompass the right to marry someone of the same gender.

Understanding marriage

The key ingredients of marriage are: "A partnership based on an irrevocable consent given by both spouses, which establishes a unique and very special lifelong relationship" (Costello, P, *Murray v Ireland* [1985] IR 532).

The Supreme Court's definition of marriage in *N v K* (McCarthy, [1985] J1 IR) was: "A civil contract which created reciprocating rights and duties between the parties and further established a status which affected both the parties to the contract and the community as a whole."

> **'We must remember that the Constitution deals with civil marriage and not religious marriage'**

Much Irish case law instances the marriage contract as one of partnership and stability and as a social contract in which society is invested and, by extension, in which the inherent dignity of the person is enhanced.

The Constitution and civil marriage

We must remember that the Constitution deals with civil marriage and not religious marriage. Murphy, J in *TF v Ireland* ([1995] I IR) explained why the court had declined to hear evidence from a theologian as to the essential features of marriage: "It may well be that 'marriage' as referred to in our Constitution derives from the Christian concept of marriage. However, whatever its origin, the obligations of the State and the rights of parties in relation to marriage are now contained in the Constitution and our laws and … it falls to me as a judge of the High Court to interpret those provisions and it is not permissible for me to abdicate that function to any expert, however distinguished."

The institution of civil marriage protected under the Constitution and the religious understanding of marriage are entirely separate and, to borrow the language of the Constitutional Court of South Africa in *Minister for Home Affairs v Fourie* (2005): "It would be out of order to employ the religious sentiments of some as a guide to the constitutional rights of others."

Concerns have been expressed that religious clergy may, against their religious beliefs, be required to perform same-sex marriages. This fear is unfounded, as the *Marriage Equality Bill 2015* specifically confirms that religious solemnisers will not be obliged to perform same-sex marriages, and any attempt to force them to do so would contravene the guarantee of freedom of conscience and the free profession and practice of religion in article 44.2.1 of the Constitution.

In reality, more and more marriages are now civil ceremonies or those conducted by humanists or spiritualists. In 2014, 36% of marriages were non-religious. This is increasing year on year.

Marriage and the family

Article 41.3 refers to the fact that the family, which has constitutional protection, is founded on marriage. The

family based on marriage is given a special status. The term 'family' is not defined. Costello J, in *Murray & Murray v Ireland*, stated: "'Family' is a word which, in everyday use, has many different meanings. The Constitution does not attempt to define it, but instead describes it as the 'natural primary and fundamental unit group of society', as a 'moral institution', as 'the basis of the social order' and as being 'indispensable to the welfare of the nation and the State'."

The key point to understand is that the courts have consistently emphasised that a married couple without children is a 'family' attracting the constitutional protection of article 41. This was unambiguously reiterated by Hamilton CJ for the Supreme Court in *TF v Ireland*: "It is important to bear in mind, also, that a married couple is a family, so that the guarantee given by the State to protect the family in its Constitution and authority is also a guarantee given to every married couple."

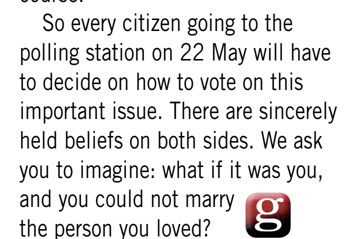
Hamilton CJ cited with approval and quoted the judgment of Costello J in *Murray v Ireland*: "A married couple without children can properly be described as a 'unit group' of society, such as is referred to in article 41 and the lifelong relationship to which each married person is committed is certainly a 'moral institution'. The words used in the article to describe the family are therefore apt to describe both a married couple with children and a married couple without children."

In the current debate, those opposing the constitutional change invariably identify the procreative potential of marriage between a man and a woman as its essential characteristic. This is manifestly wrong as a matter of reality and law and has been repeatedly rejected both in Ireland and elsewhere. In the case of *Zappone & Gilligan v Revenue Commissioners* ([2006] IEHC 404), the High Court noted that the State as defendant had not tried to suggest that "the justification for the exclusion of same-sex couples for marriage was on the basis that the nature of marriage is related to procreation".

In *Goodridge v Massachusetts* ([2003] 440 Mass 309), the Supreme Court of Massachusetts held: "Fertility is not a condition of marriage, nor is it grounds for divorce. People who have never consummated their marriage and never plan to may be and stay married. People who cannot stir from their death-bed may marry. While it is certainly true that many, perhaps most, married couples have children together (assisted or unassisted), it is the exclusive and permanent commitment of the marriage partners to one another, not the begetting of children, that is the *sine qua non* of civil marriage."

Ireland now has diverse family formations, with 36% of all children born to parents who are not married to each other. The *Children and Family Relationships Act* will (whatever the outcome of the referendum) provide a legal framework for the complexity of these relationships. The promised surrogacy legislation will deal with this vexed area of law in due course.

So every citizen going to the polling station on 22 May will have to decide on how to vote on this important issue. There are sincerely held beliefs on both sides. We ask you to imagine: what if it was you, and you could not marry the person you loved?



The authors wish to thank members of the Lawyers4Yes committee for their assistance in carrying out research for this article.

"Those opposing the constitutional change invariably identify the procreative potential of marriage between a man and a woman as its essential characteristic"

FOCAL POINT

referendum wording

"Marriage may be contracted in accordance with law by two people without distinction as to their sex"

LIFE *sentence*

Maggie Armstrong is a journalist and theatre critic with the Irish Independent

The *Gazette* joined the chairman of the Parole Board on a recent visit to Mountjoy Prison. Maggie Armstrong checks out life behind bars

"Prison can be tough, especially in the first few years." John Costello's words were met with nods of agreement. The only person in the room in a suit and tie, he seemed out of place among the young men in t-shirts, shorts, tracksuit bottoms and trainers. Their faces were drawn as they sank into their chairs, gazing at the floor, sipping from Lucozade bottles. If it weren't for the lack of colour in their cheeks, they might have been in a dressing room after a football game.

"When you're in for life and you don't know what life means, that must be very upsetting," Costello continued. The men looked at him with a certain interest as he talked about the possibility of "integrating back into society slowly – there are 70 former lifers out in the community, living normal lives".

We were in the gymnasium of Mountjoy Prison to meet life-sentence prisoners. These meetings are a new aspect of what has become a more proactive Parole Board under its chairman John Costello. John personally visits each of the 14 prisons in Ireland every two years to tell 'lifers' about the Parole Board and encourage them to move forward. On this occasion, he was accompanied by head of the secretariat Una Costello (no relation) and the *Gazette*, and a guest speaker, of whom more later.

His message to the prisoners was simple: "You have to serve your punishment. You have to put every effort into rehabilitation by using the therapeutic services to deal

at a glance

- There are 345 prisoners currently serving life sentences in Ireland. Of the 553 prisoners in Mountjoy, approximately 45 are in for life for committing serious crimes – mainly murder
- The work of the Parole Board includes prison visits by its chairman
- Engaging with all that the prison system has to offer so that prisoners can reintegrate into society
- Strengthening the independence of the Parole Board's decisions
- Incentives to plead guilty for serious crimes, judicial discretion in life sentences, and the setting of minimum tariffs for Parole Board prisoner reviews

PIC: IRISH PHOTO ARCHIVE/GAZETTE STUDIO

> In one prison, a lifers' group had built a grass patch. When the grass grew, the lifers were overwhelmed and sat lovingly touching the blades of grass

with addiction problems and psychological problems. You must also try and get some kind of qualification or experience to help you find a job in the future. Finally, you must be at low risk of reoffending."

Not pleasant

These are not pleasant visits. At Mountjoy, the grand Victorian edifice on North Circular Road gives way to slate grey blocks, razor wire jutting from roofs. As we give up our phones and keys and pass sniffer dogs, the security checks are delayed by a woman in leopard print and bangle earrings with three infant children. She's having an argument with the guards.

Inside, the word 'institutionalised' begins to mean something. It's easy to become passive, with guards on your tail, opening the thick metal doors that clang shut, leading you up narrow staircases.

Passing the landings, young men stand around behind the steel caging and mesh. Echoes of shouts can be heard. The mood is austere, save for the odd homemade artwork on the walls. A mosaic of dolphins jumping on a choppy blue sea is almost uplifting.

PIC: DAVID MURPHY

Chairman of the Parole Board, John Costello: 'The Parole Board should become independent of the Minister for Justice'

There are 345 prisoners currently serving life sentences in Ireland. Of the 553 prisoners in Mountjoy, 45 are in for life (as of 20 April 2015), meaning that they have committed serious crimes – the majority murder. We were told it was unlikely many would turn up for the talk. But seated in a circle were 17 lifers, two prison guards and Josephine, a friendly, tough-minded young teacher in the prison.

Most of the lifers were in their early 20s, sinewy and physically fit, probably spending long hours in the very popular prison gym. The average sentence that lifers serve is currently 18½ years, so some will have their 40th birthdays here. Most of them had the same sharp inner-city accent that spoke of tough socioeconomic circumstances. Not many spoke, however, preferring to listen.

'Exceptional' lifer

The Parole Board had brought along a guest speaker, Stephen Doyle. This 'exceptional' lifer was convicted of murder at the age of 21 and served a sentence of 13 years, 8 months before being paroled in 2013. On arrival, he was greeted with rowdy punches and hugs from the guards. There was laughter and exclamations of "X is back!", as they bemoaned the return of the latest reoffending prisoner, back in for life.

This was Doyle's first time back in Mountjoy since his release, this time to tell the prisoners about leaving prison and life outside. He remains a lifer, on temporary release. The cold, dull gymnasium was instilled with hope as they peered at their former prison mate.

"It's a real honour and a privilege to come back and see some of you today," said Doyle. He told his story of committing a heinous crime, his deep remorse, and his painful rehabilitation.

> In Ireland, everyone gets life for murder, and there are no particular guidelines as to whether one murder is 'worse' than another

He spoke also about the inertia of prison life, of "doing the same nothing every day" and of psychological distress. "The prison paranoia can creep in. It's an all-male environment; you can get angry."

He tried to encourage the young men: "There are a lot of you lads that are here a long time – you should be moving towards the training unit" [the semi-open prison beside Mountjoy].

Doyle talked about the self-discipline required to earn the trust of the authorities. "You're only as good as the last bad thing you've done. You've to build yourself up for a lot of falls."

This sparked an animated discussion about P19s (disciplinary reports filed when a prisoner breaks the rules). "I have 25 P19s," said one man. "Where am I going to go from here?"

Costello replied, "The first thing you could do would be to reduce those P19s."

One asked: "Some of our cases are more high-profile. Does that matter?"

Another asked: "Is gun crime going to be longer? Is the Parole Board categorising murder?"

It was a good question, as the Parole Board may be receiving formal guidelines on the categories of murder when it comes to reviewing sentences in the future.

One prisoner said it was "disheartening" to be reminded how "exceptional" one prisoner's case was. Stephen Doyle replied: "I was told I'd be the last of my kind. I can't be the last of my kind. It's up to you to make sure I won't be the last of my kind."

Strange hope

Una Costello told the men that is was very easy to become institutionalised, as prisoners tend to lose basic life skills. They have doors opened for them, their food is cooked for them, everything is paid for. She said that, in one prison, a lifers' group had built a grass patch. When the grass grew, the lifers were overwhelmed and sat lovingly touching the blades of grass. There were murmurs of sympathy.

A man agreed it was "hard" seeing only concrete. Would they be able to grow a grass patch in Mountjoy, he asked. "When visitors come in with their kids, we could sit there and have a picnic in the summer."

"Yeah, that would be nice," another agreed.

At the end, there was a round of applause and the room was full of strange hope.

FOCAL POINT

chairman of the board

John Costello is a past-president of the Law Society. He was appointed to the Parole Board in July 2011. With impressive urgency, he has set about improving its procedures.

The most essential reform, he believes, is that the Parole Board should become independent of the Minister for Justice. This was recommended by the Penal Policy Review Group last autumn. At present, the Parole Board advises the minister, who then makes the final decision.

In notorious cases, there is a concern that the minister's decision could be swayed by media opinion, he says, while the Parole Board is trained to look at each case objectively. "Malcolm McArthur was granted parole after 30 years," says John. "Because he was high profile, it possibly affected the decision of former ministers not to grant parole earlier."

Another important reform recommended by the Penal Policy Review Group is that prisoners should be allowed legal representation at their Parole Board meetings.

Costello would like to see the introduction of an incentive to plead guilty. Currently, if someone commits a murder, they are automatically sentenced to life imprisonment. This is the harshest penalty available to judges. The incentive would be for the judge to give a discretionary sentence to those who plead guilty. Figures from the Parole Board show that this makes sense. In their 2013 annual report, the board says that, of the 172 reviews involving a mandatory life sentence for murder, 42 offenders pleaded guilty at trial, while 130 pleaded not guilty. By contrast, in the other 83 cases reviewed involving a discretionary sentence, 68 pleaded guilty. They had an incentive to. Also, the vast majority of offenders readily accept their guilt when placed in custody.

"In Ireland, everyone gets life for murder, and there are no particular guidelines as to whether one murder is 'worse' than another."

A very positive improvement is the presence in each prison of a parole liaison officer to liaise between the Parole Board and the prison. When the Parole Board makes a decision, the liaison officer brings it to the prisoner personally.

"We owe a duty to protect society. When do we take the risk of recommending parole when there is a chance of someone reoffending? If you're looking for a balance between society and an individual prisoner, society must come first."

> If you plead guilty, the judge should be able to give a discretionary life sentence or set a minimum sentence or tariff to be served before a prisoner can be reviewed by the Parole Board

Afterwards, a prisoner came to the table with tea and biscuits. "Just going to take a few of these," he said, filling a plastic bag with leftover custard creams. He introduced himself and gave a sorry description of having murdered a man in his hometown. He spoke quickly and nervously, his head turned away, not looking at me directly.

He talked about the grimness of life behind bars. He never knew his father, but his mother visited him, and the mother of his three children. He had his oldest when he was 15 – "I don't regret it for the world" – and the youngest, three, was born when he was in prison. "She's the little apple of my eye."

He said the gym, art classes and 'Toe by Toe' – student-led tutoring for people with learning disabilities – had been helpful. This man had dyslexia and left school early, but he was hoping to sit his Leaving Cert in prison.

He was crestfallen about a recent P19 he had received for having a 'shiv' – a hand-made knife – in his pocket one day. Everyone carried them, he said.

That's life.

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Winner: Acquisition International Magazine – Trademark Law Firm of the Year 2013 &
Arbitration Law Firm of the Year 2013.

Let the GAMES begin

Abbeyleix-born barrister and sports arbitrator David Casserly has handled some of the highest-profile sports arbitration cases in the world. He also acts for several Champion's League clubs in Italy, Portugal and France. Lorcan Roche plays the man, not the ball

Lorcan Roche is an award-winning freelance journalist

When, in the 2014 World Cup, hapless Uruguay/Liverpool striker Luis Suarez bit Italian defender Giorgio Chiellini, the world's sports media went into overdrive. After all, Suarez had 'form', having previously gnawed PSV Eindhoven's Otman Bakkal in 2011 and Chelsea's Branislav Ivanovic in 2013. Suarez's FIFA-imposed nine-game international suspension and four-month ban from all sporting activities dominated headlines.

When, in the same World Cup, the Greek (now Portugal) coach Fernando Santos received a record FIFA ban (eight international matches and "all football related activities" for four months) for verbally abusing match officials, there was less outcry; this, despite the fact that Santos' ban had arguably greater repercussions, not just for the coach's career, but for justice and any sense of proportion in world football.

Both incidents, however, had a unifying thread that went largely uncommented upon. Enter (quietly and without fuss) Irish barrister and sports lawyer David Casserly, a young man with a passion for sports, a love of adversarial law, and an impressive background in arbitration.

Man with a plan

The Abbeyleix-born UCD Law and Commerce graduate is one of those rare, very fortunate individuals who seem always to have had a life-plan. One of that breed who knows what they want, and how to get it. Sometimes these individuals enter politics – more often they go into business. Generally, they have egos the size of small countries. But Casserly (36) is refreshingly short on ego. In fact, he is so low key, it can (initially) be difficult to locate the zeal behind the Laois man's nonchalant demeanour, his almost laconic style of delivery.

"I always had a fairly good idea of what I wanted to do," he drawls. "I liked law, but I loved sports. What I hoped was I could combine them and do sports arbitration."

Where did that hope spring from?

He laughs: "Well, I knew someone was handling those disputes."

Which disputes?

"Initially, football disputes arising when I was a student. In '86, there was the infamous 'Hand of God', though, as a lawyer, there was little or nothing that could be done about that. But then, in '88, Ben Jonson, Linford Christie and all those boys being done out of a gold medal – that really grabbed my attention. I didn't have any great need or desire to solve the sporting world's problems, but I did have a need and a desire to be involved."

After graduating, he felt arbitration was "the next logical step". He did the diploma in arbitration and identified

at a glance

- Becoming an international sports law arbitrator
- Involvement in several landmark cases
- "You wouldn't go into it, or stay in it, for the money"

> The saying 'justice delayed is justice denied' really applies in sport when bans and suspensions can have immediate, lasting and very damning repercussions. The Olympics might be coming up in six weeks

ALL PICS: DAVID MURPHY

(and here, please note that typical low-key delivery) a "couple of things" that he felt he might need: a specialism in arbitration and a linguistic advantage – so he did a diploma in legal French and further arbitration training in TCD.

He also "knew" he wanted to work internationally, so he qualified as an attorney in New York. (Just like that!) Then, as he describes it, he went out with his pack on his back in search of work.

Casserly's meticulous attention to the demands of his career path (see panel) has ensured not just steady progress, but real success and international standing. But he is also the first to admit that luck played, and still plays, "a huge part". He describes how his internship at one of the world's leading sports arbitration firms was secured partly by his CV and partly because the senior partner he was to be assigned to hailed from Ireland.

Fight for your right

Casserly is quietly forceful. He did not push nor did he pester for his first job. "No, that is not the approach I would have taken. If you are pestering them, you are pestering them. I know now from having people writing to me, week in, week out, that it is not a suitable approach. Those kinds of people know exactly what they are looking for." (Note to potential interns: this is Casserly-speak for "and so do I".)

Does he believe that he's unusual in terms of having a career path that was clearly defined so early on? "Yes."

So, where does that self-belief come from?

"I don't know. But I do know that, even now, I can still feel like something of an imposter when I attend international events and the inevitable question is asked, as it always is, "How did you get into sports law?" Because, obviously, the people at such events would like to get into the area themselves. And the other lawyers present always describe how they were in a family law case, and the husband was a footballer, and then he asked them to represent him in another matter, and then his team mate asked them. Everybody always has that story, or a version of it. And mine is a slightly more contrived route. I decided that it was what I wanted to do, and then I put the building blocks in place – but again, I have to underline the fact that there was a huge element of luck involved."

> **The sports law, the sports arbitration, which is 80% of my work, I do because of a love of the whole process, of the Corinthian values of sport**

After his internship, he contacted the Court of Arbitration for Sport (CAS) in Lausanne. "That," he says with a smile, "was my end-game, and I had no reason to believe at that stage that they would be receptive to any kind of application. But they got back to me and said they would be interested. However, at that stage, I knew I wanted to come back here [to Dublin] and qualify as a barrister, so they agreed to hire me but allow me to qualify as a barrister at King's Inns. I ticked off the last box [of the career plan] and I went to work for them for a few years."

Those few years saw Casserly directly involved in several landmark cases. His first was for Ludger Beerbaum, a German show-jumper who won a team gold medal in the 2004 Olympics, but whose aptly named horse 'Goldfever' later tested positive for a banned steroid. Beerbaum claimed the positive result came from an ointment used to treat the animal's skin irritation. He lost his medal (the German team were demoted to bronze), but it was ruled that the doping was "unintentional", meaning the court respected Beerbaum's story. It was, says Casserly, a "very good introduction" to CAS.

He acted for controversial cyclist Alberto Contador Velasco (one of just six riders to have won all three Grand Tours). The cyclist, who had tested positive for clambutirol, claimed the test result occurred because he had eaten a steak on the tour and that the cow from which the steak derived had been fed animal steroids at some point in its upbringing. (This argument was rejected by the CAS panel.)

But the case he is perhaps most proud of was for the FAI, and footballer Daniel Kearns. In 2010, in concert with Paul Gardiner SC, he was instrumental in reversing the practice of players who were born north of the border being deemed ineligible to play for the Republic. That case set a precedent that would later allow the likes of Darron Gibson, James McLean,

FOCAL POINT

slice of life

David Casserly holds a BCL (Hons) from UCD, a Dip Arb (also from UCD), an FCI Arb (from Trinity), a Master du Droit du Sport (from the Sorbonne) and is also an attorney at law (NY). The latter training he describes, in his characteristic, low-key style, as "a good investment".

He interned at Sherman & Sterling in Paris, probably the world's foremost sports arbitration house, under another Irishman, Peter Griffin. He currently acts for the IRB, FIFA, UEFA, among others, and has acted in Irish Olympic selection/eligibility cases and as a mediator and arbitrator in Irish domestic sports cases.

He is vice-chairman of the Irish Sport Anti-Doping Disciplinary Panel. He has acted for and against leading investment funds, and is currently acting in one of the test cases for third-party ownership in football – the practice that was banned in England after the Tevez/Mascherano affair, but which he says is "still widespread" in many countries.

He has acted in some of the leading international corruption cases on behalf of FIFA, foremost among them the World Cup vote-buying scandal. He acted for UEFA in the Fenerbahce match-fixing affair, and for the IRB in 'Bloodgate'. In the 2009 Heineken Cup against Leinster, Harlequin's wing Tom Williams came off with what turned out to be a faked blood injury to facilitate a tactical substitution. (Williams received a 12-month ban; former director of rugby at Harlequins, Don Richards, a three-year ban; and physio Steph Brennan a two-year ban. The club was also fined €260,000.)

Casserly is a former prosecutor for the FAI and is current prosecutor for UEFA. He has acted in several of the leading Bosman/Article 17 cases, among them for Bangoura and Bresciano (Bosman refers to the landmark cases taken by Belgian footballer Jean-Marc Bosman, where free movement of labour laws were applied to transfers of footballers within the EU.)

He acts for several Champion's League clubs in Italy, Portugal and France, and has been involved in disputes involving leading players such as Pepe, Essien and Cissokho.

He is diplomatic and discreet about the characters involved in these cases. It is clear that the young Irish barrister regards client-confidentiality as sacred.

Casserly is married to a French woman, and lives between Dublin and Lausanne, where the Court of Arbitration for Sport (CAS) is located.

By the time this article is published, he hopes to be a first-time father.

Shane Duffy and Marc Wilson play for the Republic. "The decision came out the day before my wedding, which was kind of cool."

Walk this way

Casserly has a wry sense of humour. He is also very honest about how disappointing it can be to meet sporting heroes in the flesh. He refuses, gracefully, to be pressed on specific names, but smiles as he recalls "a certain French footballer with a reputation for arrogance who most definitely lived up to the reputation, and then some".

By contrast, when he was acting against Arsenal for UEFA (an ironic stroke of luck, since he is a massive Arsenal fan), he found Arsene Wenger lived up to his reputation as being intelligent, articulate, studious, calm.

Almost all his work is adversarial. "A dispute has arisen, and that is when I get the telephone call. By the time I arrive, they are already fighting." When describing the adversarial nature of his work, one senses his admiration for a cogent, well-laid-out argument and his talent for locating lacunae in the arguments of others. As he describes the process, from the initial phone call, to the research, to the interviews, to the legal arguments, one glimpses not just his formidable intellect, but his impressive attention to detail. He is calm, steady and focussed. A bit like Wenger, in fact.

He concedes that there are aspects of the job that are "a little bit demanding" – staying abreast of developments in doping, masking agents, the permutations and combinations of laboratory screening, for example. But he says that, despite the "more imaginative stories" (for example, cyclist Tyler Hamilton's extraordinary claim that he had had a twin in the womb who was lost, and that there had been an 'in utero' blood transfer), the law remains the law (as laid down by the World Anti-Doping Code), no matter if it is a famed cyclist, brilliant footballer or internationally renowned medical expert on the stand.

There is still so much of the ardent young sports fan in him that it is difficult (even for this non-sports-obsessed writer) not to be similarly enthused. The man loves his work, and likes the fact that cases are expedited quickly, far more so, he says, than in commercial arbitration.

"The saying 'justice delayed is justice denied' really applies in sport when bans and suspensions can have immediate, lasting and very damning repercussions. The Olympics might be coming up in six weeks."

When it is pointed out that he has packed a lot of cases into his 36 years, he almost sighs: "Yes, a lot of people say that, but I don't know, it is a somewhat embarrassing kind of thing."

He is not embarrassed to talk about money, in fact, he is glad of the chance to clear up a popular misconception: "You wouldn't go into it, or stay in it, for the money. I have a commercial arbitration business as well, and that is where the real money is. The sports law, the sports arbitration, which is 80% of my work, I do because of a love of the whole process, of the Corinthian values of sport."

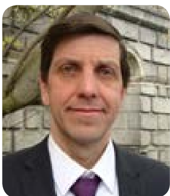
> **'I decided that it was what I wanted to do, and then I put the building blocks in place – but again, I have to underline the fact that there was a huge element of luck involved'**

And Suarez? Casserly acted for the Uruguyan Football Federation, post World Cup. They wanted their client to be able to train (as, indeed, did Barcelona), to be able to play friendly matches. Suarez wanted to be able to watch his family play football. "It was our position that his ban should only have been a competitive match ban. And in that element of the appeal, we were successful."

And the fiery Fernando Santos? Casserly had his ban, which would have effectively cancelled two years of the coach's career, reduced to a two-match deal.

It is increasingly common for solicitors' client accounts to be targeted by online fraudsters. Despite warnings by banks, the Law Society and the gardaí, fraud – and in particular cyber-fraud – appears to be on the increase. Rory O'Neill charges his disrupters

REVENGE OF THE Cybermen



Rory O'Neill is an investigating accountant with the Law Society

Cybercrime is a method of perpetrating a crime through the internet. Accordingly, a cybercriminal can commit a crime, including the theft of moneys, without physical proximity to the victim. A solicitor is a particularly valuable target for a cybercriminal due to the maintenance of substantial sums of moneys in their client accounts. Online banking is a valuable tool for practices; however, it does come with certain risks, making the practice a vulnerable target. Cybercriminals have many tools at their disposal to break into online accounts. Typically, businesses get deceived into giving out sensitive information through 'phishing' attacks. A phishing attack is when seemingly legitimate emails lead to websites where the recipient is asked to enter sensitive information (such as usernames, passwords, credit card data, and so on) or is requested to respond directly with this information. Both the emails and the websites are professionally designed and appear to come from legitimate, trustworthy sources (it should be noted that financial institutions will *not* send you an email asking you to provide any of your personal banking details).

Once cybercriminals have secured the information, they can either target the account to transfer funds out or sell the login details to other cybercriminals. The Law Society is aware of a number of attempts to gain fraudulent access to client moneys.

Cybercrime is rapidly evolving, and staying ahead is very difficult. However, a solicitor should take as many precautions as possible to keep their accounts secure and minimise the risk of attack. The following guide should assist in so doing. The Banking and Payments Federation Ireland has also produced a booklet in relation to all aspects of online fraud, which can be found in the 'publications' section of at www.bpfi.ie.

at a glance

- Solicitors are particularly valuable targets for cybercriminals due to the maintenance of substantial sums of moneys in their client accounts
- Typically, businesses get deceived into giving out sensitive information through 'phishing' attacks
- Financial institutions will *not* send you an email asking you to provide any of your personal banking details. If you receive an email that appears to be from your bank that asks for such details, then treat it with suspicion

Secure your computer

Security software is essential, regardless of what you use your computer for. Ensure all computers in the practice (PCs, file servers, and mail servers) are protected by

"Financial institutions will not send you an email asking you to provide any of your personal banking details"

PIC: iSTOCK

trustworthy internet security business products and are using the latest updates. Consumer solutions (paid or free) are not sufficient to provide adequate coverage and visibility for the security of your business. Also, ensure you have a firewall turned on.

You'll also want to keep your operating system and other software up-to-date to ensure that there are no security holes present.

Which bank is best for you?

Discuss with your bank the type of security they have in place and other best practices it can recommend based on its systems. Try to get a bank account that offers some form of two-factor authentication for online banking. These days many, but not all, banks offer a small device that can be used to generate a unique code each time you log in. This code is only valid for a very short period of time and is required in addition to your login credentials in order to authorise payments from your accounts.

> Try to get a bank account that offers some form of two-factor authentication for online banking

Also, familiarise yourself with the protection and processes the bank provides to business accounts in the event of losses.

Secure access to accounts

It's always best practice to connect to your bank using computers and networks you know and trust. Consider designating a single computer to use as your business's online account machine. This computer should solely be used for online banking and not for other activities such as email, web browsing, or file sharing.

If you need to access your bank online from remote locations, you might want to set up a VPN (virtual private network) so that you can establish an encrypted connection to your home or work network and access your bank from there.

Look for a small padlock icon somewhere on your browser and check the address bar – the URL of the site you are on should begin with 'https'. Both act as confirmation that you are accessing your account over an encrypted connection.

Be cautious if you use internet cafés or a computer that is not your own.

Monitor your accounts

It should go without saying that monitoring your bank statement when received is good practice, as any unauthorised transactions will be identified on a timely basis. Take advantage of the feature in online banking and check your account on a regular basis. Look at every transaction since you last logged in and, if you spot any anomalies, contact your bank immediately.

Always log out

It is good practice to always log out of your online banking session when you have finished your business. This will lessen the chances of falling prey to session hijacking and cross-site scripting exploits.

You may also want to set up the extra precaution of private browsing on your computer or smartphone, and set your browser to clear its cache at the end of each session.

Avoid clicking through emails

Financial institutions will *not* send you an email asking you to provide any of your personal banking details. If you receive an email that appears to be from your bank that asks for such details, then treat it with suspicion, as it may well be a phishing attempt to trick you into handing your credentials over.

Likewise, be aware of links in emails that appear to be from your bank – this is a trick often employed to get you onto a website that looks like your bank. When you log in to 'your account', they will steal your username and password and, ultimately, your money.

It is always safer to access your online bank account by typing the address into your browser directly.

Also, be aware of unsolicited phone calls that purport to be from your bank. While your financial institution may require you to answer a security question, they should never ask for passwords or PINs (they may ask for certain letters or numbers from them, but never the whole thing).

If in doubt, do not be afraid to hang up and then call your bank back via a telephone number that you have independently confirmed as being valid.

If your bank requires a user-generated password in order to access online accounts, make sure you choose one that is strong.

FOCAL POINT

examples of recent frauds

Malware in email

The solicitor received a phishing email that contained malware, providing the criminals with access to the solicitor's system. The email contained the word 'invoice' in the subject field. Coincidently, the solicitor was awaiting an invoice from a supplier. It should be noted that the solicitor did not respond to this email in any way. However, clicking on the email was sufficient to provide the criminals with access to his system. The next time the solicitor tried to access his online banking facility, he was directed to what appeared to be the bank's genuine site. However, it was a fraudulent site that looked authentic. Each time the solicitor entered his login details, he was returned to the same page, rather than gaining access to his accounts. The solicitor contacted his bank and was advised to delete his browsing history, log off, and wait a period before logging back on. The solicitor followed these instructions and what appeared to be an authentic bank message appeared stating that, as a routine security measure, he should use his digipass (the device required to authorise payments) and press continue. The solicitor did this and still did not gain access to his accounts. He has since discovered that this was authorising substantial payments that had been fraudulently withdrawn from his client account.

'Update your details'

Another solicitor received a phishing email that appeared to be from his bank. The name that appeared on the email in the solicitor's inbox was 'Bank of Ireland'; however, when the email was opened, the address of the sender was completely different. The email informed the solicitor that his online account would soon expire and requested the solicitor to follow a link and update his account details. The solicitor, believing that the email was authentic, clicked on the link – which brought him to an authentic-looking website – and updated his details. This provided the criminals with the login details to his online banking, thus facilitating the fraudulent withdrawal from his client account. It should be noted that it was nearly two months after the solicitor had responded to the email that the fraud took place. It is possible that the original criminals who sent the phishing email sold the details they obtained to the criminal who stole the moneys.

PIC: iSTOCK

Beware: online scammers will try to filch your personal details

The best way to achieve this is by making it long and a mix of upper and lower case letters, numbers, and special characters. Always avoid using any common words or phrases, and never create a password that contains your name, initials, or your date of birth. If your bank allows it, change your password every few months.

When setting up online banking, if your bank asks you to provide answers to some standard security questions, remember that the answer you give does not have to be the real one, so make it something else, as if it was a password. Use a password manager if you are concerned about how to remember everything.

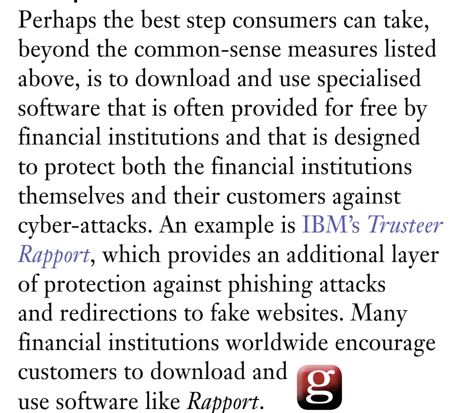
Consider using passphrases instead of passwords. For example, "androids dream of electric sheep" can be converted into a passphrase as "@NDR()!DSdmofecSH33P".

Set up account notifications

Some banks offer a facility for customers to set up text or email notifications to alert them to certain activities on their account. For example, if a withdrawal matches or exceeds a specified amount or the account balance dips below a certain point, then a message will be sent. Such alerts could give quick notice of suspicious activity on your account.

Employee training

Ensure that all employees are aware of the risks and the steps outlined above to decrease the level of risk involved in online banking.



Use specialised software

Perhaps the best step consumers can take, beyond the common-sense measures listed above, is to download and use specialised software that is often provided for free by financial institutions and that is designed to protect both the financial institutions themselves and their customers against cyber-attacks. An example is IBM's *Trusteer Rapport*, which provides an additional layer of protection against phishing attacks and redirections to fake websites. Many financial institutions worldwide encourage customers to download and use software like *Rapport*.

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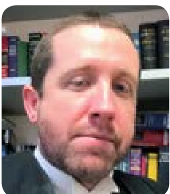
Too much INFORMATION

The EU directive on disclosure provides a clear protocol for criminal disclosure and appears to give rights to an accused that may go beyond those that exist in Irish law, argue Gary Fitzgerald and James Dwyer

Gary Fitzgerald is a Dublin-based barrister. He has a civil litigation practice and is the director of the Irish Centre for European Law



James Dwyer is a practising barrister. A large part of his practice comprises the prosecution and defence of criminal cases at both trial and appellate level

The European Union has entered the arena of the Irish criminal justice system with Directive 2012/13/EU on the right to information in criminal proceedings. The directive forms part of the roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings adopted by the European Council on 30 November 2009.

It provides for the introduction of laws giving effect to various disclosure rights to those in police custody and those charged with criminal offences. The Department of Justice and Equality has taken the view that existing Irish law covers all the rights contained in the directive – a view that we do not share.

Rather than set out the terms of the directive in full, we will focus on what, if any, changes the directive will bring to criminal litigation and the extent to which it will remedy what the Supreme Court as described as the "considerable anomaly" resulting from the absence of a protocol for disclosure in criminal proceedings in this jurisdiction (see the judgment of Hardiman J in *JB v DPP*).

Message in a bottle

Articles 3 and 4 of the directive describe the rights of a person in police custody to be given basic information and a 'letter of rights'. To some extent, these matters are already provided for by the *Custody Regulations* and the Form C72(S) notice of rights supplied to a person in garda custody. However, there are a number of matters that are not provided for by the Irish regulations, which include the following, all of which are set out in article 4 of the directive:

- The right of access to materials in the case,
- The right to be informed of the maximum period for which a prisoner might be detained,
- The right to be told of the possibility under of challenging the lawfulness of the arrest,
- The right to obtain a review of the detention,
- The right to make a request for provisional release.

Article 7(1) provides that when a person is in police custody, they or their lawyers are entitled to be given material in the possession of competent authorities that are "essential to challenging effectively … the lawfulness of the arrest or detention". There is currently no provision for this in the *Custody Regulations*. The meaning of this phrase is difficult to

at a glance

- The EU *Disclosure Directive* provides for the introduction of laws giving effect to various disclosure rights to those in police custody and those charged with criminal offences
- The Department of Justice has taken the view that existing Irish law covers all the rights contained in the directive
- However, it is arguable that there are rights in the directive that go beyond those that currently exist in Irish law, and that the directive should thus be implemented

PIC: PHOTOCALL IRELAND

unpack in a common law context.

The phrase 'competent authorities' is not defined. 'Authority' would suggest an emanation of the State. The use of the adjective 'competent' might suggest a subset of the State, meaning the DPP and An Garda Síochána. In the absence of a definition, it is unclear what this many mean in other circumstances. For example, in *Thompkins v O'Neill*, the High Court accepted the Medical Bureau of Road Safety could not be compelled to disclose material in a summary criminal trial as a non-party. Given its statutory function in the preparation of evidence in drunken-driving prosecutions, it might be difficult to argue that the MBRS is not a 'competent authority' and therefore might now be covered under the directive.

Every breath you take

The most common method for challenging an arrest or detention in this jurisdiction is by way of *voir dire* during a criminal trial, where the fruits of the detention are sought to be tendered in evidence by the prosecution. In those circumstances, an accused will have been given disclosure material as described by article 7(2), which is presumably broader than that covered by article 7(1). The other route commonly adopted in this jurisdiction to challenge the lawfulness of a police detention is by way of a *habeas corpus* application under article 40.4.2 of the Constitution. It is noteworthy that it is possible to obtain discovery within article 40 applications, as per *Duncan v Governor of Portlaoise*.

In Ireland, an accused already has a standalone statutory right to a copy of the custody record under article 24(2) of the *Custody Regulations*. However, this only applies "where a person ceases to be in custody" and is not available to a solicitor during his detention. In Britain, an accused person or his solicitor can inspect the custody record at any stage. Again, this would appear to be an extension of the rights contained under Irish law.

Other documents that might fall into the category of documents disclosable under article 7(1) are certificates of extension made by garda superintendents, court orders granting extensions, warrants and informations under section 10 of the *Criminal Justice Act 1984*, and warrants and informations under section 42 of the *Criminal Justice Act 1999*. Unlike pre-trial disclosure, the information sought cannot be refused on the basis that it may affect the fundamental rights of another individual under article 7(4).

> **Under article 8(2) of the directive, a person in custody has a right to challenge the failure or refusal of competent authorities to provide information**

Under article 8(2) of the directive, a person in custody has a right to challenge the failure or refusal of competent authorities to provide information. The exact form of such a challenge will be considered below.

Can't stand losing you

Article 7(2) provides for a right to pre-trial disclosure not dissimilar to that described by the Irish courts: "Member states shall ensure that access is granted at least to all material evidence in the possession of the competent authorities, whether for or against suspects or accused persons, to those persons or their lawyers in order to safeguard the fairness of the proceedings and to prepare the defence."

The wording of the article appears to limit disclosure to competent State non-parties. Recital 27 to the directive casts a wider net: "Persons accused of having committed a criminal offence should be given all the information on the accusation necessary to enable them to prepare their defence and to safeguard the fairness of the proceedings."

One aspect of disclosure procedure that

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is missing in Ireland is a clear approach to non-party disclosure. In *HSE v White*, the High Court made it clear that the absence of a protocol for non-party disclosure cannot be fixed by a judicially fashioned procedure and that legislative intervention is required. Some protocols have been entered into between the DPP and certain bodies, most notably the Health Service Executive. In practice, it is clear that these protocols are not an adequate substitute for a clear and enforceable non-party disclosure protocol. The directive appears to add little to this difficulty. It may be that a broad definition of 'competent authorities' could require a protocol for disclosure against some State agencies, but the position in relation to private non-parties would appear to remain unaffected.

Many of the rights described by the directive are familiar and echo much of the law in Ireland. There remains a lacuna in the Irish criminal justice system – being the lack of a protocol for criminal disclosure

Walking on the moon

The Department of Justice is of the view that existing legislation covers all of the rights contained in the directive and therefore has not enacted any implementing legislation. It is our view that there are rights in the directive that go beyond those that currently exist in Irish law. Therefore, it will be necessary to examine whether the relevant provisions are capable of having direct effect – that is, whether they can be relied upon in the Irish courts by litigants. The European Court of Justice has set out a number of criteria that must be met in order for any directive to have direct effect:

- The deadline for transposition must have passed,
- The directive is being enforced against the State or an emanation of the State,
- The language of the directive is clear and precise, and
- The rights contained in the directive are not dependant on any further legislative action by either the European Union or the member state.

The first criterion is clearly met, as the deadline for implementation contained in the directive was 2 June 2014 and the gardaí, in carrying out a policing function, are an emanation of the State, as is the DPP.

In analysing whether the language of the directive is clear and precise, as required by the third criterion, it is not necessary to consider the entirety of the directive, just those parts that are being relied upon. Articles 3, 4, 7 and 8 are set out in unambiguous terms and clearly fulfil this criterion.

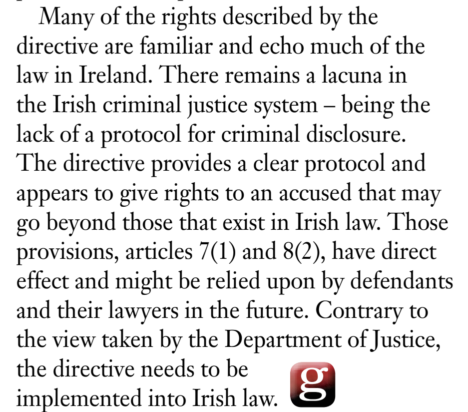
The final issue to be considered is whether the rights contained in those articles are dependent on any further legislative measures by the member state. This criterion is met for the rights contained in articles 3, 4 and 7, but article 8 is more problematic. It places an obligation on Ireland to ensure that there is a right to challenge, in accordance with procedures in national law, the refusal to disclose.

Does that mean that this right is dependent on further action by Ireland? In *Reyners*, the ECJ examined the operation of article 49 TFEU and said that, once there was an obligation on the member state to achieve a precise result, the fact that the member state had to take steps to achieve that result did not deprive the article of direct effect. Therefore, article 8 has direct effect.

Wrapped around your finger

If the gardaí refuse to provide information as required under article 7(1), the suspect or accused person has a right to challenge this refusal under article 8(2). Both articles have direct effect, but Ireland has not yet put in place a procedure for challenging the refusal. In the absence of EU procedural rules on how EU rights are to be protected, it is for the national legal system to protect those rights (see *Rewe-Zentralfinanz*). It is submitted that the correct procedure would be to bring a *habeas corpus* application in addition to issuing a plenary summons in the High Court. The remedies sought under the plenary proceedings would be declarations that the suspect or accused person has a right to the information and that it should be provided in compliance with the directive.

Many of the rights described by the directive are familiar and echo much of the law in Ireland. There remains a lacuna in the Irish criminal justice system – being the lack of a protocol for criminal disclosure. The directive provides a clear protocol and appears to give rights to an accused that may go beyond those that exist in Irish law. Those provisions, articles 7(1) and 8(2), have direct effect and might be relied upon by defendants and their lawyers in the future. Contrary to the view taken by the Department of Justice, the directive needs to be implemented into Irish law.



look it up

Cases:

- *Duncan v Governor of Portlaoise* [1997] 1 IR 558
- *HSE v White* [2009] IEHC 242
- *JB v DPP* [2006] IESC 66
- *Thompkins v O'Neill* [2010] IEHC 58

Legislation:

- *Criminal Justice Act 1984*
- *Criminal Justice Act 1984 (Treatment of Persons in Custody in Garda Síochána Stations) Regulations 1987* (SI 119/1987)
- *Criminal Justice Act 1999*
- Directive 2012/13/EU (the *Disclosure Directive*)

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Making a STATEMENT

The *Companies Act 2014* is a mammoth piece of legislation. Sean Nolan looks at its implications for the preparation of a company's financial statements and the related audit and filing requirements

Sean Nolan is a partner in the corporate department of Kerman & Co Solicitors, Dublin, and a member of the Business Law Committee

In addition to the other significant changes wrought by the *Companies Act 2014*, and referred to in previous articles (March and April *Gazettes*), the new legislation consolidates and reforms the myriad of existing acts and regulations relating to a company's obligation to prepare, audit and file its financial statements. While the focus of the *Companies Act* in this area has predominantly been on consolidation rather than reform, it nonetheless introduces some beneficial changes. This article focuses on part 6 (which comprises 135 sections), and schedules 3, 4 and 5, and looks at their implications from a practitioner's perspective.

Structure of part 6

Following a comprehensive 'self-standing' interpretation section, in which the principal accounting concepts are most helpfully defined, the legislation proceeds to deal sequentially with a private company's obligations to keep accounting records, prepare statutory financial statements both for single entities and groups, the directors' report, laying the financial statements before the members, the audit of the financial statements, and the filing of corporate particulars with the Registrar of Companies in an annual return. The net result is that, whatever the practitioner's interest in this area, it is possible to readily locate the relevant provisions in one place without the need to cross refer into other source materials.

Reporting frameworks

The *Companies Act* preserves the choice for companies whereby they may elect to prepare their financial statements under either of two financial reporting frameworks. The first framework is the *Companies Act* financial statements regime under section 291, whereby a company can prepare a balance sheet as at the end of the financial year and a profit-and-loss account for the financial year, subject to an overriding obligation that they must give a 'true and fair view' of the assets, liabilities and financial position of the company. The format, content and accounting principles for such accounts are set out in considerable detail in schedules 3 and 4. Alternatively, a company can elect to prepare its financial statements under the International Financial Reporting Standards framework (IFRS). Where the latter option is chosen, section 292 disapplies the regime set out in schedules 3 and 4 and defers to the format, content, and accounting principles set out in IFRS rather than in the *Companies Act*. Since 2005, all publicly traded companies have been required to prepare their financial statements under IFRS.

DACs, PLCs, CLGs, unlimited companies, external companies, traded companies, and investment companies

at a glance

- The new *Companies Act* consolidates and reforms the myriad of existing acts and regulations relating to a company's obligation to prepare, audit and file its financial statements
- The act significantly increases the penalties where a company and its directors contravene the obligation to keep accounting records
- The methodology whereby a company may comply with its obligation to send to its members and debenture holders the financial statements, directors' report, and auditor's report has been streamlined and modernised

PIC: NUALA REDMOND

> 'Disclosure now extends to the remuneration paid to persons 'connected with' a director, being spouses, civil partners, parents, siblings and children, bodies corporate controlled by a director, trustees and partners'

I'm a cat, don't ya know'

are subject to modified and/or enhanced obligations concerning their financial statements, and the modifications and enhancements to the regime under part 6 for such companies are contained in the dedicated parts of the *Companies Act* applicable to such companies in parts 16 and following.

Accounting records

The new and recast obligation of a company to keep, establish, and maintain adequate 'accounting records' replaces the former regime, under which a company was required to maintain 'books of account'. The opportunity has also been taken to clarify who has the right to access the accounting records. Section 284 preserves the right of the officers to access the accounting records at all reasonable times without charge. This right is also extended to include other persons, such as the auditors under section 386. However, the *Companies Act* clarifies a hitherto grey area by providing that members (other than those who are directors) have no right of access to inspect the financial statements or accounting records of a company except where conferred by statute, by the company's constitution, or where authorised by the directors or by the company in general meeting. The directors are now subject to a statutory duty to consider if this limited access regime should be relaxed.

The act significantly increases the penalties where a company and its directors contravene the obligation to keep accounting records. For example, where a contravention has contributed to a company's inability to pay its debts or has resulted in substantial uncertainty as to the assets and liabilities of a company that was subsequently wound up, the offence is elevated to a category 1 offence (which carries a maximum fine of €500,000 and imprisonment for ten years).

> **'Chapter 6 consolidates the obligations of a company to disclose in the notes to its statutory financial statements the directors' remuneration'**

Financial year

The practice whereby companies may regularly change the length of their financial year has been a cause for concern for some time. Subject to limited exceptions, a company may now only change its financial year once in every five years, and it may no longer exceed 18 months. Save where there are substantial reasons not to do so, a holding company is now required to ensure that the financial year-end dates of each of its subsidiary undertakings included in its consolidated group accounts coincide with the year end of the holding company. These changes will facilitate the comparative review of a company's financial statements.

Audit committees

Section 167 requires that all public companies and other companies having a balance sheet total of over €25m and a turnover of greater than €50m shall either establish an audit committee or explain in the directors' report the reasons why an audit committee has not been established. This obligation applies on a 'comply or explain why' basis. While audit committees have been a feature of listed company and State sector corporate governance for many years, audit committees are now placed on a statutory footing. The members of a statutory audit committee are required to include at least one independent non-executive director who has the requisite degree of independence so as to be able to contribute effectively to the functions of the committee and who has "competence in accounting or auditing". Such a director must not have and, at no time during the three years preceding his or her appointment have had, a material business relationship or employment with the company. The responsibilities of an audit committee include the monitoring of the financial reporting process, the effectiveness of the company's systems of internal control, internal audit and risk management, the monitoring of the statutory audit of the company's financial statements, and the review and monitoring of the independence of the company's auditors.

Information to auditors

The *Companies Act* includes measures to further strengthen the integrity of the audit process. For example, section 330 introduces a new obligation on directors, whereby the directors' report must include a statement that, so far as each director is aware, there is no relevant audit information of which the statutory auditors are unaware and that each director has taken all the steps that he ought to have taken as a director to make himself aware of the relevant audit information and to establish that the auditors are aware of that information.

Publication of financial statements

The methodology whereby a company may comply with its obligation to send to its members and debenture holders the financial

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FOCAL POINT

directors' compliance statements

Under section 225, all public companies (excluding investment companies) and those private companies, DACs, and CLGs having a balance-sheet total greater than €12.5m and a turnover greater than €25m, must include in their directors' report attached to the financial statements, commencing on or after 1 June 2015, a directors' compliance statement. Unlimited companies are excluded from the obligation. A directors' compliance statement is an acknowledgement that the directors are responsible for securing the company's compliance with tax law, those company law obligations where failure to comply would result in the commission of a category 1 or category 2 offence, or a serious market abuse or prospectus offence, and that certain things have been done respecting compliance with those obligations or, if they have not been done, specifying the reasons why they have not been done. This requires the directors to confirm that they have prepared (or, if not, the provision of an explanation as to why not) a compliance policy statement setting out the company's policies regarding compliance by the company with the above obligations, the putting in place of appropriate arrangements or structures that are designed to secure material compliance with those obligations, and conducting a review during the financial year of any arrangements or structures put in place to ensure material compliance with the company's obligations. The new requirement operates on a 'comply or explain' basis – it does not in fact require those arrangements to be put in place. Thus, it is open to the directors to concede that they have not discharged the obligation, provided that their report specifies the reasons therefor. It will be interesting to see whether any companies seek to avail of this opt-out and explain facility. It is considered that impecuniosity and/or an insufficiency of resources is unlikely to justify an opt-out due to the fact that section 225 only applies to medium and large-scale companies.

FOCAL POINT

disclosure of remuneration

Chapter 6 (of part 6) consolidates the obligations of a company to disclose in the notes to its statutory financial statements the directors' remuneration. Disclosure now extends to the remuneration paid to persons "connected with" a director, being spouses, civil partners, parents, siblings and children, bodies corporate controlled by a director, trustees, and partners.

statements, directors' report, and auditor's report has been streamlined and modernised. The obligation to send out those documents can now be satisfied where the company and the entitled recipient have agreed that access to the documents may be made available on a website instead of their being sent by conventional means, so long as the entitled recipient has been notified of the publication of the documents on the website and how they may be accessed. Where such documents are posted to a website, they will be treated as having been sent to the persons entitled not less than 21 days before the date of the AGM, provided that they have been published on the website throughout the 21-day period. The requirement to send out or publish the financial statements during the requisite 21-day period can now be waived where all the members so agree.

Non-compliant financial statements

Under the former regime, where financial statements were approved and filed with the Registrar of Companies, no provision existed whereby they could be corrected. Chapter 17 introduces a comprehensive procedure whereby financial statements that do not comply with the requirements of the *Companies Act* or, where applicable, article 4 of the *IAS Regulation*, may be revised and delivered to the Registrar of Companies subsequently, notwithstanding that they were laid before the members at the AGM and filed.

Exemptions

Chapter 15 introduces changes to the regime whereby a company can avail itself of an exemption from having its statutory financial statements audited. A company may now avail itself of the exemption where it fulfils any two or more of the following conditions:

- The amount of its turnover does not exceed €8.8m,
- Its balance sheet does not exceed €4.4m, or
- The average number of its employees does not exceed 50.

Under the former law, in order to qualify for the exemption, a company had to satisfy all three of those requirements. The new provisions also remove the requirement that a company has to satisfy the conditions both in the current and former financial year. The audit exemption has also been extended to include companies limited by guarantee (CLGs), unless any one member objects.

Chapter 16 also introduces a new and separate audit exemption for those dormant companies that form part of a group. In order to qualify, the company must not have had any significant accounting transaction in the relevant financial year, and its only assets and liabilities are represented by shares or an amount due to or from other group undertakings.

Small and medium-sized companies may avail of an exemption whereby only limited abridged financial and accounting information is required to be attached to its annual return and filed with the Registrar of Companies. A company is now regarded as a 'small' company if it fulfils two or more of the following requirements:

- Its turnover does not exceed €8.8m,
- Its balance sheet does not exceed €4.4m, or
- The average number of its employees does not exceed 50.

The financial thresholds for a 'medium' company have been increased from a turnover limit of €15.2m to €20m and a balance sheet limit of €7.6m to €10m, and the number of its employees must not exceed 250.

Further changes

In addition to the above changes, the long-awaited *Accounting Directive* (2013/34/EU) of 26 June 2013 is required to be transposed by member states by 20 July 2015. This will replace the *Accounting Directives* of 1978, 1983 and 2006 and will remove the current exemption whereby certain unlimited companies are exempt from the obligation to file their financial statements with the Registrar of Companies. Following an extensive consultation process by the Department of Jobs, Enterprise and Innovation earlier in the year, practitioners can look forward to the *Companies (Amendment) Act 2014*, which will implement the directive by mid-summer.

look it up

Legislation:

- *Accounting Directive* (2013/34/EU)
- *Companies Act 2014*

Literature:

'You must comply' (directors' compliance statements), *Law Society Gazette*, May 2014, p46

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- Part 3 deals with regulatory bodies such as the Advertising Standards Authority of Ireland.

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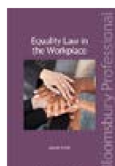
Equality Law in the Workplace
Alastair Purdy



This practical new book provides employers with a guide to equality issues that takes you through the recruiting process, the term of the person's employment, and the period after they have left. It alerts you to all the areas you need to consider, and will guide you through the equality issues that occur on a daily basis.

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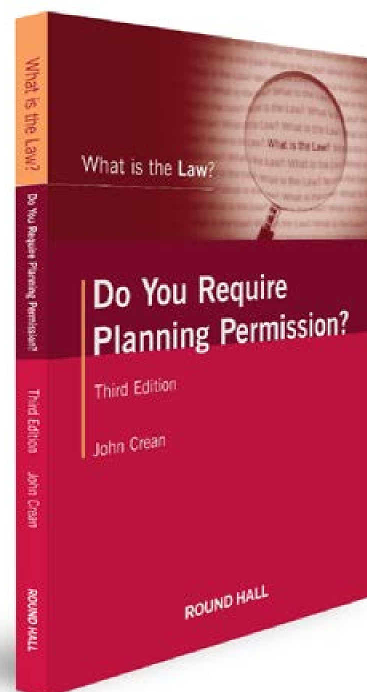
Do You Require Planning Permission?

John Crean. Round Hall (2014), www.roundhall.ie. ISBN 978-0-4140-369-56. Price: €45 (incl VAT).



Fortuitously, I was asked to review this book when faced with a question of whether planning permission was required for a particular development. So before starting my review, I put the book to the test. The index is excellent, and I navigated immediately to the relevant page, which provided the answer to my question in a clear manner. The simple joy of finding the answer to a question is not something to be underestimated in the complex area of planning law.

The book is part of the 'What is the Law?' series of handbooks produced by Roundhall. The series is designed to explain the fundamentals of a particular subject in clear, straightforward language, avoiding legalese and technical jargon. It certainly passes the 'Ronseal' test of 'doing exactly what it says on the tin'! Written by John Crean, a chartered town planning consultant, the book is a reference guide to the common exemptions from planning permission under the *Planning and Development Regulations 2001* (as amended) and the conditions that must be fulfilled in order to benefit from these exemptions. The book also comments on the relevant provisions of the *Planning and Development Act 2000* (as amended).

The book follows the layout of the 2001 regulations. Chapter 1 deals with general development exemptions, chapter 2 with exemptions for advertisements and advertising structures, and chapter 3 with exemptions for rural developments. Helpfully, in every chapter, each class of development is addressed in the same order as it occurs in the 2001 regulations.

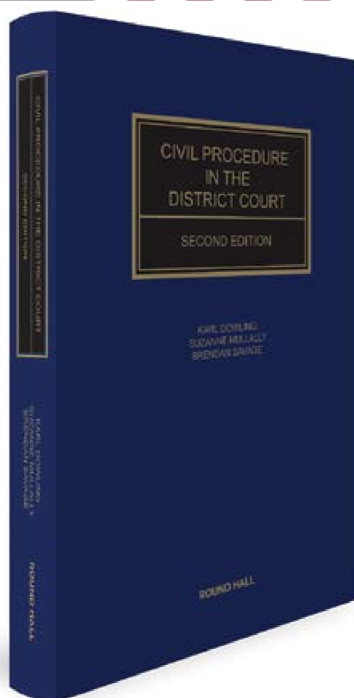
Another helpful feature is the inclusion of drawings and simple illustrations to clarify the application of specific exemptions. Where relevant, specific exemptions also contain notes that are useful aids in determining the application of the exemption in practice and in highlighting common scenarios where the exemption would not apply.

The appendix to the book points the reader to the section 5 reference procedure, a useful innovation of the *Planning and Development Act 2000*, pursuant to which a planning authority can be formally requested to give a declaration as to whether a proposed development is exempt from the need to obtain planning permission. The appendix also contains some commentary on regulation 9 of the 2001 regulations, which sets out a number of specific instances where planning permission is required. In addition, the appendix contains a section on important definitions. Finally, and perhaps most importantly, there is the index – the map to finding the answers to the question of the book's title.

This book contains the appropriate health warnings: that it is intended as a general guide, not as a substitute for the appropriate professional advice and consultation with relevant planning authorities. One perhaps unjustified criticism (in light of the book's stated brief to avoid legalise) is that it does not set out the amendments that have been made to the relevant provisions of the 2001 regulations or the 2000 act. Rather, the introduction states that the book is based on the 2001 regulations as they stood in mid-2013. The inclusion of such a table would be of benefit in future editions, as it would help busy practitioners to quickly verify, by reference to the statute book, the excellent explanations provided in this book.

Heather Murphy is a solicitor in the project, energy and construction group at Matheson.

Civil Procedure in the District Court



Karl Dowling, Suzanne Mullally and Brendan Savage. Round Hall (2014), www.roundhall.ie. ISBN: 978-0-4140-369-70. Price: €225 (hardback, incl VAT).

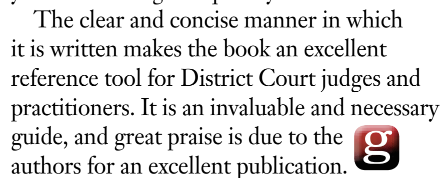
The second edition of *Civil Procedure in the District Court* provides an authoritative text that will be especially welcomed by practitioners.

The book was published in late 2014 and provides a useful guide to court practice and procedure in civil matters under the new *District Court Rules*, which came into effect on 3 February 2014. These rules brought in sweeping changes to practice and procedure in civil matters.

The book is laid out in a logical and coherent format. The new rules provide for new procedures and new forms of pleadings and, in each chapter, the authors take you through the new formats.

The authors trace the various practice areas in this work, beginning with jurisdiction and commencement of proceedings, through to trial and evidence. There are also chapters on appeals and the issue of costs.

The authors have also provided comprehensive chapters on small claims procedure, liquor licensing, family law, and landlord and tenant, with the final chapter focused on a variety of other proceedings of a civil nature – including fisheries, gaming and lotteries, control of dogs, and food safety.



In each chapter, the authors are meticulous in examining the issues with recourse to legislation, practice directions, and reference to reported and unreported cases. The layout and division of the book make it easy to identify and locate the topic you are looking for quickly.

The clear and concise manner in which it is written makes the book an excellent reference tool for District Court judges and practitioners. It is an invaluable and necessary guide, and great praise is due to the authors for an excellent publication.

Joyce A Good Hammond is a partner in Hammond Good in Mallow, Co Cork, and is a member of the Law Society's Conveyancing Committee.

new books available to borrow from the library

- Berlins, Marcel and Clare Dyer, *The Law Machine* (5th ed; Penguin, 2000)
- Blake, Susan, *A Practical Approach to Effective Litigation* (8th ed; OUP, 2015)
- Carey, Peter, *Data Protection: a Practical Guide to UK and EU Law* (4th ed; OUP, 2015)
- Cordell, Neville, *Intellectual Property and the Internet* (Globe Law & Business, 2014)
- Coulson, Peter, *Coulson on Construction Adjudication* (3rd ed; OUP, 2015)
- Levaggi, Peter and Roger Elford, *Property Insolvency* (2nd ed; Jordan, 2015)
- McParland, Michael, *The Rome I Regulation on the Law Applicable to Contractual Obligations* (OUP, 2015)
- Mullan, Mark, *Running a Charity* (4th ed; Jordan, 2015)
- Rothwell, Donald R *et al*, *The Oxford Handbook of the Law of the Sea* (OUP, 2015)
- Semple, Abby, *A Practical Guide to Public Procurement* (OUP, 2015)
- Slater, Laura (ed), *Leadership in Law Firms: an Expert Guide* (Ark Group, 2015)
- Soderland Sause, Susan, *Domain Names: Strategies and Legal Aspects* (Sweet & Maxwell, 2015)
- Wood, Helen, Cohabitation: Law, Practice and Precedents (6th ed; Jordan, 2015)

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council report

Council report – 6 March 2015

Legal Services Regulation Bill

The Council noted that another scheduled date for resumption of the report stage of the bill in Dáil Éireann had been missed, and it was now scheduled to resume on 21 April 2015. The director general noted that October 2015 would bring the fourth anniversary of the publication of the bill.

Collapse of Setanta Insurance

The Council noted correspondence from the Society with the Minister for Transport, the MIBI, and the President of the High Court seeking to establish responsibility for the approximately 1,700 valid claims against Setanta Insurance. The Council discussed the steadfast refusal of the MIBI and the Department of Transport to accept liability and the continuing frustration of the profession and their clients arising from the uncertain situation that had been ongoing now for many months. The Council expressed concern that the profession was largely unaware of the persistent efforts being made by the Society to have the matter resolved. However, the volatility of the situation and a desire not to provide misinformation and confusion had prevented any meaningful communication with the profession. It was agreed that a comprehensive *eBulletin* would issue once matters became clearer.

Medical negligence litigation

The Council considered a report from the Law Society Small Expert Group on Medical Negligence Litigation Reform, which had been prepared in response to a report and campaign by the Medical Protection Society against medical negligence litigation and legal costs. The expert group comprised Eamon Harrington (chairman), Michael Boylan, Ernest Cantillon, Catherine Tarrant and Colette Reid, with input from Cormac Ó Culáin, public affairs executive. The Council noted that the president and Ernest Cantillon had represented the Society at hearings by the Oireachtas Health Committee on the issue.

Report on Society Committees

The Council received a presentation on a report by Symbio Business Solutions on the Law Society committees. The report had been initiated as a consequence of recommendation 20 of the *Future of the Law Society Task Force Report*, which required the Society to "engage a facilitator to assist in objectively reviewing the complex resource that is the Society's committee service". Following interviews with the chairmen, vice-chairmen and secretaries of the Society's committees, together with a number of lay members and a focus group of non-committee members, Symbio had produced a comprehensive report, which included 15 recommendations under four headings: strategy, appointments/roles and responsibilities, work allocation, and communication.

The Council noted that the report was highly-complimentary about the committee resource, as follows: "As consultants who have had a variety of experience working with voluntary and membership-based organisations, we found the level of voluntary involvement of members in the committee structure to be exceptionally high and significantly better and in more robust shape than the norm. This is a genuine strength that many other bodies would dearly wish to have and, as such, it should be treasured and protected by the Society, and nothing should be done to put that huge commitment to voluntarism within the Society at any risk.

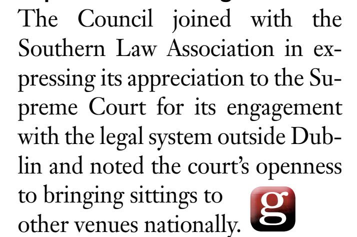
"It is clear that the Society finds itself in a much stronger position in terms of the effectiveness of its committee structure than is the case for many other organisations of this type. Therefore, any changes recommended are more about moving the current structure from good to great, rather than about tackling a range of significant weaknesses."

It was agreed to circulate the report to all committees for feedback on its content and recommendations and to discuss the results of that consultation process at the July Council meeting.

Regional cluster events

The Council congratulated the Education Department on the highly successful cluster events held at six locations around the country during 2014, in which over 1,100 solicitors participated. The events provided an opportunity for colleagues to meet their CPD obligations, but they also provided a valuable opportunity for Council members to engage with practitioners.

Supreme Court sitting in Cork

The Council joined with the Southern Law Association in expressing its appreciation to the Supreme Court for its engagement with the legal system outside Dublin and noted the court's openness to bringing sittings to other venues nationally. 

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PRACTICE NOTE
CONVEYANCING COMMITTEE

Constitution for owners' management companies post 1 June 2015

The Conveyancing Committee has issued a precedent form of memorandum and articles of association for an owners' management company (OMC) under the *Multi-Unit Developments Act 2011*. It is available on the Law Society website. However, this precedent will no longer be appropriate for use in incorporating new OMCs following the commencement date for the *Companies Act 2014*, anticipated to be 1 June 2015. Practitioners currently setting up schemes for new multi-unit developments might consider having the OMC incorporated before that date.

The committee is arranging to have drafted a precedent constitution for an OMC under the *Companies Act 2014* that will comply with the *Multi-Unit Developments Act 2011* and will publish it on the Law Society's website as soon as it is available.

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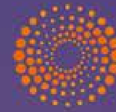

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legislation update

10 March – 13 April 2015

Details of all bills, acts and statutory instruments since 1997 are on the library catalogue – www.lawsociety.ie (members' and students' area) – with updated information on the current stage a bill has reached and the commencement date(s) of each act. All recent bills and acts (full text in PDF) are on www.oireachtas.ie and recent statutory instruments are on a link to electronic statutory instruments from www.irishstatutebook.ie

ACTS

Irish Collective Asset-Management Vehicles Act 2015
Number: 2/2015
Provides for the creation, operation and regulation of bodies corporate to be known as Irish Collective Asset-Management Vehicles (ICAVs) and provides for related matters.
Commencement: 12/3/2015

Garda Síochána (Amendment) Act 2015
Number: 3/2015
Amends the powers and functions of the Garda Síochána Ombudsman Commission (GSOC). Provides primarily for the inclusion, for the first time, of the Garda Commissioner within the investigative remit of GSOC; the conferral of additional policy powers on GSOC for criminal investigation purposes; greater autonomy for GSOC in examining garda practices, policies and procedures; and the ability of the Garda Síochána Inspectorate to carry out inspections on its own initiative without the need for the prior approval of the Minister for Justice and Equality. Amends the *Garda Síochána Act 2005*, the *Interception of Postal Packets and Telecommunications Messages (Regulation) Act 1993* and the *Criminal Justice (Surveillance) Act 2009*, and provides for related matters.
Commencement: Commencement order(s) required as per s14(4) of the act

Public Health (Standarised Packaging of Tobacco) Act 2015
Number: 4/2015
Provides for standardised packaging of tobacco and tobacco products, gives effect in part to Directive 2014/40/EU, and provides for related matters.
Commencement: Commencement order(s) required as per s(3) of the act

Regulation of Lobbying Act 2015
Number: 5/2015
Provides for establishing and maintaining a register of persons who carry on lobbying activities. Provides for a code of conduct relating to carrying on lobbying activities. Imposes restrictions on involvement in lobbying by certain former designated public officials. Amends the *Ethics in Public Office Act 1995* and provides for related matters.
Commencement: Commencement order(s) required as per s1(2) of the act

Misuse of Drugs (Amendment) Act 2015
Number: 6/2015
Amends the *Misuse of Drugs Act 1977*, confirms certain statutory instruments, and provides for related matters.
Commencement: 12/3/2015

Betting (Amendment) Act 2015
Number: 7/2015
Provides a regulatory system for remote bookmakers and betting intermediaries (betting exchanges) offering betting services in Ireland, regardless of location. It provides for equal treatment of all bookmakers and betting exchanges, including bodies corporate, offering services in Ireland and will bring into the licensing and taxation regime all remote bookmakers and betting intermediaries (betting exchanges). Ensures that all businesses offering betting services from Ireland or to persons in Ireland are regulated appropriately. Amends the *Betting Act 1931*, the *Finance Act 2002*, and provides for related matters.
Commencement: Various – see act

Redress for Women Resident in Certain Institutions Act 2015
Number: 8/2015
Provides for health services to be made available without charge to women who were resident in Magdalen laundries and in similar laundries operated at St Mary's Training Centre, Stanhope Street, Dublin 7, and in the House of Mercy Training School, Summerhill, Wexford. Also provides that such women will not be required to pay the statutory charge for public acute hospital in-patient services and that the *ex gratia* payments will not be included in the financial assessment of means under the *Nursing Homes Support Scheme Act 2009*.
Commencement: Commencement order(s) required as per s6(2) of the act

Children and Family Relationships Act 2015
Number: 9/2015
Reforms and updates family law to address the needs of children living in diverse family types. Provides for certain matters relating to donor-assisted human reproduction and the parentage of children born as a result of donor-assisted human reproduction procedures and provides for the establishment of a National Donor-Conceived Person Register. Amends the *Guardianship of Infants Act 1964* to provide for children living with cohabiting parents or civil partners or with a parent and a step-parent, civil partner, or the parent's cohabiting partner. Also provides for children living with another relative or with a person other than a parent. It sets out the provisions concerning guardianship, custody, and access for each of these situations. Amends *the Family Law (Maintenance of Spouses and Children) Act 1976*, the *Family Law Act 1995*, and the *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010* to provide for a potential maintenance liability in respect of the child on a civil partner or a parent's cohabiting partner where that person is also a guardian of the child. Amends the *Adoption Act 2010* to extend its provisions to civil partners and cohabiting couples. Civil partners and cohabiting couples, where the latter have lived together for three years, will have the right to apply jointly to adopt a child. Amends the *Status of Children Act 1987*, the *Succession Act 1965*, the *Civil Registration Act 2004* and other enactments, and provides for related matters.
Commencement: Various – see act

SELECTED STATUTORY INSTRUMENTS

Water Services Act 2013 (Prescribed Persons) Order 2015
Number: SI 84/2015
Prescribes An Post and approved housing bodies as relevant persons for the purposes of section 26 of the *Water Services Act 2013*.
Commencement: 10/3/2015

Freedom of Information Act 2014 (Commencement Date for Certain Bodies) Order 2015
Number: SI 103/2015
Provides a later commencement date under section 1(3)(b) of the *Freedom of Information Act 2014* for the bodies listed in the schedule to the order. These bodies will now become subject to FOI under the act on 14 October 2015, rather than on the standard commencement date for new FOI bodies of 14 April 2015 (six months from enactment) as provided for under the act.
Commencement: see above

A list of all recent acts and statutory instruments is published in the free weekly electronic newsletter LawWatch. *Members and trainees who wish to subscribe, please contact Mary Gaynor, m.gaynor@lawsociety.ie.*

Solicitors Disciplinary Tribunal

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

In the matter of David Montgomery, a solicitor practising as managing partner in the practice of Thomas Montgomery & Sons, 5 Anglesea Buildings, Dun Laoghaire, Co Dublin, and in the matter of the *Solicitors Acts 1954- 2011* [7186/DT101/13]
Law Society of Ireland (applicant)
David Montgomery (respondent solicitor)

On 8 July 2014 and 28 October 2014, the Solicitors Disciplinary Tribunal sat to consider a complaint against the respondent solicitor and found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

1) Allowed 12 debit balances to be extant totalling €56,889 as of 30 June 2012, in breach of regulation 7(2)(a) of the *Solicitors Accounts Regulations*,
2) Discharged a client's tax liability of €750,000 on 1 September 2011 from the client bank account when not in funds to do so, causing a deficit in relation to the client funds of the practice and in breach of regulations 7(1), 7(2) and 8(4) of the *Solicitors Accounts Regulations*,
3) Was in breach of regulation 12(2) of the *Solicitors Accounts Regulations* by his failure to maintain books of account at all times that showed the true financial position in relation to the solicitor's transactions with client moneys,
4) Transferred funds between unrelated client ledger accounts, in breach of regulation 9 of the *Solicitors Accounts Regulations*, including a transfer of €250,000 recorded to one ledger and then subsequently transferred to another ledger account,
5) Was in breach of regulation 7(1)(a)(iii), regulation 8(4) and regulation 11(3) of the *Solicitors Accounts Regulations* by transferring fees to the office bank account between 14 September 2011 and 9 September 2012 when not in funds to do so,
6) Was in breach of regulation 10(5) of the *Solicitors Accounts Regulations* by allowing the existence of 13 credit balances totalling €105,553.52 on the office ledger,
7) Was in breach of regulation 10(4) of the *Solicitors Account Regulations* by his failure to record as a debit on the office side of the relevant client ledger account the amount of professional fees,
8) Was in breach of regulation 8(3)(b) of the *Solicitors Accounts Regulations* by including incorrect details in the payee field of cheques used to purchase drafts,
9) Was in breach of SI 372 of 2004 in relation to accounting to the clients for interest earned on €1.5 million held since August 2010,
10) Wrongly transferred €78,500 from the client account to the office account in October/November 2010 to pay the partners' tax liability, in breach of regulation 8(4) of the *Solicitors Accounts Regulations*.

The tribunal ordered that the respondent solicitor:

1) Do stand censured,
2) Pay a sum of €15,000 to the compensation fund,
3) Pay the whole of the costs of the Society, to be taxed by a taxing master of the High Court in default of agreement.

In the matter of Oliver Hanrahan, solicitor, formerly practising as Hanrahan Rynne Solicitors, 3B Riverside Business Park, Ennis, Co Clare, and in the matter of the *Solicitors Acts 1954- 2011* [9381/DT131/13 and High Court record 2014 no 148 SA]
Law Society of Ireland (applicant)
Oliver Hanrahan (respondent solicitor)

On 18 June 2014, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

1) Failed expeditiously, within a reasonable time, or at all to comply with an undertaking given by him in respect of named clients over property at Lisnagry, Co Clare, to EBS Building Society Ltd on 15 September 2004,
2) Failed to respond adequately or at all to the complainant's correspondence in respect of his undertaking given on behalf of named clients over property at Lisnagry, Co Clare, to EBS Building Society Ltd on 15 September 2004 and, in particular, letters dated 24 May 2010, 27 September 2010, 6 May 2011, 25 October 2011, 21 November 2011 and 12 December 2011 respectively,
3) Failed to comply with the directions of the Complaints and Client Relations Committee meeting of 4 September 2012 in respect of an undertaking given by him on behalf of named clients over property at Lisnagry, Co Clare, to EBS Building Society Ltd on 15 September 2004,
4) Failed to comply adequately or at all with the directions of the Complaints and Client Relations Committee meeting of 16 October 2012 in respect of an undertaking given by him on behalf of named clients over property at Lisnagry, Co Clare, to EBS Building Society Ltd on 15 September 2004,
5) Failed to comply adequately or at all with the directions of the Complaints and Client Relations Committee meeting of 11 December 2012, despite being granted a stay in respect of an undertaking given by him on behalf of named clients over property at Lisnagry, Co Clare, to EBS Building Society Ltd on 15 September 2004,
6) Failed to comply expeditiously, within a reasonable time, or at all with an undertaking given by him on behalf of named clients over property at Killaloe, Co Clare, to EBS Building Society Ltd on 15 September 2004,
7) Failed to respond adequately or at all to the complainant's correspondence in respect of his undertaking given on behalf of named clients over property at Killaloe, Co Clare, to EBS Building Society Ltd on 15 September 2004 and, in particular, letters dated 24 May 2010, 27 September 2010, 6 May 2011, 25 October 2011, 21 November 2011 and 12 December 2011 respectively,
8) Failed to comply with the directions of the Complaints and Client Relations Committee meeting of 4 September 2012 in respect of an undertaking given by him on behalf of named clients over property at Killaloe, Co Clare, to EBS Building Society Ltd on 15 September 2004,
9) Failed to comply adequately or at all with the directions of the Complaints and Client Relations Committee meeting of 16 October 2012 in respect of an undertaking given by him on behalf of named clients over property at Killaloe, Co Clare, to EBS Building Society Ltd on 15 September 2004,
10) Failed to comply adequately or at all with the directions of the Complaints and Client Relations Committee meeting of 11 December 2012, despite being granted a stay in respect of an undertaking given by him on behalf of named clients over property at Killaloe, Co Clare, to EBS Building Society Ltd on 15 September 2004,
11) Failed to comply expeditiously, within a reasonable time, or at all with an undertaking given

by him on behalf of named clients over property at Ennis, Co Clare, to EBS Ltd on 9 November 2007,

12) Failed to respond adequately or at all to the complainant's correspondence in respect of his undertaking given on behalf of named clients over property at Ennis, Co Clare, to EBS Ltd on 9 November 2007 and, in particular, letters dated 24 May 2010, 27 September 2010, 6 May 2011, 25 October 2011, 21 November 2011 and 12 December 2011 respectively,
13) Failed to comply with the directions of the Complaints and Client Relations Committee meeting of 4 September 2012 in respect of an undertaking given by him on behalf of named clients over property at Ennis, Co Clare, to EBS Ltd on 9 November 2007,
14) Failed to comply adequately or at all with the directions of the Complaints and Client Relations Committee meeting of 16 October 2012 in respect of an undertaking given by him on behalf of named clients over property at Ennis, Co Clare, to EBS Ltd on 9 November 2007,
15) Failed to comply adequately or at all with the directions of the Complaints and Client Relations Committee meeting of 11 December 2012, despite being granted a stay in respect of an undertaking given by him on behalf of named clients over property at Ennis, Co Clare, to EBS Ltd on 9 November 2007.

The tribunal ordered that the matter go forward to the High Court and, on 26 January 2015, the President of the High Court ordered that the name of the respondent solicitor shall be struck from the Roll of Solicitors.

In the matter of Oliver Hanrahan, solicitor, formerly practising as Hanrahan Rynne Solicitors, 3B Riverside Business Park, Ennis, Co Clare, and in the matter of the *Solicitors Acts 1954-2011* [9381/DT132/13 and High Court record 2014 no 149 SA]
Law Society of Ireland (applicant)
Oliver Hanrahan (respondent solicitor)

On 18 June 2014, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

1) Failed to comply expeditiously, within a reasonable time, or at all with an undertaking given by him on behalf of named clients over property at Ennistymon, Co Clare, to ACC Bank Plc on 23 May 2005,
2) Failed to reply to the complainant's correspondence and, in particular, letters dated 23 January 2008, 23 February 2010, 18 April 2011, 1 September 2011, 4 November 2011, and 6 December 2011 respectively,
3) Failed to comply with the directions of the Complaints and Client Relations Committee meeting on 4 September 2012,
4) Failed to comply with the directions of the Complaints and Client Relations Committee meeting on 16 October 2012,
5) Failed to comply with the directions of the Complaints and Client Relations Committee meeting on 11 December 2012,
6) Failed to reply adequately or at all to the Society's correspondence and, in particular, letters dated 5 January 2012, 24 January 2012, 9 March 2012, 5 June 2012, 31 July 2012, 21 August 2012, 5 September 2012, 19 October 2012 and 14 December 2012.

The tribunal ordered that the matter go forward to the High Court and, on 26 January 2015, the President of the High Court ordered that the name of the respondent solicitor shall be struck from the Roll of Solicitors.

In the matter of Oliver Hanrahan, solicitor, formerly practising as Hanrahan Rynne Solicitors, 3B Riverside Business Park, Ennis, Co Clare, and in the matter of the *Solicitors Acts 1954-2011* [9381/DT12/14 and High Court record 2014 no 150 SA]
Law Society of Ireland (applicant)
Oliver Hanrahan (respondent solicitor)

On 18 June 2014, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

1) Failed to comply expeditiously, within a reasonable time, or at all with an undertaking given by him in respect of named clients over property at Clarecastle, Co Clare, to Bank of Ireland Mortgages on 21 April 2008,
2) Failed to respond adequately or at all to the complainant's correspondence in respect of his undertaking given on behalf of named clients over property at Clarecastle, Co Clare, to Bank of Ireland Mortgages on 21 April 2008 and, in particular, letters dated 23 February 2010, 1 March 2010, 29 June 2010, 23 September 2010 and 24 May 2011 respectively,
3) Failed to comply with the directions of the Complaints and Client Relations Committee meeting of 26 June 2012, which directed him to file a report on all outstanding undertakings/complaints with the Society by 23 July 2012,
4) Through his failure to comply with the directions of the Complaints and Client Relations Committee meeting of 26 June 2012, caused the Society to re-enter a section 10 application to the President of the High Court on 23 July 2012,
5) Failed to comply with the directions of the Complaints and Client Relations Committee on 16 October 2012 to furnish documentation and information in respect of complaints within 21 days to the Society,
6) Failed to comply with the directions of the Complaints and Client Relations Committee at its meeting on 11 December 2012, despite a stay of four months being imposed,
7) Failed to comply expeditiously, within a reasonable time, or at all with an undertaking given by him in respect of named clients over property at Thurles, Tipperary South, given to Bank of Ireland Mortgages on 18 August 2005,
8) Failed to reply adequately or at all to the complainant's correspondence in respect of an undertaking given by him on behalf of named clients over property at Thurles, Tipperary South, given to Bank of Ireland Mortgages on 18 August 2005 and, in particular, letters dated 30 June 2006, 29 December 2006, 5 February 2008, 26 February 2008, 18 March 2009, 8 April 2009, 23

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February 2010, 1 March 2010, 29 June 2010, 23 September 2010, 24 May 2011 and 15 June 2011 respectively,
9) Failed to comply expeditiously, within a reasonable time, or at all with an undertaking given by him in respect of named clients over property at Clybaun, Co Galway, given to Bank of Ireland Mortgages on 11 November 2005,
10) Failed to reply adequately or at all to the complainant's correspondence in respect of an undertaking given by him on behalf of named clients over property at Clybaun, Co Galway, given to Bank of Ireland Mortgages on 11 November 2005 and, in particular, letters dated 28 November 2006, 29 May 2007, 27 November 2007, 3 December 2008, 30 December 2008, 23 February 2010, 1 March 2010, 23 September 2010, 24 May 2011 and 15 June 2011 respectively.

The tribunal ordered that the matter go forward to the High Court and, on 26 January 2015, the President of the High Court ordered that the name of the respondent solicitor shall be struck from the Roll of Solicitors.

In the matter of Douglas A Kelly, a solicitor formerly practising in the firm of Douglas Kelly & Sons, Solicitors, Swinford, Co Mayo, and in the matter of the *Solicitors Acts 1954-2011* [9874/DT88/13]
Law Society of Ireland (applicant)
Douglas Kelly (respondent solicitor)

On 27 January 2015, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he failed to ensure that there was furnished to the Society a closing accountant's report, as required by regulation 26(2) of the *Solicitors Accounts Regulations* in a timely manner or at all.

The tribunal made the following orders:
1) That the respondent solicitor do stand censured,
2) That the respondent solicitor pay a sum of €1,000 to the compensation fund,
3) That the respondent solicitor pay a contribution towards the whole of the costs of the Society, limited to a sum of €1,000.

In the matter of Douglas A Kelly, a solicitor formerly practising in the firm of Douglas Kelly & Sons, Solicitors, Swinford, Co Mayo, and in the matter of the *Solicitors Acts 1954-2011* [9874/DT09/14]
Law Society of Ireland (applicant)
Douglas Kelly (respondent solicitor)
On 27 January 2015, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:
1) Failed to comply with an undertaking given by Douglas Kelly & Sons, Solicitors, dated 13 September 2005, up to the date of the swearing of the Society's affidavit,
2) Failed to attend a meeting of the Complaints and Client Relations Committee on 19 March 2013, despite being required to do so, or to arrange representation,
3) Refused to attend a meeting of the Complaints and Client Relations Committee on 3 July 2013 or to arrange representation.

The tribunal made the following orders:
1) That the respondent solicitor do stand censured,
2) That the respondent solicitor pay a sum of €2,000 to the compensation fund,
3) That the respondent solicitor pay a contribution towards the whole of the costs of the Society, limited to a sum of €2,000.

In the matter of J Finbarr O'Gorman, a solicitor practising as Finbarr O'Gorman Solicitors at Mayfield House, Hollyfort Road, Gorey, Co Wexford, and in the matter of the *Solicitors Acts 1954-2011* [7672/DT45/13, 7672/DT46/13, 7672/DT47/13, 7672/DT48/13, 7672/DT64/13, 7672/DT83/13]
Law Society of Ireland (applicant)
J Finbarr O'Gorman (respondent solicitor)
On 29 May 2014, the Solicitors Disciplinary Tribunal heard six complaints against the above solicitor and found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

7672/DT45/13
1) Failed to comply with an undertaking dated 26 September 2008 furnished to Bank of Ireland Mortgages in respect of his named client and properties at Ballinakill, Co Laois, in a timely manner or at all,
2) Failed to attend the meeting of the Complaints and Client Relations Committee on 13 March 2012 and 2 May 2012, despite being required to do so.

7672/DT46/13
1) Failed to comply with an undertaking dated 9 May 2005 furnished to Bank of Ireland Mortgages in respect of named borrowers and property at Gorey, Co Wexford, in a timely manner or at all,
2) Failed to attend the meetings of the Complaints and Client Relations Committee on 13 March 2012 and 2 May 2012, despite being required to do so.

7672/DT47/13
1) Failed to comply with an undertaking dated 7 September 2005 furnished to Bank of Ireland Mortgages in respect of named borrowers and property at Tinahely, Co Wicklow, in a timely manner or at all,
2) Failed to attend the meeting of the Complaints and Client Relations Committee on 13 March 2012 and 2 May 2012, despite being required to do so.

7672/DT48/14
1) Failed to comply with an undertaking dated 8 October 2002 furnished to Bank of Ireland Mortgages in respect of named borrowers and property at Gorey, Co Wexford, in a timely manner or at all,
2) Failed to attend a meeting of the Complaints and Client Relations Committee on 2 May 2012, despite being required to do so.

7672/DT64/13
1) Failed to comply with an undertaking dated 6 June 2008 furnished to Bank of Ireland Mortgages in respect of his named clients and property at Ferns, Co Wexford, in a timely manner or at all,
2) Failed to attend a meeting of the Complaints and Client Relations Committee on 13 March 2012 and 2 May 2012, despite being required to do so.

7672/DT83/13
1) Failed to comply with an undertaking furnished to Bank of Scotland in respect of named borrowers and property at Maynooth, Co Kildare, in a timely manner or at all,
2) Failed to comply with an undertaking furnished on 22 October 2004 to Bank of Scotland in respect of named borrowers and property at Ballinteer, Dublin 16, in a timely manner or at all,
3) Failed to attend the meeting of the Complaints and Client Relations Committee on 13 March 2012 and 2 May 2013, despite being required to do so.

Having made findings of misconduct in respect of the six matters, the tribunal referred the matter forward to the High Court and, on 9 February 2015, the President of the High Court ordered that:
1) The name of the respondent solicitor be struck off the Roll of Solicitors,
2) The respondent solicitor do pay the Society the costs of and incidental to the proceedings and the costs of the Society before the tribunal, including witnesses expenses, to be taxed in default of agreement.

In the matter of Sheila Duff (otherwise McConnell), a solicitor formerly practising as Sheila McConnell & Co at 10 Meadowcourt, Kilcullen, Co Kildare, and in the matter of the *Solicitors Acts 1954-2011* [7489/DT175/13]

Law Society of Ireland (applicant)

Sheila Duff (otherwise McConnell) (respondent solicitor)

On 5 March 2015, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in her practice as a solicitor in that she:

1) Failed to respond to a number of letters from the complainant in relation to her non-compliance with an undertaking,
2) Failed to respond to the Society's correspondence in a timely fashion.

The tribunal made the following orders:

1) That the respondent solicitor do stand advised and admonished,
2) That the respondent solicitor pay the costs of the Society, limited to a sum of €750.

In the matter of James J Maher, solicitor, practising as James Maher & Co, Solicitors, 1 The Bookend, Essex Quay, Dublin 8, and in the matter of the *Solicitors Acts 1954-2008* [6676/DT82/12 and High Court record 2015/4SA]

Law Society of Ireland (applicant)

James J Maher (respondent solicitor)

On 2 October 2014, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

1) Misappropriated client moneys of circa €242,219.99 by paying these moneys to a third party,
2) Failed to disclose the said misappropriations until the Society initiated an inspection of his practice,
3) Caused or permitted significant non-offsettable debit balances to arise on client ledger accounts, in breach of regulation 7(2)(a) of the *Solicitors Accounts Regulations 2001*.

The tribunal ordered that the matter go forward to the High Court and, on 16 March 2015, the President of the High Court orders:

1) That the respondent remain suspended from practice until such time as he secures a superior who will employ him and who is approved by the Society,
2) Thereafter, the respondent not be permitted to practise as a sole practitioner or in partnership; that he be permitted only to practise as an assistant solicitor in the employment and under the direct control and supervision of another solicitor of at least ten years' standing, to be approved in advance by the Society,
3) That the respondent solicitor be prohibited from signing any cheques or authorising any bank payment, either solely or jointly over any client account,
4) That a copy of the Solicitors Disciplinary Tribunal report be furnished to any prospective legal practitioner wishing to employ the respondent solicitor,
5) That the respondent solicitor pay the sum of €5,000 as a contribution towards the whole of the costs of the Society, to be paid from any surplus that should arise after all client moneys have been returned,
6) The court makes no order as to costs of the High Court application.

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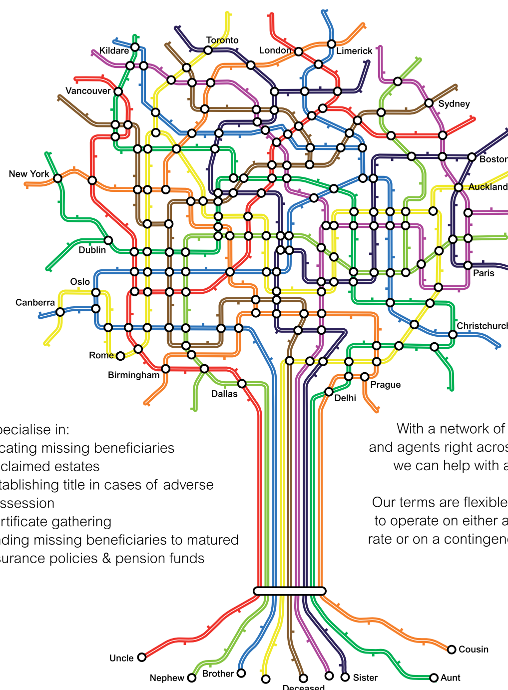

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News from the EU and International Affairs Committee
Edited by TP Kennedy, Director of Education, Law Society of ireland

BRUSSELS I RECAST YET AGAIN

This is the second part of a two-part analysis of the new *Regulation on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters* – the *Brussels I bis*.

No special procedure is required for recognition of a judgment (article 36(1)), but the new regulation provides that to 'invoke' a judgment, a certificate (pursuant to article 53) and a copy of the judgment are to be produced (article 37).

Any interested party may apply for an order declaring that there are no grounds for refusal of recognition of a judgment (article 36(2)). Such an application goes to the same court to which the judgment debtor can apply for an order that a ground of non-recognition exists (article 36(3)). Thus, on the application of any interested party, the recognition of a judgment shall be refused if one of the grounds of non-recognition is found to exist (article 45(1)) in which article the grounds for non-recognition are restated more or less as in earlier texts.

Recognition of a judgment can still be refused if the jurisdiction of the court of origin on which it was based conflicts with the 'protective' rules and the 'protected' party was the defender in the action (in the state of origin) and also if it conflicts with the rules on exclusive jurisdiction, now in article 24.

There is one weak point here – this right of review is not extended to cover the situation where there is an exclusive choice of court, so if a judgment is granted by a court that is not chosen, but there is a valid choice of court agreement conferring exclusive jurisdiction, the court addressed will not be able to refuse recognition on the ground that the court that granted the judgment should have declined jurisdiction – this is supposed to be dealt with by the *lis pendens* rule.

Rules for enforcement

The rules for enforcement provide for the dispensing of the need for the judgment creditor to apply for a declaration of enforceability (article 39). Enforcement starts with the submission of a certificate and a copy of the judgment (article 42) as formerly – but the certificate must first be served on the judgment debtor prior to the first enforcement measure being taken (article 43). Authentic instruments and court settlements continue to be enforced in the same way as judgments (articles 58-60). There are new provisions regarding the enforcement of provisional and protective measures.

> 'Any provisional or protective measure granted by a court other than one with jurisdiction under the regulation remains outside the definition of 'judgment' and so is not enforceable under the regulation'

An enforceable judgment shall carry with it by operation of law the power to proceed to any protective measures that exist under the law of the member state addressed (article 40). One new feature is that, if the judgment to be enforced contains a measure or an order that is not known in the law of the member state addressed, that measure or order shall, to the extent possible, be adapted to a measure or an order known in the law of that member state that has equivalent effects attached to it and that pursues similar aims and interests (article 54(1)).

Certificates are re-drafted substantially in the regulation – article 53 and annex I for judgments, and article 60 and annex II for authentic instruments. However, the European Commission now has delegated powers to amend the annexes – see articles 77 and 78. This power has already been exercised in the form of Regulation (EU) 2015/28. The effect of it is to replace the forms in annexes I and II. This delegated regulation came into effect on 26 February 2015.

On the application of the person against whom enforcement is sought, the enforcement of a judgment shall be refused where one of the grounds of non-recognition is found to exist (article 46). An application for refusal of enforcement goes to the court that the member state concerned – that is, the member state addressed – has communicated to the commission as the court to which the application is to be submitted (article (47(1)).

Member states are to communicate to the commission the details of the courts designated for applications of various kinds, and this information is to be "made publicly available" by the commission, "in particular through the European Judicial Network" (article 75). The information is to be found by accessing the EJN part of the European e-Justice Portal site and clicking on the *Brussels I Regulation (Recast)* entry for the member state concerned.

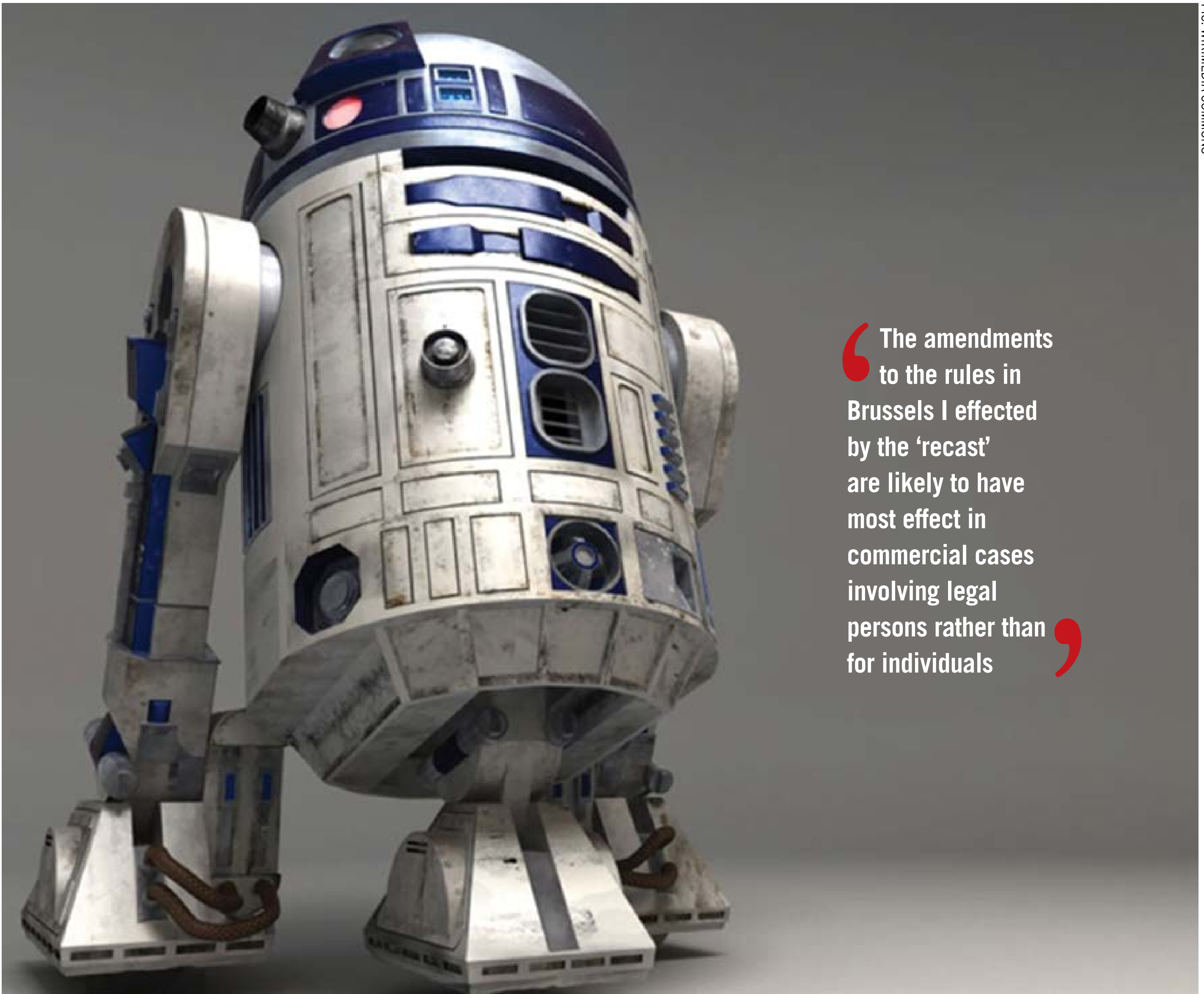
Provisional and protective measures

There is no definition of provisional and protective measures. However, in recital 25, there is an attempt to deal with the long standing problem as to the scope of the expression by drawing a distinction between measures, for example, for obtaining or preserving evidence as regards IP rights and those related to hearing witnesses, which are to be seen as more within the scope of the *Taking of Evidence Regulation*. There is no change as regards the jurisdiction of courts as to the taking of such measures – see article 35

As regards enforcement, the definition of 'judgment' to be found in article 2(a) is drafted to include, for the purposes of recognition and enforcement, provisional, including protective, measures ordered by a court that, by virtue of the regulation, has jurisdiction as to the substance of the matter. However, this only applies to such a measure that is ordered by such a court when the defender has been summoned to appear, unless the judgment containing the measure is served on the defender prior to enforcement.

Thus, any provisional or protective measure granted *ex parte*, which it is intended to enforce under the regulation, must first be served on the defender/judgment debtor before enforcement takes place. Any provisional or protective measure granted by a court other than one with jurisdiction under the regulation remains outside the definition of 'judgment' and so is not enforceable under the regulation. For such a measure to be enforced, the certificate has to specify that the conditions as to jurisdiction, appearance of the judgement debtor, and/or service of the judgment are met – article 42(2).

This formulation may create a problem for protective measures such as arrestment of bank accounts or other 'freezing orders' taken on the dependence of an action, which are normally executed *ex parte* to create surprise, since these would not be able to be enforced cross-border under the



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> The amendments to the rules in Brussels I effected by the 'recast' are likely to have most effect in commercial cases involving legal persons rather than for individuals

regulation – however, there may be possibilities to do so under the regulation creating the European Account Preservation Order.

Relations with arbitration

One of the issues that had been identified for examination was the relationship between the rules on jurisdiction of courts under *Brussels I* and arbitration. It had been thought that the exclusion of arbitration procedures from the scope of the regulation meant that the two tracks of dispute resolution were completely separate and that the jurisdiction rules in the regulation would not apply to arbitration proceedings in the EU.

This view was supported, it had been thought, by a read-across from the principles of party autonomy in the choice of court rules in the regulation. It was considered that a choice of arbitration in a contract would mean the exclusion of the jurisdiction of the courts on the merits of the substantive questions in dispute. However, there were still some open questions as regards jurisdiction of courts under the regulation in matters such as the validity of the arbitration agreement and the decisions of arbitrators on validity and procedural matters.

The idea that the jurisdiction rules in the regulation would not affect arbitration proceedings generally was, however, disabused by *Allianz SpA v West Tankers Inc* (C-185/07), in which the CJEU held that an anti-suit injunction sought against an action raised in an Italian court on the same subject matter as an arbitration commenced earlier in Britain pursuant to an arbitration clause was contrary to the jurisdiction rules of the *Brussels I Regulation*. The exclusion of arbitration from the substance of the regulation could not have the effect of preventing a court with jurisdiction under the regulation from continuing to hear an action on the same subject matters, even after arbitration had been on the go for several months. This led to vigorous debate as to what should be done in the regulation to support that aspect of party autonomy relating to arbitration agreements and to make similar provision for arbitrations as for court actions.

What has emerged in the new text is recital 12, which, in its terms, seeks to confirm that the

regulation does not apply to arbitration, but then goes on to suggest that neither are the courts to be inhibited in exercising jurisdiction to deal with matters within the scope of a particular arbitration proceeding by "staying or dismissing the [presumably court] proceedings or from examining" the validity of the arbitration agreement. Furthermore, the terms of the recital suggest that, were a judgment to be issued by a court as to the latter, it may be enforceable under the regulation.

It is not entirely clear what effect this will have in practice; in *West Tankers*, the arbitration continued despite the court action, and this may become typical of the pattern that will emerge, especially as regards issues like the validity of the arbitration agreement and appointment of the arbitrator. Only as regards the *New York Arbitration Convention* is the position clear, in the sense that its effect is preserved, but this will only apply as regards the scope of that convention (article 73(2)).

Choice of court convention

Another reason for amending the *Brussels I* rules on prorogation and *lis pendens* was to prepare the way for ratification by the EU of the 2005 *Hague Choice of Court Convention*. This provides a worldwide system for supporting party autonomy in choice of court, with rules on jurisdiction, recognition, and enforcement. Articles 5 and 6 of the convention give primacy to the chosen court. Thus, any court other than that chosen shall suspend or dismiss any proceedings where the choice of court agreement confers exclusive jurisdiction on the chosen court. Recognition and enforcement follows of a judgment granted by the court chosen under an exclusive choice of court agreement.

The convention was signed by the EU on 1 April 2009, and a proposal for ratification by the EU was approved by EU justice ministers in October 2014 and adopted formally on 4 December 2014. The convention will be ratified by the EU later this year when the instrument, described in the decision as an instrument of approval, will be deposited within one month of 5 June. This will bring the convention into force. At present, the only contracting state is Mexico, though the USA has also signed it.

Conclusions

The amendments to the rules in *Brussels I* effected by the 'recast' are likely to have most effect in commercial cases involving legal persons rather than for individuals. In particular, the changes to the prorogation rules and *lis pendens* will have an important influence on the drafting of commercial contracts. Whether they will have the effect of shifting commercial dispute resolution towards courts rather than arbitrators remains to be seen. In this respect, the failure of the instrument really to get to grips with the relationship with arbitration is an issue that may well have to be revisited in early course.

The changes to recognition and enforcement should have a broader effect and consolidate the shift of onus away from the creditor onto the judgment debtor. The addition of pre-notified provisional and protective measures to the list of those to which the recognition and enforcement provisions apply may be theoretically useful, though in practice the requirement to give notice may prove to be an obstacle. g

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Peter Beaton is a Scottish solicitor based in The Hague who is a consultant in EU civil and private international law.

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professional notices

WILLS

Byrne, James, otherwise Jim Byrne (deceased), late of Kilbride, Duncannon, New Ross, Co Wexford. Would any person having knowledge of a will executed by the above-named deceased, who died on 21 July 2014, please contact Ensor O'Connor, Solicitors, 4 Court Street, Enniscorthy, Co Wexford; tel: 053 923 5611, fax: 053 923 5234

Cronin, Hannah (deceased), late of Beenbawn, Dingle, Co Kerry. Would any person having knowledge of any will made by the above-named deceased, who died on 31 October 2008, please contact Nicole Dillon, solicitor, Porter Morris, Solicitors, 10 Clare Street, Dublin 2; tel: 01 676 1185, email: mail@portermorris.ie

Cullen, William Francis (deceased), late of 4 Glenhill Villas, Finglas East, Dublin 11, who died on 27 December 2013. Would any person having knowledge of the whereabouts of a will executed by the above-named deceased please contact Tony Taaffe & Co, Solicitors, 1 Main Street, Finglas, Dublin 11; tel: 01 834 4959, email: david@tonytaaffe.com

RATES

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RATES IN THE PROFESSIONAL NOTICES SECTION ARE AS FOLLOWS:

- **Wills** – €147 (incl VAT at 23%)
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No recruitment advertisements will be published that include references to years of post-qualification experience (PQE). The *Gazette* Editorial Board has taken this decision based on legal advice, which indicates that such references may be in breach of the *Employment Equality Acts 1998* and *2004*.

Cusack, Denis Martin (deceased), late of Cratloe West, Abbeyfeale, Co Limerick, who died on 11 March 2004 approximately. Would any person having knowledge of the whereabouts of any will executed by the said deceased please contact Jeremiah Healy, Healy Crowley & Company, Solicitors, 9 O'Rahilly Row, Fermoy, Co Cork; tel: 025 32066, email: info@healycrowleysolrs.com

Flynn, Paul (deceased), late of 34 Albany Road, Ranelagh, Dublin 6. Would any person having knowledge of any will made by the above-named deceased, who died on 22 February 2015, please contact Maguire Muldoon, Solicitors, 34 Gledswood Park, Clonskeagh, Dublin 14; reference FLY 001/1; tel: 01 296 4266, email: info@maguiremuldoon.ie

Grendon, Andrew (deceased), late of 41 Cabinteely Way, Cabinteely, Dublin 18, who died 3 November 2014. Would any person having knowledge of a will made by the above-named deceased, or if any firm is holding same, please contact Alan Wallace, Mangan O'Beirne, Solicitors, 31 Morehampton Road, Donnybrook, Dublin 4; tel: 01 668 4333, email: solicitors@manganobeirne.ie

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professional notices

Herr, Mary (deceased), late of 3 An Radharc, Maryborough Ridge, Maryborough Hill, Douglas, Cork, and formerly of Arden, Roslea Road, Clones, Co Monaghan. Would any person having knowledge of a will executed by the above-named deceased, who died on 6 November 2014, please contact John Murphy, solicitor, O'Connor Murphy Clune, Solicitors, 26 South Mall, Cork; tel: 021 427 8380, fax: 021 427 8586, email: jmurphy@ocmcsolr.ie

Kavanagh, Anne (deceased), late of 16 Annamoe Drive, Cabra, Dublin 7, who died on 13 December 2014. Would any person having knowledge of a will made by the above-named deceased, or if any firm is holding said will, please contact Susan Cosgrove, Cosgrove Gaynard Solicitors, 22 Fitzwilliam Place, Dublin 2; tel: 01 234 0044, email: info@cgsolicitors.ie

Mulhern, Lena (deceased), late of Rookwood, Athleague, Co Roscommon, who died on 18 May 1972. Would any person having knowledge of a will made by the above-named deceased please contact Messrs Patrick J Neilan & Sons, Solicitors, Roscommon; tel: 090 6626 245, email: pjneilan@securemail.ie

Murphy, Michael Anthony (deceased), late of 16 Killagoley Terrace, Enniscorthy, and formerly of Rectory Road, Enniscorthy, and Esmonde Road, Enniscorthy, Co Wexford. Would any person having knowledge of any will made by the above-named deceased, who died on 1 April 2015, please contact Jason Dunne, John A Sinnott & Co, Solicitors, Market Square, Enniscorthy, Co Wexford; tel: 053 9233 111, email: info@johnasinnottsolicitors.ie

O'Callaghan, Michael P (deceased), late of 3 Emma Villas, Castleview Avenue, Thomondgate, Limerick, also of Ard Mhuire, Scarteen Lower, Charleville Road, Newmarket, Co Cork, also of Cnoc Mhuire, Coolacossane, (Boherbue Road), Kanturk, Co Cork. Would any person having knowledge of a will made by the above-named deceased, who died on 16 September 2014 at Ard Mhuire, Scarteen Lower, Charleville Road, Newmarket, Co Cork, please contact Don O'Connor & Co, Solicitors, Percival Street, Kanturk, Co Cork; DX 114003 Kanturk; tel: 029 51237, fax: 029 51239, email: donoco@eircom.net

Shine, Denis (Din) (deceased), late of 47 Silverheights Avenue, Mayfield, Cork. Would any person having knowledge of a will made by the above-named deceased please contact Holohan Law, Solicitors, Waterview House, 16 Sundays Well Road, Cork; tel: 021 430 0734, email: amy@holohanlaw.ie

Silke, Edward (deceased), late of Kilkerrin, Ballinasloe, Co Galway, who died on 25 February 2014. Would any person having knowledge of the last will made by the above-named deceased or its whereabouts please contact Greg Nolan, Solicitors, 5 Sherwood Avenue, Taylor's Hill, Galway; tel: 091 582 942, email: info@gns.ie

Stanley, Liam (deceased), late of Liffey View, Newtown, Celbridge, Co Kildare, who died on 24 February 2015. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Barry Powerly, Solicitors, The Square, Kilcock, Co Kildare; DX 98009 Maynooth; tel: 01 628 4333, fax: 01 6284259, email: barry@davidpowderlysols.ie

ADVERTISEMENT FOR INCUMBRANCERS

Circuit Court record no EJ057/12, Eastern Circuit, county of Kildare: between Thomas Drohan (plaintiff) and Michael Ryan, Mitchel O'Brien and Michael Cronin, all trading as Borc Partnership (defendants)

Donal T Ryan (solicitors for the plaintiff) 89/90 Main Street, Cashel, Co Tipperary.

Notice for incumbrances pursuant to order of the Circuit Court dated 9 April 2013 herein to all persons claiming to have incumbrances affecting interest of the defendant in the property at 7 The Grove, Louisa Valley, Leixlip, Co Kildare, being the property comprised in folio 28798F of the register of freeholders, Co Kildare, situate to the side of Station Road in the town of Leixlip, being part of the townland of Leixlip and barony of North Salt in the county of Kildare, under the registered ownership of Michael Cronin, are to prove their claims by affidavits and exhibits therein and any security held and to so prove at the office of the county registrar, the Circuit Court office of the Courthouse, Naas, Co Kildare, on 5 June at 11.30am and in default may be excluded from the benefit of the order.

Date: 13 April 2015

Signed: Eithne Coughlan, County Registrar, County of Kildare

TITLE DEEDS

Kevin Carmichael (deceased), 14 Thomas Hand Street, Skerries, Co Dublin. Would anyone knowing the whereabouts or having any information regarding the title deeds to the above property please contact Shane Dowling of Direct Law, Solicitors; tel: 01 849 4226, email: sdowling@directlaw.ie

Anne Kavanagh (deceased). Would any person knowing the whereabouts or holding title documents on behalf of the late Ms Anne Kavanagh (deceased), late of 16 Annamoe Drive, Cabra, Dublin 7, with respect to property at 16 Annamoe Drive, Cabra, Dublin 7, please contact Susan Cosgrove, Cosgrove Gaynard Solicitors, 22 Fitzwilliam Place, Dublin 2; tel: 01 234 0044,email: info@cgsolicitors.ie

In the matter of the *Landlord and Tenant Acts 1967 and 1994* and in the matter of the *Landlord and Tenant Acts (Ground Rents) (No 2) Act 1978*: an application by Mary (otherwise Maura) McErlane

Take notice that any person having interest in the freehold estate of the following property: 4, 5 and 6 Westbourne Terrace, Qunisborough Road, Bray, Co Wicklow, more particularly described in an indenture of lease dated 27 February 1865 between William Dargan of the first part and Peter Warburton Jackson of the second part for the term of 900 years from 25 March 1862, subject to the yearly rent of £250 and to the covenants on the lessee's part and conditions therein contained.

Take notice that Mary (otherwise Maura) McErlane intends to submit an application to the county registrar for the county of Wicklow for the acquisition of the freehold interest in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid property are called upon to furnish evidence of title to the aforementioned property to the below named within 21 days of the date of this notice.

In default of any such notice being received, Mary (otherwise Maura) McErlane 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 Wicklow for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest including the freehold reversion in the property aforesaid are unknown or unascertained.

Date: 8 May 2015

Signed: Partners at Law (solicitors for the applicant), 8 Adelaide Street, Dun Laoghaire

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 50 Dollymount Avenue, Clon-

tarf, Dublin 3: an application by Argentum Property Holding Five Limited

Take notice any person having any interest in the estate of the following property: 50 Dollymount Avenue, Clontarf, Dublin 3. Take notice that Argentum Property Holding Five Limited intends to submit an application to the county registrar for the city of Dublin for the acquisition of the freehold interest and all intermediate interests in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid property are called upon to furnish evidence of title to the aforementioned property to the below named within 21 days from the date of this notice.

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

Date: 8 May 2015

Signed: Byrne Wallace (solicitors for the applicant), 88 Harcourt Street, Dublin 2

In the matter of the *Landlord and Tenant (Ground Rents) Act 1967-2005* and in the matter of an application by Christine McCreevey (acting by her attorney, the secretary for the time being of Allied Irish Banks plc, pursuant to a power in that behalf granted by deed of mortgage and charge dated 30 July 1996) (applicant)

Take notice any person having an interest in the freehold estate of the following property: all that and those the premises demised by lease dated 10 October 1941 between Linda Aylward, Mervyn Reigh, Gertie New, Alice M Burns, Francis P Long and Frank Ossian New of the first part, and the said Linda Aylward, Mervyn Reigh and Gertie New of the second part, and Elizabeth Catherine Clegg of the third part, therein described as "all that and those the plot of ground on the south side of the North Circular Road, being part of the manor and lands of Grangegorman, containing in breadth in the front 20 feet, in breadth in the rear 20 feet, and in depth from front to rear 169 feet, six inches, be all or any of said admeasurements more or less bounded on the north by the North Circular Road, on the south by a stable lane, on the east by the house now known as number 88 North Circular Road, together with the dwellinghouse and premises erected thereon and now known as number 90 North Circular Road, situate in the parish of Grangegorman and county of the city of Dublin", and thereunder held for a term of 100 years from 29 September 1945, subject to a yearly rent of eight pounds (the property).

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 property, and any party or parties asserting that they hold a superior interest in the aforesaid property are called upon to furnish evidence of title to the property 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 person or persons beneficially entitled to the superior interest including the freehold reversion in the property are unknown or unascertained.

Date: 8 May 2015

Signed: Gartlan Furey (solicitors for the applicants), 20 Fitzwilliam Square, Dublin 2

In the matter of the *Landlord and Tenant (Ground Rents) 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 Robert Horgan, Michael Horgan, David Horgan and James Horgan, and in the matter of property situate at 19 Blarney Street, Cork

Any person having a freehold interest or any intermediate interest in all that and those the dwellinghouse and premises known as number 19 Blarney Street, in the parish of St Mary's Shandon and in the city of Cork, more particularly set out in the map annexed to an indenture of lease dated 21 December 1942 between George Banks of the one part and Timothy Ahern of the other part for a term of 32 years from 29 September 1942 at a rent of £3 per annum,

Take notice that the applicants intend submitting an application to the county registrar for the county of Cork for the acquisition of the freehold interest in the aforesaid property, and any party asserting that they hold a superior interest in the said property are called upon to furnish evidence of title to the same to the below signed within 21 days from the date of this notice.

In default of any notice as referred to above being received, the applicants intend to proceed with the application before the county registrar at the expiry of the said period of 21 days and will then apply to the county registrar for the county of Cork for such direction as maybe appropriate on the basis that the person or persons beneficially entitled to the superior interest including the freehold reversion in the said premises are unknown or ascertained.

Date: 8 May 2015

Signed: Ruairi Ó Catháin (solicitors for the applicants), 30 South Terrace, Cork

In the matter of the *Landlord and Tenant Acts 1967-1994* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of premises at 3B Aideen Place, Lower Kimmage Road, Dublin 6W: an application by John Jordan

Take notice any person having any interest in the freehold estate of or superior interest in the following premises: all that and those that piece or parcel of ground with the factory buildings and offices standing thereon, known or intended to be known as number 3B Aideen Place, Lower Kimmage Road, in the city of Dublin, held under an indenture of lease dated 16 January 1965 made between Kinlen Development Company of the one part and Weartex Limited of the other part for the term of 150 years from 1 September 1963 and subject to the yearly rent of £275 (old currency).

Also held under an indenture of lease dated 4 August 1951 made between Louis Kinlen of the one

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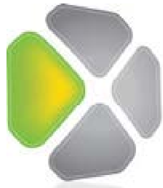

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part and Mona Boden of the other part for the term of 500 years from 29 September 1950, subject to the yearly rent of £60 (old currency), which is a sublease derived out of the demise effected by an indenture of lease dated 20 May 1947 made between Francis Perry of the one part and the said Louis Kinlen of other part.

Also held under an indenture of lease dated 16 January 1937 for a term of 300 years between Sir Robert De Vere Shaw of the first part, Fanny Armstrong Gordon and Violet Montgomery Gordon of the second part, Dame Eleanor Hester Shaw of the third part, Mary Margaret Shaw and Eile De Vere Shaw of the fourth part, and John Perry of the fifth part, subject to the yearly rent of £30.

Also held by indenture of lease dated 31 October 1972 for a term of 300 years between Percieval J Hanna of the first part, Weartex Limited of the second part, and Burnside Society Limited of the third part.

Take notice that the applicant, John Jordan, being the person entitled under sections 9 and 10 of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978*, intends to submit an application to the county registrar for the county/city of Dublin for the acquisition of the freehold interest and any intermediate interests in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid premises or any of them are called upon to furnish evidence of title to the aforementioned premises to the below within 21 days from the date of this notice.

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

Date: 8 May 2015

Signed: Jordan Law (solicitors for the applicant), 130 Leinster Road, Dublin 6

In the matter of the *Landlord and Tenant Acts 1967-1994* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of premises at 3A Aideen Place, Aideen Avenue, Lower Kimmage Road, Dublin 6W: an application by Aodhagan O'Broin, Darach O'Broin and Eoin O'Broin

Take notice any person having any interest in the freehold estate of or superior interest in the following premises: all that and those that piece or parcel of ground with the factory buildings and offices standing thereon known or intended to be known as number 3A Aideen Place, Aideen Avenue, Lower Kimmage Road, in the city of Dublin, held under an indenture of lease dated 16 January 1965 made between Kinlen Development Company of the one part and Weartex Limited of the other part for the term of 150 years from 1 September 1963 and subject to the yearly rent of £275 (old currency).

Also held under an indenture of lease dated 4 August 1951 made between Louis Kinlen of the one part and Mona Boden of the other part for the term of 500 years from 29 September 1950, subject to the yearly rent of £60 (old currency).

Also held under an indenture of ease dated 16 January 1937 and made between Sir Robert De Vere Shaw of the first part, Fanny Armstrong Gordon and Violet Montgomery Gordon of the second part, Dame Eleanor Hester Shaw of the third part, Mary Margaret Shaw and Eile De Vere Shaw of the fourth part, and John Perry of the fifth part for a term of 300 years from 29 September 1936, subject to the yearly rent of £30 (old currency).

Also held under an indenture of lease dated 31 October 1972 and made between Percieval J Hanna of the first part, Weartex Limited of the second part, and Burnside Society Limited of the third part for the term of 250 years from 29 September 1970, subject to the yearly rent of £1 (old currency).

Take notice that the applicants, Aodhagan O'Broin, Darach O'Broin and Eoin O'Broin, being the persons entitled under sections 9 and 10 of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978*, intend to submit an application to the county registrar for the county/city of Dublin for the acquisition of the freehold interest and any intermediate interests in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid premises or any of them are called upon to furnish evidence of title to the aforementioned premises to the below within 21 days from the date of this notice.

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

Date: 8 May 2015

Signed: Nelson & Co (solicitors for the applicants), Templeogue Village, Dublin 6W

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

Notice to any person having any interest in the freehold interest of the following property: all that and those the lands more particularly described in and demised by an indenture of lease dated 6 July 1882 made between Ambrose More O'Ferrall of the first part, John Henry O'Brien and Gerald Dease of the second part, and the Local Government Board for Ireland of the third part for a term of 199 years from 1 May 1882 (the 'lease') as, firstly, part of the lands of Kilmainham with the houses and buildings thereon now known as Garden Hill, containing 5 acres, 1 rood, 37 perches statute measure or thereabouts, situate in the parish of St James and county of Dublin, and described and coloured pink in the map annexed to the lease; and, secondly, part of the said lands of Kilmainham adjoining the Garden Hill premises containing 6 acres, 2 roods, 37 perches statute measure or thereabouts, situate in the parish of St James and partly in the county of the city of Dublin and described and coloured green in the map annexed to the lease.

Take notice that the applicant, being the person entitled to the lessee's interest under the lease, intends to submit an application to the county registrar for the county of the city Dublin for the acquisition of the freehold interest and all intermediate interests in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid property are called upon to furnish evidence of title to the aforementioned property to the solicitors for the applicant, details of which are provided below, within 21 days from the date of this notice.

In default of such notice being received, the applicant intends to proceed with the application before the county registrar for the county of the city Dublin for directions as may be appropriate on the basis of the person or persons beneficially entitled to the superior interest including the freehold reversion in the above premises are unknown or unascertained.

Date: 8 May 2015

Signed: Arthur Cox (solicitors for the applicant), Earlsfort Centre, Earlsfort Terrace, Dublin 2; ref: E2C/HS012/1066

In the matter of the *Landlord and Tenant Acts 1967-1994* and

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28 May	TACTICAL NEGOTIATION SKILLS	€120	€150	3 Management & Professional Development Skills (by Group Study)
WILLS, PROBATE & ESTATES MASTERCLASS CPD Hours for each Module: 10 General (by Group Study). Fee: €760/ €608* *(Skillnet members*)*				
5 & 6 June	MODULE 1: WILLS, PROBATE & ESTATES I: Lectures and workshops providing an update on will drafting, probate and administration dealing with advising the LPR on capacity and other issues, non-contentious and contentious applications to the Probate Officer and the Courts when necessary, administering trusts on death either by will or otherwise.			
12 & 13 June	MODULE 2: WILLS, PROBATE & ESTATES II: Building on Module 1 with lectures and workshops on taxation of estates dealing with CAT and other taxes arising including Discretionary Trust Tax and taxation issues (CAT and CGT) on the break up / dissolution of Trusts, wrap-up lecture and workshop, incorporating all issues arising.			
THE FUNDAMENTALS OF DISTRICT COURT CIVIL PROCEDURE, DRAFTING AND ADVOCACY SKILLS (Focus on general tort & personal injuries litigation). 10 CPD hours including 3 M & PD Skills hours (by Group Study) for each session. Fee: €760/€608* *(Fee for Skillnet members*)*				
5 & 6 June	SESSION 1 – THE FUNDAMENTALS OF PI LITIGATION; DISTRICT COURT CIVIL PROCEDURE AND DRAFTING SKILLS. Lectures and small group workshops providing an overview of the basic principles of civil liability & the law and procedure on PI claims; the new District Court Rules and procedures; effective drafting of pleadings and interlocutory applications. Presentation and courtroom advocacy skills; overview of the law and rules of evidence in the civil context.			
3 & 4 July	SESSION 2 – PREPARING FOR TRIAL AND COURT ROOM ADVOCACY. Building on session 1 with lectures and small group workshops on District Court practice & procedure; case analysis and the application of the rules of evidence in preparing for trial. Small group training in advocacy techniques including how to conduct both a direct and a cross-examination of witnesses. The session will culminate in simulated trials conducted by the course participants as the advocates and actors playing the parties and witnesses. The aim is to encourage and enhance each participant's trial skills. The trials will be followed by a feedback and learning session with the 'judge'.			
19 June	ESSENTIAL SOLICITOR UPDATE 2015 – in partnership with Clare Bar Association and Limerick Solicitors'	n/a	€95	5 General plus 1 Regulatory Matters (by Group Study)
24 June	CHILDREN & FAMILY RELATIONSHIPS ACT, 2015 – Symposium	€150	€176	4.5 General plus 1 Regulatory Matters (by Group Study)
26 June	NORTH WEST GENERAL PRACTICE UPDATE 2015 – in partnership with Donegal and Inishowen Bar Associations – Solis Lough Eske Castle, Donegal	n/a	€95	5 General plus 1 Regulatory Matters (by Group Study)
7 Oct or 26 Nov	EXECUTIVE TRAINING – USING COACHING STRATEGIES TO DEVELOP & MOTIVATE THE NEXT GENERATION OF SOLICITORS – Relevant to all those who have a role in managing others. Improve performance & morale even when finances are stretched.	€120	€150	3 hours Management & Professional Development Skills (by Group Study)
24 Sept	EFFECTIVE WRITING SKILLS – presented by the Law Society Finuas Network and *hpc* – formerly Mast Ireland	€120	€150	6 hours Management & Professional Development Skills (by Group Study)
24 Sept or 19 Nov	EFFECTIVE DELEGATION & PERFORMANCE MANAGEMENT – Equip all practitioners including training solicitors, junior and senior solicitors, practice managers, unit heads and team leaders with the skills and confidence to delegate effectively AND how to do manage performance	€120	€150	3 hours Management & Professional Development Skills (by Group Study)

For full details on all of these events visit webpage www.lawsociety.ie/Lspt or contact a member of the Law Society Professional Training team on:
P: 01 881 5727 E: Lspt@lawsociety.ie F: 01 672 4890

The 2015 CPD requirement is 16 hours in total, to include a minimum of 3 hours Management & Professional Development Skills and a minimum of 1 hour Regulatory Matters. Please note FIVE hours on-line learning is the maximum that can be claimed in the 2015 CPD Cycle
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in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978*: an application by Junebay Limited

Take notice any person having interest in the freehold estate of the following property: 12 North Summer Street, Dublin 1, more particularly described in an indenture of lease dated 1 December 1812 and made between Ambrose Moore of the first part and Joley William Reid of the second part for the term of 990 years from 25 March 1812, subject to the yearly rent of £16 (since apportioned to £7.5.7) and to the covenants on the lessee's part and conditions therein contained.

Take notice that Junebay Limited intends to submit an application to the county registrar for the county of 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 property are called upon to furnish evidence of title to the aforementioned property to the below named within 21 days of the date of this notice.

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

Date: 8 May 2015

Signed: Partners at Law (solicitors for the applicant), 8 Adelaide Street, Dun Laoghaire, Co Dublin

RECRUITMENT

Mater Misericordiae University Hospital Dublin

Contracts Manager

The Mater Misericordiae University Hospital is seeking a Contracts Manager for a full time position for one year with a proposed start date of July 1, 2015.

The scope of the role will include but is not limited to;

- Conducting robust legally compliant tendering procurement processes for goods, services on behalf of the hospital
- Negotiating contractual terms and conditions on behalf of the hospital which protect the hospitals interest
- Drafting legally binding agreements which protect the hospitals commercial and operational interests
- Providing advice and support to the hospitals executive management team in all third party contracting issues.
- Providing general advice, support and guidance to hospital staff in the area of public procurement regulations and contract law.

Informal enquiries to Mr. Seamus Priest, Head of Procurement and Logistics; telephone (353) 1 803 4078; or email spriest@mater.ie.

Please submit your CV and cover letter to jobs@mater.ie or via post to Recruitment Manager, Human Resources, 40 Eccles Street, Dublin 7, Ireland.

in flagrante delicto

An bhfuil Gaeilge agat?

Hundreds of cases of alleged drink-driving have been adjourned due to a legal challenge brought by a Romanian national – who was not given details of a breath test *as Gaeilge*, the *Irish Independent* reports.

District Judge Conal Gibbons has referred the case of Mihai Avandenei (28) to the High Court.

Mr Avadenei was stopped by Garda Francis McMahon, alleging that the motorist had been driving at 80km/h in a 50km zone. Garda McMahon arrested Mr Avandenei, suspecting him of drink-driving, and took him to Store Street Station. Although the Romanian national had a good command of the English language, an interpreter was provided.

A subsequent breath test carried out by Garda Colm McCluskey gave a reading of 52 microgrammes of alcohol per 100ml of breath (the limit is 22 per 100ml). Garda McCluskey and the accused both signed the computer printout.

During his appearance before the Dublin District Court last July, solicitor Michael Staines argued that his client should have been given a printout of his intoxlyser breath test in both English and Irish. As a result, he said, the printout submitted to the court was not a duly completed statement within the meaning of the *Road Traffic Act 2010* and was not admissible in evidence.

'High – is that 911?'

An Ohio man recently called 911 to report that his wife had stolen his cocaine – leading to his subsequent arrest.

According to *The Alliance Review*, police officers responding to a night call discovered that the man had a marijuana pipe and was wanted on a warrant for failing to pay hundreds of dollars in costs in an earlier court case.

Rise of the planet of the apes?

An animal rights group has been granted a court hearing in which it will argue that two chimpanzees that live at a New York university cannot be held captive because they are autonomous, intelligent creatures.

The Irish Times reports that New York State Supreme Court Justice Barbara Jaffe issued a *habeas corpus* writ requiring the State University of New York to defend its right to keep the primates, named Hercules and Leo.

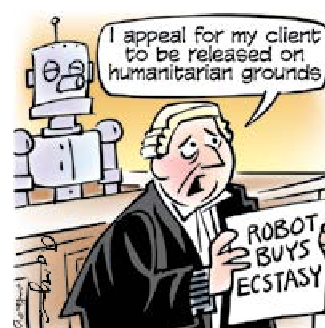
In what may be the first case of its kind in the world, the Nonhuman Rights Project claims that, because chimpanzees are autonomous, intelligent creatures, their captivity amounts to unlawful imprisonment.

They want the pair of chimps, who are used in research on physical movement at the university, to be sent to a sanctuary in Florida. Under the law, such orders can be granted only to 'legal persons', so Ms Justice Jaffe is under pressure to find that chimpanzees have at least some limited rights traditionally reserved for humans. She has not explained the reason for issuing the order. The hearing was scheduled for 6 May.

Do stoned androids dream of electric sheep?

If your robot buys ecstasy, are you responsible? Apparently not, reports *The Guardian*. The police department in St Gallen, Switzerland, has 'released' a robot they confiscated last January after it bought ten ecstasy pills on the internet as part of an art installation called *The Darknet: From Memes to Onionland*, meant to explore the deep web.

The bot and most of the purchases it made online – including a pair of fake Diesel jeans, a baseball cap with a hidden camera, a pair of Nike trainers, 200 Chesterfield cigarettes, a set of fire brigade-issued master keys,



a fake Louis Vuitton handbag and a Lord of the Rings e-book collection – were returned to !Mediengruppe Bitnik, the art group that designed the robot. The ecstasy pills were destroyed.

The robot – which goes by the name Random Darknet Shopper – is "an automated online shopping bot". It was provided with a budget of $100 in Bitcoins per week, allowing the bot to go on a shopping spree in the deep web where it randomly purchased items that were mailed to the art group. The installation ended the day before the robot was apprehended.

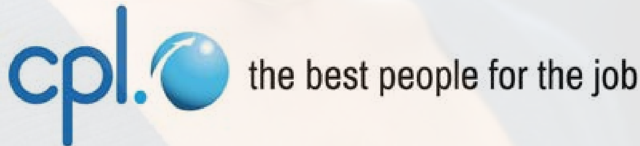
Thomas Hanskajob, spokesman for the Swiss police, told CNBC: "We decided the ecstasy that is in this presentation was safe and nobody could take it away. Bitnik never intended to sell it or consume it, so we didn't punish them."

Inhouse Financial Services Solicitor, Dublin
A new legal position is being created to support the development of the Legal Department in an international services institution as a result of integration and continued expansion of its business. Junior – Associate level with a focus on financial services and asset management business.

Corporate Lawyer, Dublin
This Top Tier Corporate Team is renowned for its experience in complex national and international transactions. They are looking to hire at both Associate and Senior Associate level.

Commercial Property Solicitor, Dublin
A Top 10 Law Firm is seeking to recruit an Associate for their Commercial Property Team. This Law Firm boasts a wide range of clients including private equity funds, developers, investors and financial institutions. This position is also suitable for someone at Junior – Associate level.

Tax Solicitor, Dublin
Our client is seeking a Tax Solicitor to join their firm and work across all tax heads. This firm's tax Group has considerable experience handling matters for a diverse client base, including multinational and domestic corporations, financial institutions, investment funds, and start-ups. Junior – Associate level.



To apply for any of the above vacancies or for a strictly confidential discussion, please contact Seán Fitzpatrick on +353 1 5005916 or sean.fitzpatrick@cpl.ie or Tony Glynn on +353 1 500 5918 or tony.glynn@cpl.ie

TALK TO THE EXPERTS

Corporate - Senior Associate / Partner
Dublin / €90,000 - €100,000

Our client, a Top 10 corporate firm is seeking to recruit a Senior Associate to join its market leading corporate department.
The role will involve providing sophisticated legal advice to leading global and domestic corporations, investment banks, private equity providers, state and semi state entities, from all industry sectors. The role will involve high profile and extremely complex cross border transactions. The ideal candidate should have extensive experience at a senior level in M&A, strategic investments, reorganisations and migrations, restructurings, general commercial advisory, contractual, private equity and venture capital.

Senior Legal & Compliance Consultant - Funds
Dublin / €80,000 - €100,000

Our client, an international asset management consultancy firm is seeking to recruit a Senior Legal & Compliance Consultant to join its rapidly growing organisation. The role will involve advising on a wide range of compliance, operational and governance issues relevant to the establishment and operation of investment funds across leading offshore centres, focusing on the legal and regulatory requirements. Successful applicants should have extensive experience within the funds industry and possess a detailed understanding of legal agreements that funds enter into and experience in the drafting and negotiation of such agreements.

Banking Solicitor
Dublin / €60,000 - €65,000

Our client, a top tier firm is seeking to recruit a junior Banking Solicitor to join its market leading team with experience in domestic and cross border finance transactions and financial services. The successful candidate should have completed a training seat in a busy banking & finance department.

For further information on this and other newly qualified roles, please contact Anna McCarthy in strict confidence on 01 6621000 or email a.mccarthy@brightwater.ie

For further information on these or other senior roles, please contact Michael Minogue in strictest confidence on 01 6621000 or email m.minogue@brightwater.ie

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Commercial Property – Assistant to Associate – PP0313
Our client is searching for an experienced commercial property lawyer to advise both domestic and international clients on the full range of property matters including multi-jurisdiction sales and acquisitions, sale and leasebacks, re-financings and investments.

Conveyancing solicitor – Associate to Senior Associate – PP0228
Our client is a successful and dynamic practice seeking a highly competent practitioner who will take on a broad range of transactions to include commercial developments and acquisitions as well as commercial landlord & tenant matters.

Commercial Litigation – Associate to Senior Associate
A leading Dublin firm is seeking a commercial litigation practitioner to deal with high caliber commercial court work. You will be working with a highly regarded team dealing with challenging and often complex cases.

Corporate/Commercial Lawyer – Newly Qualified to Associate – J00471
This Dublin based firm is seeking a solicitor to join their Corporate/Commercial team. This is a role for an ambitious practitioner with experience gained either in private practice or in house. You will ideally have dealt with M&A, Investments Agreements as well as general commercial law matters.

Corporate Finance Solicitor – Assistant to Associate – J00424
Advising financial institutions, government bodies and regulators as well as domestic and international companies, the successful candidate will have exposure to a broad range of financial services including asset finance, insolvency, regulation and secured/unsecured loans.

Environmental – Assistant – J00375
A leading Dublin firm seeks an ambitious practitioner with experience of providing environmental advice. The role will involve, inter alia: Provision of environmental due diligence advice on property; Corporate and banking transactions; Advising on environmental infrastructure projects; Stand-alone environmental compliance advice.

Financial Regulatory – Assistant – J00505
A top flight firm requires an ambitious assistant solicitor to join its financial regulatory team. The role will involve: Advising clients on practical implications of new regulatory developments; Consumer based financing; Sanctions regimes; Insurance regulation.

Litigation – Healthcare Assistant Level
An excellent opportunity has arisen for an ambitious practitioner to join the Healthcare Department of this Top 6 Dublin based law firm which has a first rate client base. You will be dealing with interesting and challenging work. Significant previous experience in insurance defence matters is essential, preferably with medical negligence exposure.

Pensions – Newly Qualified to Associate
Top flight firm requires candidates with a strong academic background and an interest in pensions law and practice to join its well established team with a first rate client base.

Tax Lawyer – Associate to Senior Associate – J00337
A Top 5 Dublin law firm is looking to recruit a Senior Tax Assistant with solid general tax experience to slot into a fast growing partner led team. You will advise Irish and European clients on structuring transactions, such as complex cross-border acquisitions, real-estate investment, private equity public offerings of debt and equity securities and joint ventures.

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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