



**Into the fire**

The EU Commission is seeking to develop a comprehensive anti-money-laundering policy



**I got you, babe**

The provisions of the *Data Sharing and Governance Act* are set to have a big impact



**What the Dickens?**

The concept of 'legitimate expectation' is being aired in a current tax case

# gazette

LAW SOCIETY

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LAW SOCIETY OF IRELAND



## 'LEGALISED ILLEGALITY'

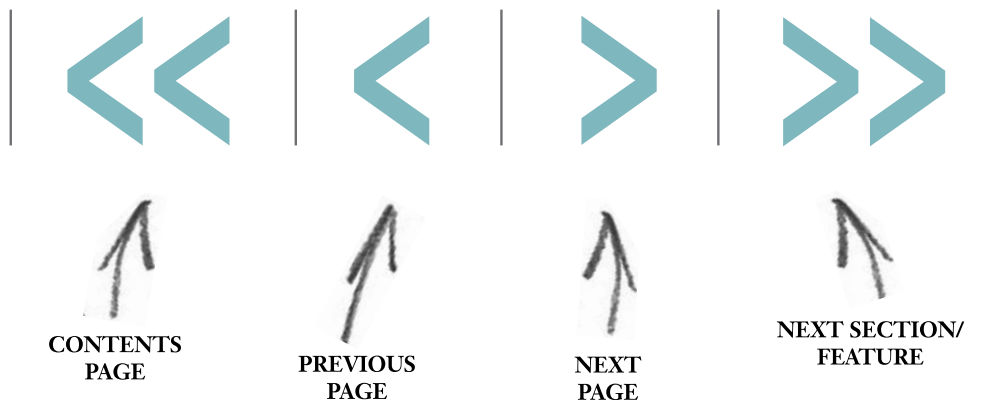
The killing of Eileen Quinn by Crown forces, November 1920



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PRESIDENT'S MESSAGE

# STRONG AND RESILIENT

**W**hat a year it has been! When I took office on 8 November 2019, I pledged to the Law Society Council that I would represent our members to the best of my ability, and my hope was that I would make a positive, meaningful difference to the shape of the profession. One of my commitments for the year was supporting smaller practices and, boy, was that commitment tested!

It was challenging, but never overwhelming; interesting, and never dull!

As you read this message, I will be in the final days of my term as president, preparing to pass the baton to my successor James Cahill.

It was an entirely different presidency to that of my 148 predecessors, and not what I or, indeed, the Law Society Council envisaged, by any stretch of the imagination. However, the truth is that, with the unstinting support of the Council, officers, executive, committees and staff, I have enjoyed meeting the challenges, and I have gained so much knowledge and insight from the experience.

**Lessons learned**

What I have learned is that information, communication, active listening, active lobbying, and collaborative constructive engagement with a common purpose are key.

I have also learned that we are a deeply resilient, adaptable, agile, supportive profession, willing to do everything within our power to ensure access to justice to those who need it most, and willing to take proactive steps to preserve our livelihoods, which included adapting and adjusting to the way we do our business.

The year has seen positive progress, with the appointment of 17 solicitor senior counsel from right across the country. It has witnessed the appointment of solicitor judges to the various courts – High Court, Circuit Court and District Court, and the elevation of former High Court judge Mr Justice Donald Binchy to the Court of Appeal.

Since 1 November 2019, we have seen the limited liability partnership (LLP) model being embraced by 216 firms (as of 29 October). This is a culmination of 20 years of lobbying by the Law Society. Crucially, law firms with LLP status protect the personal assets of the partners in the practice.

We have made meaningful progress on the ‘statement of truth’, although much more needs to be achieved, and that work remains ongoing.

We have welcomed Government priorities and, in particular, the long-awaited *Family Courts Bill*, which will transform practice in the area of family law.


**Prudent management**

As a Council, we have carefully considered prudent financial management in the context of our shared desire to reduce the burden of the practising certificate fee for all of us. We have introduced regulations with a view to attracting insurers into the market with the objective of minimising the anticipated hike to professional indemnity insurance premiums.



“ ONE OF MY COMMITMENTS FOR THE YEAR WAS SUPPORTING SMALLER PRACTICES AND, BOY, WAS THAT COMMITMENT TESTED! ”

My successor will, undoubtedly, face many challenges in the weeks and months ahead, and I am confident that he will meet the challenges with skill and determination. He will have my full support.

I am honoured and grateful to have had the unique opportunity to represent and lead the profession during this once-in-a-lifetime global pandemic. I leave in the knowledge that we have a strong and resilient Law Society, and a strong and resilient profession. 

MICHELE O'BOYLE, PRESIDENT

PG. GAZETTE STUDIO



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## FEATURES

### 26 The killing of Eileen Quinn

Eileen Quinn was shot dead by Royal Irish Constabulary Auxiliaries while sitting outside her house on 1 November 1920. Gerard Quinn assesses the incident and praises the actions of solicitor Dr AD Comyn at the subsequent Military Court inquest

### 32 Top of the world

A successful woman in the turbo-charged world of aircraft leasing, Shairon Sexton talks about her interesting career path and how she navigated from a legal to a commercial role. Mary Hallissey reports

### 38 Share and share alike

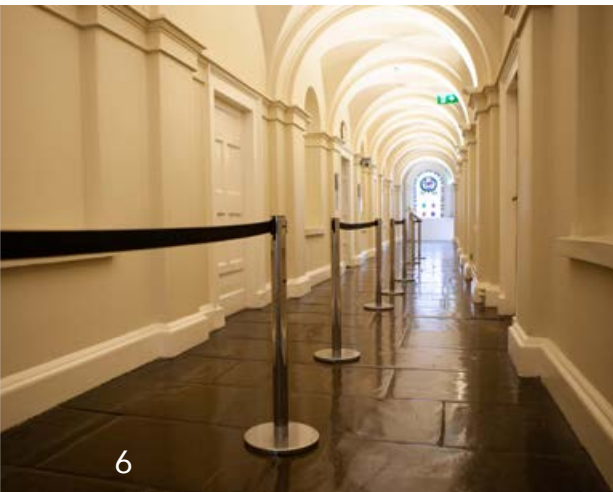
While most of the *Data Sharing and Governance Act 2019* has yet to be commenced, its provisions are set to have a big impact, Michael Barrett believes

### 42 Great expectations

Pharma company Perrigo is relying on the concept of ‘legitimate expectation’ in an attempt to have revised tax assessments reversed. But what thresholds will it have to meet to succeed? Brian Duffy and Robert Kearns hear the chimes

### 46 Heavy heart

Move more and sit less this November, with the Irish Heart Foundation. Tara Curran outlines some top tips for those working from home



## REGULARS

### 4 The big picture

Standout photo of the month

### 6 People

### 10 News

### 17 Comment

17 **Viewpoint:** Letters

18 **Viewpoint:** Practice Direction HC 97 will save court time, reduce costs for litigants – and is ecologically friendly

20 **Viewpoint:** The LRC’s report on personal injuries focuses on constitutional rights

24 **Book reviews:** *Civil Proceedings and the State* (3rd ed) and *Irish Capital Gains Tax 2020*

### 50 Analysis

50 **News in depth:** The inaugural Law Society ‘Business of Wellbeing’ summit

54 **News in depth:** COVID-19 pandemic triggers welcome civil litigation reforms

58 **News in depth:** Civil legal aid at critical juncture

60 **Eurlegal:** The strengths and weaknesses of the EU’s policies on money-laundering and terrorist-financing

### 65 Briefing

65 **Council report:** 11 September 2020

66 **Practice notes**

### 68 Professional notices

### 72 Final verdict





# THE BIG PICTURE

## SEND IN THE CLOWNS

Thousands of artists, actors and entertainers took part in a Berlin rally on 28 October 2020, protesting against COVID-19 restrictions that are affecting the cultural and entertainment industries across Germany. Protesters are calling for help for the sector, which is also in crisis in Ireland and all across Europe due to the pandemic

PICTURE: EPA-EFF/FLIP SINGER

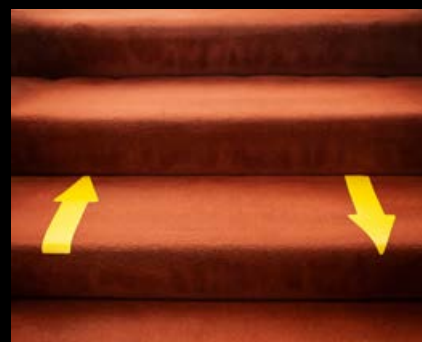


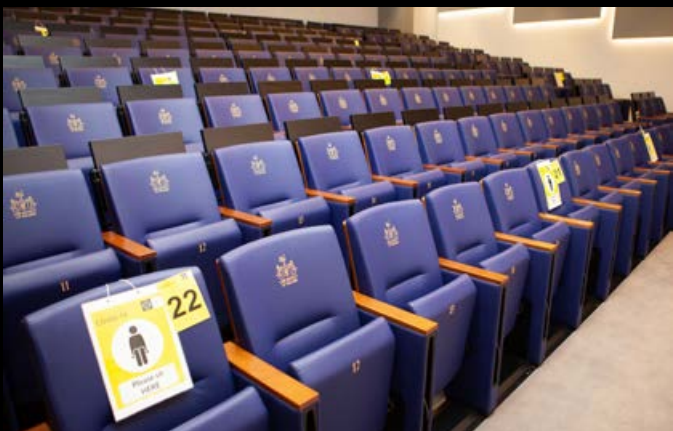
# A JOURNEY THROUGH EMPTY ROOMS

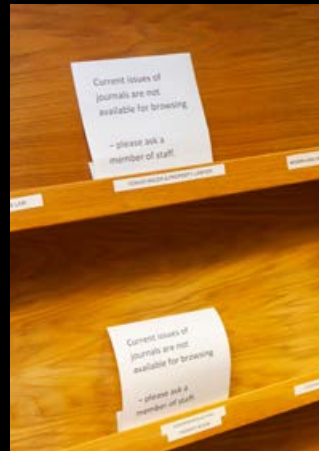
ALL PICS: CAN REDMOND



Security officer Billy Redmond tends the door at Blackhall Place. The building is largely empty again during the current phase of the lockdown, with only essential staff – such as the library’s Victoria Archer (pictured, p8) and Eileen Brennan (Facilities, p9) – being on-site









# LSRA HIGHLIGHTS 'CLEAR AND TIMELY COMMUNICATION' TO CLIENTS

■ The importance of clear and timely communication is a key theme of the Legal Services Regulatory Authority (LSRA) *Second Report on Complaints About Solicitors and Barristers* (7 March to 6 September 2020).

Specific complaints of alleged misconduct relating to failure to communicate remain high, at 17% of all misconduct complaints.

The LSRA believes that, since so many complaints are resolved relatively quickly, if legal practitioners engaged with their clients and responded to emails and calls in a timely fashion, many complaints might have been avoided altogether.

## Probate complaints

Probate complaints have fallen slightly – from 28% of all complaints of inadequate service to 23%. Such complaints comprise a significant workload for the LSRA. Many complainants have expressed frustration at probate delays, but responsibility for estate administration lies with the executors/administrators, and it is they who are the solicitors' clients.

The LSRA also notes an 'unrealistic expectation' among some complainants as to the role and remit of the LSRA and the extent of what can be achieved in the complaints and mediation process. "The LSRA will frequently not be in a position to resolve what, on investigation, is actually found to be a long-standing family dispute," the report says.

## Late file handovers

Many complaints about late file handovers concern a solicitor's lien, or long-standing common-law right to retain all documents in their possession, where there are fees owed to them. The



proper exercise of a lien does not constitute misconduct, the LSRA points out.

This issue often arises in court proceedings where there is a change of solicitor – but proper discussions should lead to a quicker handover of such files, the LSRA says.

Complaints from barristers against instructing solicitors for non-payment of fees increased from nine to 20.

The LSRA has urged solicitors to audit all outstanding fees owed to barristers, in line with their obligations, as set out in paragraphs 8.3 and 8.4 of the Law

Society's *Guide to Good Professional Conduct for Solicitors*.

## Letters to practitioners

The LSRA has clarified that a letter to a practitioner does not mean that a complaint file has been opened. The LSRA must write to a legal practitioner before determining whether a complaint is admissible or not.

Many practitioners mistakenly believe that LSRA correspondence, and an invitation to respond, means the matter has been reopened. That is not the case.

If there has been a previous complaint to the Law Society about substantially the same act or omission, which has already been determined, the LSRA is prohibited by law from dealing with it and must determine the complaint to be inadmissible. A practitioner who believes that to be the case should inform the LSRA and provide details. If the LSRA is satisfied, then the file will be closed.

Anonymised complaints in the report detail some interesting scenarios. For example, a former client complained that she was unable to get the title deeds of a

property she owned and wished to sell. The complainant was unable to make contact with her former solicitor, and was shocked to find that the solicitor had closed his firm and retired. After a letter from the LSRA, the former solicitor placed the matter in the hands of another practitioner, and the issue was very quickly resolved. This situation would not have resulted in a complaint had the solicitor properly wound down their practice, the LSRA points out.

Solicitors retiring from practice, or firms that are closing or merging, are obliged to provide contact details to the Law Society and proceed in accordance with its *close-of-practice guidelines*.

In another case, a beneficiary of a will made a complaint of alleged misconduct against a solicitor and alleged fraud and dishonesty relating to a property valuation. On investigation by the LSRA, it became clear that there was, in fact, a substantial dispute between family members regarding the property. The complaint had already been determined by the Law Society and was, therefore, found to be inadmissible.

## DONATE TO CALCUTTA RUN 2020

■ The Virtual Calcutta Run took place from 30 October to 8 November to raise vital funds for the *Peter McVerry Trust* and *The Hope Foundation*.

Members of the legal profession and supporters ran, walked, cycled or hiked a collective 10,000km, in their own time, to represent the distance from Ireland to Kolkata. Participants' distances were recorded on the [idonate.ie](http://idonate.ie) or [strava.com](http://strava.com) app, and their collective progress tracked on a map against the route to Kolkata.



We encourage everyone to make a direct donation at [www.idonate.ie/event/2552\\_virtual-](http://www.idonate.ie/event/2552_virtual-)

[calcutta-run-2020.html](http://calcutta-run-2020.html) – the Calcutta Run appreciates your support.

# 'SUAVE' DG TO STEP DOWN NEXT MARCH

■ Ken Murphy has notified the Law Society that he has decided to retire as director general on 22 March 2021, the date of his 65<sup>th</sup> birthday. He will have served 26 years in the role.

Reporting the news, *The Sunday Times* described Murphy as “the suave director general of the Law Society who has long been the public face of the legal profession in Ireland”.

In fact, Mr Murphy is aware, through his extensive international networks, that he is by far the longest serving CEO of a national bar or law society anywhere in the world. He will continue to serve in one of the most senior officer roles in the International Bar Association, to which he was recently elected and where he begins a two-year term of office on 1 January 2021 (see the October *Gazette*, p9).

Leading tributes to Mr Murphy, Law Society President Michele O’Boyle said: “Ken has led the Society with distinction for 26 years. In that time, he has represented the solicitors’ profession with integrity, dedication, wisdom and tremendous skill. I am certain that Ken’s contribution will leave a lasting legacy.”

Describing him as “a gifted communicator”, she added: “Ken has always had the profession’s obligations to the public interest at the forefront of his mind.”



Ken Murphy, the Society’s director general, is to retire next March, on his 65<sup>th</sup> birthday. He will have served 26 years in the role

## Council member

Murphy’s term as director general was preceded by 12 years as a Law Society Council member, being first elected in 1983. Before that, he spent two years on the Younger Members Committee – evidence of his long and devoted service to the Society and profession.

Announcing his intention to retire, the director general said to the Council on 16 October that, after almost 40 years of service, he was profoundly grateful for the “enormous honour and opportunities” that the Law Society had given him.

“Most importantly, my various roles have enabled me to serve the solicitors’ profession, which I love and of which I am so

very proud to be a member, and through this the public interest. I have worked with wonderful colleagues, and I often remarked that I knew no one who enjoyed their job as much as I enjoyed mine,” he said.

“That was certainly true up to the arrival, in March 2020, of the constraints caused by the COVID-19 pandemic which, for me, as for so many people, deprived working life of many of its most enjoyable dimensions.”

He commented that he and his wife Yvonne, who is also due to retire next year, had decided that the time was now right to pursue their many other interests in life, while they were still healthy and young enough to enjoy them.

## Strategic thinking

Murphy continued: “I recognise fully that the timing, in the circumstances, is far from ideal. The COVID-19 crisis in the country, from which I know a great many of my colleagues and friends in the solicitors’ profession are suffering, will create considerable challenges for the profession in conducting a proper and professional recruitment process – preceded, no doubt, by some serious strategic thinking.”

He added that, if it were the Society’s wish for him to continue in office for a limited period of “weeks or even months” to bridge a gap before his successor was appointed and available to take office, he would be willing to do so, and would “not leave the Law Society in the lurch”.

## Period of change

Mr Murphy has guided the Law Society through a period of great change and expansion, from approximately 5,000 solicitors on the Roll of Solicitors when he took up office in 1995, to over 22,000 today.

“I wish Ken, his wife Yvonne, and their children Gavin, Charlotte and Rebecca continued good health and an abundance of happiness in this exciting new chapter in their lives,” President O’Boyle concluded.

## NORTH-EAST PANDEMIC EXPERIENCES SHARED

■ Almost 100 solicitors attended the first-ever online annual North East CPD 2020 on 9 October.

Organised by the Law Society Finuas Skillnet in association with Monaghan, Cavan, Drogheda and Louth Solicitors’ Bar Associations, the conference provided an opportunity for local solicitors to stay up to date in areas such as family law and mediation.

The event also discussed litigating through a pandemic, how

technology can be used to a firm’s advantage, and tips on how to go paperless for an environmentally conscious practice.

The Monaghan Bar Association’s president, Kevin Hickey (Hickey, Henderson & Co, Clones), said that the event was a great opportunity for solicitors to check in with each other and reflect on the highs and lows of recent months.

The conference examined how

solicitors could use technology to their advantage to help support their office operations, case management, and client care. Speakers also shared their experiences of some of the most useful apps, and discussed security issues.

“Technology can help improve accuracy and efficiency within a solicitor’s workplace, which in turn will help save time and money,” Mr Hickey said.

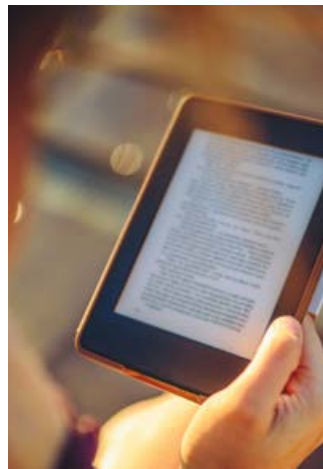
The speakers were Maebh Gog-

arty (arbitrator and senior solicitor at Smyth & Son, Drogheda), Gerard Groake BL (founder of the Paperless Academy), Robert Lowney (learning technologist, Dublin City University), Conor MacGuill (principal, Conor MacGuill Solicitors, Dundalk), Brian McMullin (mediator and principal, Brian J McMullin Solicitors, Donegal and Dublin), and Keith Walsh (principal, Keith Walsh Solicitors, Dublin).

# LIBRARY OFFERS E-BOOK OPTIONS

■ Electronic books are an environmentally friendly alternative to print books. Not only do they eliminate the amount of paper used, but the energy costs involved in book production, packaging, and delivery are also significantly reduced.

The Law Society Library is continuing to build an e-book collection containing core Irish textbooks, which staff can access to deliver extracts to members and students. Unfortunately, due to current copyright and licens-



PIC: SHUTTERSTOCK

ing restrictions, members cannot borrow entire e-books, but the library can email up to 10% of a book, or one chapter (if it is 10% or less of the entire book).

The library has also recently signed up to VLeBooks, which is an e-book platform from Browns Books designed specifically for use in colleges and universities. This platform allows both members and students on the PPC and diploma courses to access e-books on a broad range of topics.

The COVID-19 crisis has provided the library with the opportunity to reassess the way it interacts with members and students remotely, while at the same time supporting a green agenda. It has noticed a considerable reduction in the amount of photocopying it has to do, which has a knock-on effect on the amount of paper and energy used. The library plans to develop its e-book collection in the future, and also look at other ways to reduce its carbon footprint.

# CONCERNS ABOUT LEGAL-AID PAYMENT DELAYS

■ In her most recent *President's eBulletin* to members of the profession, Law Society President Michele O'Boyle says that she has heard concerns about "significant delays" in receipt of legal-aid payments from criminal proceedings heard in some counties.

As a result, she has written to the director of criminal legal aid at the Legal Aid Board, Pat Gilheaney, seeking information on whether there have been delays in the processing of payments linked to COVID-19 and, if so, how such delays will be addressed.

The president says that she will continue to advocate for access to justice and work constructively with the Courts Service and others during the remaining weeks of her term of office to deal with the challenges posed by new COVID restrictions.

## Level 5 restrictions

Updating members of the profession on 'Level 5' restrictions, which came into force on 21 October, she pointed out that legal services provided by practising solicitors and barristers are defined as 'essential' and, as such, are exempt from certain work and travel restrictions. She announced

ment from Revenue that the 'debt warehousing scheme' would continue to remain available to support businesses experiencing cashflow or trading difficulties arising from pandemic restrictions. The scheme allows businesses to 'park' PAYE and VAT tax debts arising from the crisis.

## Budget 2021 allocation

The president has also welcomed the Budget 2021 allocation of a record €3 billion to the justice sector, saying: "Critically, it will go a long way towards preserving access to justice in these difficult times. The Law Society has long advocated for significant investment in digital and ICT capabilities, particularly in the courts



PIC: CIAN REDMOND

system. The complexities of operating during the pandemic accelerated the urgency of this issue."

The president also welcomed the announcement of a total gross allocation of €158.8 million for the courts system, with €8 million specifically directed towards a much-needed and long-awaited modernisation programme.

## PII resources

The president has encouraged members to make use of resources on the Law Society's website before renewing their professional indemnity insurance. A full guide to the renewal process for the 2020/2021 indemnity period will be published shortly after 1 November, when confirmed information on insurers participating in the market will be provided.

# JUSTICE COMMITTEE AGREES INSOLVENCY BILL WAIVER

The Oireachtas Joint Committee on Justice has agreed to a request from Justice Minister Helen McEntee to waive pre-legislative scrutiny of the *Personal Insolvency (Amendment) (No 1) Bill 2020*. The bill is aimed at increasing supports for borrowers whose income has been severely hit by the pandemic.

Minister McEntee had des-

cribed the bill as "short but urgent", as it addresses problems in current legislation that risk denying protection for struggling mortgage holders. The *Personal Insolvency Amendment Act 2015* allowed insolvent homeowners to seek review by a court if their mortgage lender or other creditors refused a reasonable proposal for a personal insolvency arrange-

ment. The protection only applied to mortgage arrears dating from before 1 January 2015.

The justice committee, chaired by Deputy James Lawless, met on 21 October and agreed that, to avoid any delay in the publication of this legislation, it would recommend that the business committee would agree to waive pre-legislative scrutiny.

# CASE FOR MEDIATION A 'NO-BRAINER'

■ “The case for mediation is unanswerable – it is a no-brainer” said Mr Justice Michael Peart at the recent alternative dispute resolution (ADR) webinar.

Addressing over 200 lawyers, Mr Justice Peart stated that, after 17 years as a judge in the High Court and Court of Appeal, he had seen lives destroyed, people ruined financially, and families and relationships torn apart.

Hosted by the Law Society’s ADR Committee, the Southern Law Association, and the Irish Commercial Mediation Association (ICMA), the webinar was chaired by Alison Kelleher (partner, Comyn Kelleher Tobin) with panellists Mr Justice Peart, Yvonne Joyce (partner, Comyn Kelleher Tobin, and ICMA council member), and Helen Kilroy (partner, McCann FitzGerald). All are CEDR-accredited mediators.

Mr Justice Peart described the cost of litigation as “a deterrent to any but the very rich, the very poor, and the foolhardy. To the rich, the cost is affordable; to the very poor, the cost is irrelevant



(Clockwise, from top left): Alison Kelleher, Helen Kilroy, Mr Justice Michael Peart and Yvonne Joyce

because they cannot afford it anyway; and the foolhardy are people who are prepared to ‘go into the casino and put everything on red’ and take the chance”.

He further noted that “litigation is slow, it is cumbersome, it is exorbitantly expensive, and it does take its toll on people’s emotional and mental wellbeing”.

Emphasising the benefits of

mediation, he suggested that meditation was a win/win situation, in contrast to litigation, where someone either wins or loses. In addition, given the impact that COVID-19 was having on litigation timeframes, the argument for mediation – a much faster process – was even stronger. Mr Justice Peart further noted the obligation on solicitors to encourage parties towards mediation where appropriate.

Yvonne Joyce provided practical tips on preparing a client for mediation, with an emphasis on

considerations such as the timing of the mediation and understanding the issues and the process. She further emphasised the significant advantage of mediation as a process, which allows parties to put forward their own solutions to try and resolve the dispute.

Speaking on mediating during the pandemic, Helen Kilroy described her experiences of virtual mediations, the logistics, tips for success, and her positive experiences to date.

She extolled the use of virtual mediations, commenting that technology allowed for the saving of time, costs and, potentially, relationships. Technology could enable mediations to take place at shorter notice involving key personnel, which might otherwise prove logistically challenging for in-person mediations.

The Q&A session allowed for discussion on the challenges faced by parties entering mediation, including a lack of engagement by a party, and how to choose a suitable mediator to help resolve a dispute.

The webinar’s key message was that the architecture of mediation is evolving, the need for it is increasing, and its success in resolving disputes is here to stay.

## GALWAY ABSTRACT REPORT CHANGES



■ The processing of requests for abstract reports on traffic accidents in the Galway Garda Division has now become centralised. Requests for abstract reports are no longer being dealt with by

the local garda district offices in Galway.

With immediate effect, requests for abstract reports should be emailed to [GA.Bservices@Garda.ie](mailto:GA.Bservices@Garda.ie).

## TWO SOLICITORS APPOINTED TO THE DISTRICT COURT

■ The Government has advised the President of Ireland to appoint solicitors Sandra Murphy and Alec Gabbett as judges of the District Court.

Murphy practises at Gilmartin and Murphy Solicitors in Kiltimagh, Co Mayo, and is an active member of the Mayo Solicitors’ Bar Association. Gabbett is a partner at Leahy Reidy Solicitors in Limerick. He chairs mental

health tribunals at the Mental Health Commission and is a notary public.

Judge Brian O’Shea has finished his assignment to District 23 (Wexford) with effect from 20 October. Judge John Cheate has been assigned to that district, while Judge Treasa Kelly has been assigned to the Dublin Metropolitan District with immediate effect.



## ENDANGERED LAWYERS KAMIL RUZIEV, KYRGYZSTAN



Kamil Ruziev (57) was detained by officers of Kyrgyzstan's State Committee for National Security (GKNB) on 29 May 2020, interrogated, and denied access to a lawyer. He went on hunger strike to protest against his arrest and the poor detention conditions in which he was held. After two days of detention at the Karakol detention centre, he was informed that a criminal case had been opened against him and that he was charged with the crimes of forgery of documents and fraud.

These charges appear to be related to a medical certificate he obtained after suffering from acute bronchitis. After doubting the legitimacy of the certificate, as it did not have the official template of the medical centre, Kamil Ruziev himself appealed to the prosecutor's office of the Issyk-Kul region to verify the certificate, which found it authentic. It seems that these charges were used to discredit his human-rights work and retaliate against his involvement in cases involving the alleged use of torture by the GKNB and other law-enforcement agencies.

On 31 May 2020, Ruziev was placed under house arrest for two months. On 2 June, he was hospitalised due to the deterioration of his health as a consequence of the stress suffered during his detention. The inves-

tigation conducted against him was expected to come to an end on 29 September but, at the time of writing, there is no update.

Ruziev is a human-rights defender and the head of the Karakol-based human rights organization Ventus. He is well-known for his work to end torture in detention and has also provided legal assistance in cases of domestic violence and discrimination on grounds of nationality. Law-enforcement agents have repeatedly harassed and threatened him in retribution for his human-rights activities.

"Over the last year, I have been filing complaints against the GKNB and the prosecutor's office," he told Human Rights Watch. "I also help others whose rights have been violated. The GKNB knows of my human-rights work and decided to put pressure on me to get me to stop."

The GKNB's harassment took place against a backdrop of attempts by the Kyrgyz Parliament to adopt amendments to a law concerning non-governmental groups that are aimed at tightening controls over civil society. The draft law, which targets non-profit organisations in particular, imposes additional burdensome financial reporting requirements.

*Alma Clissmann is a member of the Human Rights Committee.*

## HIBERNIAN LAW JOURNAL SEEKS ARTICLES



■ The *Hibernian Law Journal* is now accepting submissions for consideration for volume 20. The journal is particularly interested in articles examining domestic issues, but will also consider those that discuss European or international law or other common law jurisdictions, where they are relevant in an Irish context.

Submissions should be between 5,000 and 15,000 words, formatted in OSCOLA Ireland style, and sent to [editor@hibernianlawjournal.com](mailto:editor@hibernianlawjournal.com) by midnight on 5 December 2020.

Established in 1999 under the patronage of the Law Society, the journal is edited by trainee and newly qualified solicitors. It is also supported by its benefactors, drawn from the Inner Bar, and sponsor firms Arthur Cox, ByrneWallace, McCann FitzGerald and Matheson.

Matt Gregg (editor-in-chief) and Louise O'Callaghan (deputy editor for editorial) said: "We are proud to provide a platform for trainees and practising solicitors, our colleagues at the Bar, students, and early career academics to contribute to Irish legal discourse. Every year, we receive many excellent submissions and are looking forward to seeing what this year brings."

An annual prize, chosen by the *Journal's* judge-in-residence, is awarded for the best article. A separate prize is awarded by the Law Society for the best article authored by a trainee.

Volume 20 is due for publication in hard copy and online (via HeinOnline and Westlaw) in July 2021. For further information, see [hibernianlawjournal.com/submit](http://hibernianlawjournal.com/submit). Queries relating to submissions should be directed to [editor@hibernianlawjournal.com](mailto:editor@hibernianlawjournal.com).

# NEW SOLICITOR 'SUPER-EXAM' FOR ENGLAND AND WALES

■ A new solicitor 'super-exam' will be introduced for trainee solicitors in England and Wales from autumn 2021. The Solicitors Qualification Exam (SQE) will consist of a centralised assessment involving two years of mandatory work experience.

The Legal Services Board (LSB) has spent almost a decade refining the new system based on the regulatory objectives set out in Britain's *Legal Services Act 2007*.

The board's chair, Dr Helen Phillips, said the new exam should ensure consistency of standards and improve diversity and access to the sector. This would increase consumers' trust and confidence, as well as create a profession that better reflected society, with wider access to justice, she added.

Non-law graduates who wish to become solicitors currently complete a law conversion course, followed by a legal practice course.

From next year, to qualify as a solicitor, candidates will need to:

- Hold a degree, or equivalent qualifications or experience.
- Pass the SQE, which is divided into two parts. (Law graduates will also complete the same



Dr Helen Phillips, chair of the Legal Services Board

assessment.) SQE1 will test functioning knowledge of the law and will comprise two multiple-choice tests, each containing 180 questions. SQE2 will test legal research, legal writing, legal drafting, case and matter analysis, advocacy, client interviewing, and attendance note/legal analysis through 15-18 tasks in five set areas of practice.

- Complete a minimum of two years' qualifying work experience. This could be completed with up to four different organisations and before completing SQE2.
- Meet the Solicitors Regulation Authority's character and suitability requirements.



## IRLI IN MALAWI MASKS FOR MALAWI'S PRISONERS



PICTURE BY MARIA THUNDU

Masked up – prison officers in Maula Prison, Lilongwe, Malawi

As the numbers of COVID-19 cases grew in Malawi, Irish Rule of Law International (IRLI) immediately considered the risks for prisoners.

Malawi is one of only 22 countries worldwide whose prisons operate at over 200% capacity (it's actually 260% in Malawi), with over 14,700 people in custody and an official capacity for just over 5,000 people (*Malawi Prison Inspectorate Report, 2019*). In reality, this means prisoners sleeping side-by-side on the ground in tiny cells, with little ventilation. There is no access to running water or flushing toilets, with reliance on visitors for daily meals.

Many people in custody suffer acute and chronic illnesses, including pregnant women and elderly prisoners. These comorbidities pose extreme risk to prisoners who are already vulnerable and living in conditions that do not allow any level of social distancing. In other words, Malawi's prisons are the perfect incubator for COVID-19.

Prisoners are now in fear of their lives. One 71-year-old with tuberculosis stated: "I think I will die in prison. This corona will find me here and finish me. Once the virus finds its way into prison, it will be impossible to prevent it spreading."

With these realities in mind, IRLI – alongside other non-governmental organisations working in the criminal justice sector – advocated for the government to implement an effective COVID-19 response. Steps needed to be taken to quickly decongest prisons and to provide adequate preventative measures, such as screening of incoming visitors/staff, personal protective equipment for staff, masks, and adequate handwashing facilities for prisoners.

To ensure that the lives of prisoners were being protected, IRLI approached Masks4AllMalawi, an organisation that was producing and distributing reusable cloth masks to vulnerable individuals. In collaboration with the Malawi Prison Service, IRLI facilitated the procurement of over 35,000 cloth masks for all prisoners and prison staff in 31 prisons and reformatory centres. Each prisoner received two masks and were trained in their proper use.

Providing masks was a small but important step towards mitigating the risk of a COVID-19 outbreak in prisons and protecting the rights of those in custody.

Seona Dillon McLoughlin is IRLI's Malawi country programme manager.

# EMPLOYMENT LAW CONFERENCE 2020

The EBA will host its annual Employment Law Conference 2020 remotely over two sessions.

**Part 1 – Wednesday, 18 November 2020 – 4.30pm – 6.00pm**  
Chair: Ms Justice Mary Irvine, President of the High Court.

**Eoin McCullough SC** - Employer insolvency  
**Claire Bruton BL** - Covid-19 and employment equality  
**Des Ryan BL** - Vicarious liability of employers

**Part 2 – Wednesday, 25 November 2020 – 4.30pm – 6.00pm**

**Sara Phelan SC** - Objective justification and age discrimination  
**Mark Dunne SC** - Bullying, harassment and stress at work  
**Claire Hogan BL** - Data protection claims - law and practice

To register attendance, please visit our website at:  
<https://ti.to/eba/annualconference-2020>



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# MURPHY: 'ECLIPSED THEM ALL'

From: David Walsh, Registrar, Faculty of Notaries Public in Ireland, Ranelagh, Dublin 6

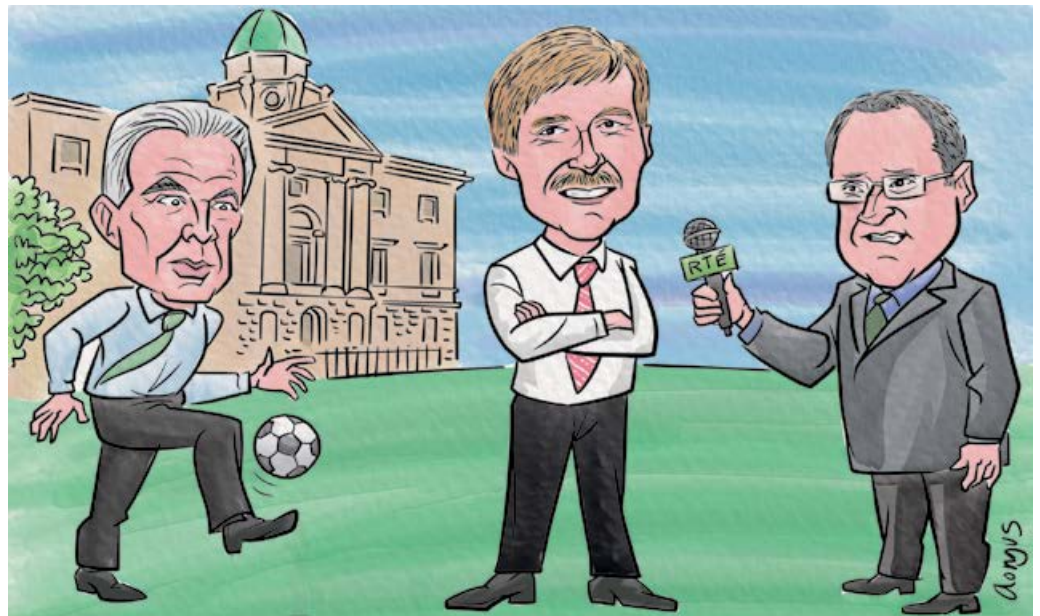
Ken Murphy is retiring, and the Irish solicitors' profession will be the poorer for his going. And at the tender age of 65 – a mere child; a year short of the bus pass, never mind the 'pinshin'. What on earth will he do for a crust?

I would earnestly say that Ken Murphy has always been my role model for how to do the job I am doing for Irish notaries.

Ken never let solicitors down and, whenever there was trouble and he was wheeled out to explain things – to us ourselves or to the general public – we could always have absolute confidence he would do the best that could possibly be done.

If you were having the morning cornflakes and you heard his voice, you didn't panic – if there was a problem, it was being handled. Ken was always careful to represent, and be seen to represent, all Irish solicitors – big and small, city and country, north and south, east and west.

Plain speaking and ruthlessly honest, it was no wonder he grew to be bigger than the role itself, and became a regular pundit on the more serious and prestigious discussion programmes, including *The Marian Finucane Show*.



Solicitors, to their great fortune, have always had the same sort of total, well-deserved confidence in Ken Murphy that people otherwise reserve for,

say, Johnny Giles or Tommy Gorman – or even George Lee. In PR terms, the Law Society never once dropped the ball on his watch. From long ago,

he followed other splendids, including Joe Finnegan and Willie O'Reilly but, even so, he eclipsed them all.

*Ar bhfeichbhimid a leibéid arís?*

## LAW SOCIETY 'PROMOTES THE IDEOLOGY OF THE RADICAL LEFT'

From: Ronan O'Brien, TP Robinson, Solicitors, 24 Fitzwilliam St Upper, Dublin 2

Dear Sirs,

I refer to the *President's eBulletin* of 2 October and, in particular, under the heading of 'Discontinuation of "Dear Sirs" salutation'.


It is depressing to see the Law Society promote the ideology of the radical left.

This is a step in the direction of compelled speech, similar to the Canadian Bill C-16.

I am going to ignore this recommendation, although I am quite prepared to negotiate with a colleague a form of address if

'Dear Sirs' upsets them.

I suggest that the Law Society should concern itself with the protection and promotion of free speech, which is a fundamental principle of the common law.

It is the tradition of free speech that we should be proud of, and it is this tradition that the radical left seeks to undermine. 



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# SOCIETY WELCOMES NEW HIGH COURT PRACTICE DIRECTION

Practice Direction HC 97 is beautiful in its simplicity and will save considerable amounts of court time, reduce costs for litigants – and is ecologically friendly, argues **Liam Kennedy**

LIAM KENNEDY SC IS A PARTNER AND COMMERCIAL LITIGATOR WITH A&L GOODBODY AND A MEMBER OF THE LAW SOCIETY'S COUNCIL



ESTABLISHING  
THE PREMISE THAT  
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FOR COMMON  
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AND EXPENSE,  
SAVE CLIENTS'  
MONEY, AND  
REDUCE THE TIME  
AT HEARING

**T**he best ideas are the simplest. *Practice Direction HC 97* may seem unremarkable, but it could save considerable court time, reduce costs for litigants, and even give the rainforests a welcome break!

Every litigation solicitor will be familiar with the need to prepare voluminous books of authorities for contested hearings. This seems superfluous when the same authorities are repeatedly presented for applications that the court regularly deals with. Unnecessary effort and expense are incurred producing bundles of authorities and opening them to the court, even when the court is already very familiar with them.

The new practice direction solves this problem in proceedings in the High Court (save for the commercial list, where *Practice Direction HC 68* continues to apply). It lists the authorities typically required for common procedural motions. It stipulates that those authorities will be deemed to be available to the High Court judges dealing with such applications, meaning that copies need not be supplied by the parties. Par-

ties no longer have to copy the same cases every time there is a new motion. The need for books of authorities should be largely eliminated for most such motions.

The practice direction concerns motions seeking:

- Dismissal for want of prosecution or delay,
- Discovery,
- Replies to further and better particulars,
- Liberty to enter final judgment,
- Security for costs,
- Stay pending appeal,
- Extension of time to appeal,
- Removal of a *lis pendens*,
- Appointment of a receiver,
- Injunctions, and
- Costs.

Reducing the volume of authorities to be put before the court should reduce the costs of preparing for such motions. Copying costs will be reduced, as will the cost involved in the parties agreeing the bundle.

#### Signposting the principles

The practice direction is also useful because, by listing the key authorities on particular

issues, the court is signposting the principles that will govern their determination, meaning that less time should be spent opening well-established authorities or arguing over accepted principles. Oral and written legal submissions should not traverse core authorities in the detail that might be appropriate if dealing with novel issues.

Accordingly, the practice direction may (a) reduce the need for the parties to engage and negotiate as to the authorities required for the hearing, (b) eliminate the need for solicitors to prepare bundles of authorities that a court already knows backwards, and which have been copied to it previously, and (c) reduce the time spent on legal argument – there should be less justification in working through common ground.

The practice direction also highlights to the litigants and their advisors whether the motion should be brought or opposed in the first place. By focusing on the authorities, litigants can determine at the outset whether an application



P.C. SHUTTERSTOCK

Practice Direction HC 97 – good for the rainforests

is likely to succeed, and can also prepare their application in the light of the jurisprudence.

### Book of authorities

Of course, issues may arise that are not covered in the standard bundles, and additional authorities may occasionally be required. The practice direction sets out the procedure when filing such supplemental authorities. Save with leave of the court, there should be no more than eight cases in any book of authorities. Lawyers are also invited to draw the court's attention to any amendments that might be required to the standard bundles of authorities, so that they can be kept up to date.

The practice direction also envisages that the parties should agree an issue paper concisely stating the issues. If parties can't agree an issue paper, each party should submit their own paper of no more than 1,000 words. It also provides for the filing of electronic (as well as paper) copies

of written submissions and issue papers in the format specified in detail in the practice direction.

Establishing the premise that the court has already been briefed with the key authorities for common motions should reduce effort and expense, save clients' money, and reduce the time at hearing. The benefits of avoiding duplicative and voluminous authorities should not be underestimated. Accordingly, while a very simple idea, the practice direction offers significant benefits both to the courts and to the legal profession and, ultimately, to the clients by reducing the overheads involved in some common contested motions.

### Statement of case

Other recent practice directions are also designed to make the operation of the courts more efficient, reducing delays and expense for the parties, and thus improving the administration of justice.

One example is the requirement, in [Practice Direction SC 21](#), for parties to Supreme Court appeals to submit a 'statement of case'. This is clearly designed to assist the court's management of the appeal, presumably shortening the time required to hear and dispose of the appeal.

The importance of the new procedure and the assistance that it provides to the Supreme Court is demonstrated by the Chief Justice's recent written judgment in *Protégé International Group (Cyprus) Ltd v Irish Distillers Ltd* ([2020] IESC 61), which complimented the parties on the quality of their statement of case. Parties to future appeals should take note of the court's preferences as appearing from the judgment.

The Chief Justice observed that he had published the judgment in order to draw attention to what he evidently considered to be an excellent example of such a statement and of a constructive approach to litigation,

and he annexed the document to his judgment to stand as a precedent for future appeals.

The Chief Justice commented: "As can be seen from the joint statement, both parties have been able to robustly maintain their respective positions in relation to the substantive issues which will need to be determined on this appeal, but have also engaged constructively so as to agree appropriate steps to enable the appeal to come on for hearing at a time which will, most likely, be less than three months after leave to appeal was given."

While issued by different courts, both practice directions illustrate the courts' determination to improve the administration of justice wherever possible, by focusing on the issues and by avoiding unnecessary documentation. Such reforms are welcome from the perspective of all stakeholders – especially the clients, who ultimately bear the cost of court proceedings.

# CONSTITUTIONAL RIGHTS FRONT AND CENTRE IN LRC REPORT

The appetite for a soundbite can never be underestimated, but **Stuart Gilhooly** hopes that the LRC's report on personal injuries damages will be taken on board and that a sensible reaction will ensue

STUART GILHOOLY IS A PARTNER IN HJ WARD & CO AND A MEMBER OF THE LAW SOCIETY'S COUNCIL



THE INSURANCE INDUSTRY CONTINUES TO SHAMELESSLY, AND WITH A STRAIGHT FACE, SUGGEST THAT THE VICTIMS OF THEIR POLICYHOLDERS' WRONGDOINGS ARE, IN FACT, TO BLAME

**S**igns you are getting old, number 563 – constitutional law starts becoming interesting. I blame Ruadhán Mac Cormaic, really. He started the downward spiral by having the temerity to write a readable, entertaining book about important decisions of the Supreme Court. It was only heading one way after that.

So it was with anticipation, rather than trepidation, than I embarked upon the [144-page report](#) of the Law Reform Commission (LRC) on *Capping Damages in Personal Injuries Actions* (LRC 126-2020, published on 30 September 2020).

The LRC has provided many thought-provoking and often radical reports over the years, but rarely has one been so eagerly awaited, particularly by politicians and the media. The issue of damages has long been flagged by insurers as the main reason for the excessive increases in premiums in recent years. The Law Society has set out, in various fora – including these pages – why this thesis is without evidence or most likely any foundation.

Nonetheless, it fits neatly into the narrative peddled by an insurance industry that will use any excuse to defend its egregious profiteering and has no compunction in laying the blame at the feet of innocent injury victims. It would appear that, notwithstanding the Central Bank finding of dual pricing, the Competition and Consumer Protection Commission's allegation of price signalling, and earning supernormal profits, it continues to, shamelessly and with a straight face, suggest that the victims of their policyholders' wrongdoing are, in fact, to blame.

## Strong constitution

In any event, the LRC was not tasked with determining whether or not capping damages would reduce insurance premiums, but rather to opine on the constitutionality of such a concept. In doing so, it provided an issues paper last December that suggested four models that could be considered, and it invited submissions from interested parties as to which, if any, they believed would

pass the constitutionality test.

The Law Society was one of 35 bodies or people who made submissions, and it is clear from the report that the views received were of a very diverse nature. It is an issue that attracts partisan opinions and, when the issue of constitutionality arises, it is not unusual to see an argument made in line with the views of the subject. Which is not to say all such arguments are equal.

In order to obtain independent, expert, and objective advice on the issue, the Law Society sought the advice of counsel, which was reviewed by an expert subcommittee of the Society, and resulted in a comprehensive submission detailing the pros and cons of each model.

Before outlining the submissions, it would be useful to briefly set out the four models:

- *Model 1* – legislative capping (mandatory in nature and set by primary legislation) that divides types of injury into separate categories of severity, alongside guidelines that would determine the category or severity of an injury, with



PICTURE SHUTTERSTOCK

damages for each category. It was proposed that the respective caps for each category would be mandatory in nature, with no room for judicial discretion above that level.

- *Model 2* – this is quite complicated. Loosely described as a presumptive cap set by primary legislation, it proposes to set an upper limit for damages, and every other injury below the most serious would represent a percentage of that injury from 1% to 100%. It is not clear whether each distinctive type of injury would have a separate cap or whether every injury would simply be a percentage of the maximum,
- *Model 3* – this is the most controversial and most problematic. It essentially suggests that the capping proposals, such as appear in Model 1 or even Model 2, could be set in secondary legislation by way of ministerial regulation. This would again involve mandatory capping, with no judicial discretion.
- *Model 4* – the easiest to achieve and simplest proposal. It envisages a common-law cap,

which would presumably be the current common-law cap of €500,000. This model, however, crucially allows for judicial uplift in cases with exceptional circumstances and in the interests of justice.

such as that which is currently set at €500,000, and guidelines as drafted by the Judicial Council under its power conferred by the *Judicial Council Act 2019*. The LRC noted that these draft guidelines must be produced by 28 October 2020, after which the board of the Judicial Council will review, amend if necessary, and approve within 12 months. They noted that the amended section 22 of the *Civil Liability and Courts Act 2004* has now significantly changed the emphasis on judicial discretion. While the original section merely required a judge to have regard to the *Book of Quantum*, now, as soon as

THE LAW SOCIETY WAS ONE OF 35 BODIES OR PEOPLE WHO MADE SUBMISSIONS, AND IT IS CLEAR FROM THE REPORT THAT THE VIEWS RECEIVED WERE OF A VERY DIVERSE NATURE





## An tÚdarás Clárúcháin Maoine Property Registration Authority

### Property Registration Authority Customer Notice

The Property Registration Authority would like to notify our customers that from the 12<sup>th</sup> of October, we have made changes to the location of processing of **Legal Services Unit applications** for some Counties. Legal Services Unit applications are applications that are processed by or with the authority of an Examiner of Titles. Therefore all applications requiring an investigation of title by the PRA such as:

- Form 1
- Examiner Form 2
- Examiner Form 3
- Form 5
- S.49 applications in Form 6
- Examiner Conversions of Title
- Applications associated with any of the above

are processed in the Legal Services Divisions across three offices in the PRA based in Dublin, Waterford and Roscommon. The following changes will help achieve greater organisational efficiency and provide better customer service.

The Property Registration Authority would like to notify our customers that all Legal Services Division applications apart from S.49 applications, for the following Counties should be lodged directly to our Roscommon Office from the 12<sup>th</sup> October 2020 onwards:

**Cavan, Donegal, Galway, Leitrim, Longford, Mayo, Monaghan, Roscommon and Sligo**

The address of our Roscommon office is:

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

The Property Registration Authority would like to notify our customers that all Legal Services Division applications for registration for the following Counties should be lodged directly to our Waterford Office from the 12<sup>th</sup> October 2020 onwards:

**Carlow, Clare, Cork, Kerry, Kildare, Kilkenny, Laois, Limerick, Louth, Meath, Offaly, Tipperary, Waterford, Westmeath, Wicklow and Wexford.**

The address of our Waterford Office is:

Property Registration Authority, Cork Road, Waterford, Eircode X91 FP98  
Waterford Office DX number - DX44090.

The Property Registration Authority would like to notify our customers that all Legal Services Division applications for **Dublin** and **all S.49 applications for the following Counties Cavan, Donegal, Galway, Leitrim, Longford, Mayo, Monaghan, Roscommon and Sligo** should be lodged directly to our Chancery Street Office from the 12<sup>th</sup> October 2020 onwards:

The address of our Chancery Street Office is:

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

Thank you for your co-operation.

these guidelines are produced, a judge must state a reason for departure from the guidelines.

The Law Society submission immediately rejected Models 1 and 3 as being unsafe constitutionally. It felt that Model 4 would be safest and least likely to be susceptible to challenge.

**Final report**

The final report of the LRC took a similar stance. In determining the issue, it looked at the constitutional rights that may be affected and focused on three rights primarily: the right to bodily integrity, property rights (the right to litigate and to an effective remedy), and the right to equality before the law.

In assessing whether the restriction of any of these constitutional rights could be justified, it applied the two tests set down in *Heaney v Ireland* ([1994] 3 IR 593) and *Tuohy v Courtney* ([1994] 3 IR 1), which are described as

the proportionality and rationality tests respectively.

In applying these tests to Model 1, it was likely to fail the proportionality test because of the mandatory nature of the cap.

Model 2 was considered the most likely of the new proposals to withstand challenge because of the discretionary nature of the judicial uplift provided.

Model 3 was rejected as the least likely to pass constitutional muster, both for reasons of its mandatory nature and its failure to pass ‘the principle and policies test’ set down in *Cityview Press Ltd v An Chombairle Oiliúna* ([1980] IR 381) in respect of the proposal to delegate the power to set caps to the minister.

It was in relation to Model 4 that the LRC felt that most amount of comfort could be drawn. It was very conscious that, since the commission was asked to commence its work on this issue, the Oireachtas had

passed the *Judicial Council Act 2019* and the fruits of that legislation’s provisions had yet to be experienced.

It felt that the creation of judicial guidelines with the power to go beyond them only for good reason was the best and fairest approach. It felt that these guidelines, and their effect, should be given an opportunity to work before serious consideration should be given to any other model. However, it was clear that this was a matter for the Oireachtas and that, of the other models considered, Model 2 with appropriate safeguards would be the most desirable.

The political appetite for a soundbite can never be underestimated, but it is to be hoped that this report will be taken on board and a sensible reaction to the guidelines will ensue. In the meantime, the Court of Appeal jurisprudence continues to recalibrate damages in a fair and consistent manner. [G](#)

THE LRC FELT THAT THE CREATION OF JUDICIAL GUIDELINES WITH THE POWER TO GO BEYOND THEM ONLY FOR GOOD REASON WAS THE BEST AND FAIREST APPROACH



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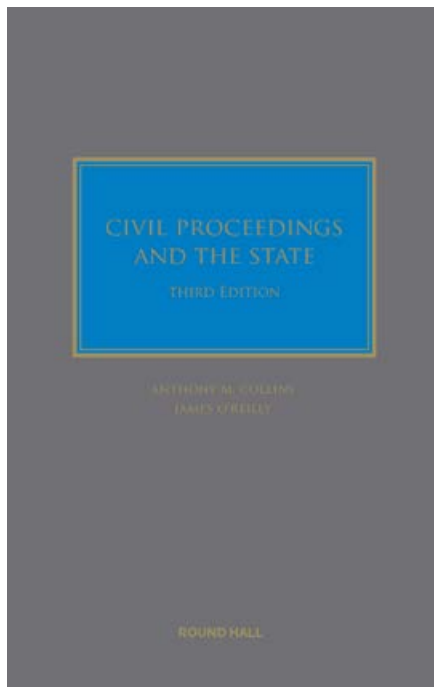
# CIVIL PROCEEDINGS AND THE STATE (3<sup>RD</sup> ED)

**Anthony M Collins and James O'Reilly.** Roundhall (2020), [www.roundhall.ie](http://www.roundhall.ie). Price: €459 (incl VAT).

Thirty years is a long time in law. It is more than three decades since the first edition of this textbook, dedicated to providing legal practitioners with an astute source of information in the broad and often convoluted area of public law.

The *Constitution of Ireland* must be looked at in concert with EU law, where the former has been amended seven times since 1972 to facilitate our participation in the Union. Practical consequences of the inception of the *European Convention on Human Rights* into our legislation through the *European Convention on Human Rights Act 2003* are also considered.

Due to changes that have occurred since the last edition, the authors, Anthony M Collins (a current judge of the General Court of the European Union) and James O'Reilly SC, have rewritten significant parts to encompass developments such as relevant judgments or the establishment of the Court of Appeal.



A new chapter has been added on statutory applications and appeals. A total of 13 chapters address topics such as orders affecting personal liberty, judicial review (relief and procedure), constitutional litigation, cases stated, as well as private legislation.

This handsome hardback is extremely well set out and clear, allowing the reader to jump straight to the relevant section and hold it there with one of two attached ribbon book-marks. This is a fine book, written 'by practitioners, for practitioners'.

This welcome third edition provides a current and comprehensive overview of an expansive area of law.

It will assist lawyers by providing a reliable reference to both legal knowledge and procedure in civil proceedings concerning the State.

*Aoife Byrne is a solicitor and a member of the Gazette Editorial Board.*



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# IRISH CAPITAL GAINS TAX 2020

**Tom Maguire.** Bloomsbury Professional (2020), [www.bloomsburyprofessional.com](http://www.bloomsburyprofessional.com). Price: €225 (incl VAT).

When I first opened Tom Maguire’s book, *Irish Capital Gains Tax 2020*, it reminded me of Judge’s *Irish Income Tax*, given its size and layout. Mr Judge’s book, I recall, scared the living daylights out of most trainees who had thought fleetingly of doing the ‘tax exams’, because of its sheer size. It was the physical embodiment of the depth and complexity of the study of tax.

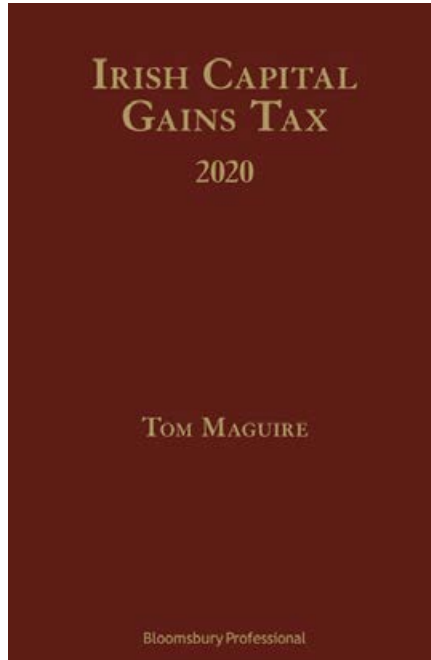
For those who persevered beyond the first shock, Judge became a valuable ally because of its clarity and attention to detail – and similarly with this book. Mr Maguire is, of course, the succeeding author to Judge on *Irish Income Tax*, which has a 2020 edition.

*Irish Capital Gains Tax 2020* is laid out over 1,300 pages in a clear and logical format that neatly falls into place and allows for ease of access.

Most of us who practise will reach for a book like this when we have a need to research a specific question. With that in mind, I looked at the kind of issues that come across a solicitor’s desk, such as the definition of a ‘principal private residence’, the interaction of capital gains tax and capital acquisitions tax, and so on.

In each case, the author sets out a clear, comprehensive explanation and review of the law and practice in the area, bringing together strands from legislation, Revenue manuals, case law and Appeals Commissioners’ decisions in a way that we sometimes forget Google searches can never do.

Given the depth of detail, the comprehensive treatment of the subject, and the clear explanations of each area of this important tax



for practising solicitors, this is undoubtedly *the* reference book for Irish capital gains tax.

It is written in an easy-to-follow conversational style that encourages the reader, intent on seeking an answer to a specific question, to follow on beyond the immediate, into discussion of wider issues and areas that would not have come immediately to mind. It’s an essential reference book on a complex subject, and is a welcome addition to our knowledge base. [E](#)

*Tom Martyn is principal of McDermott Creed & Martyn, Solicitors, Oxmantown Green, Blackhall Street, Dublin 7.*



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THE  
KILLING  
*of*  
EILLEN  
QUINN



Eileen Quinn was shot dead by Auxiliaries while sitting outside her house on 1 November 1920. **Gerard Quinn** assesses the incident and praises the actions of solicitor Dr AD Comyn at the subsequent Military Court inquest

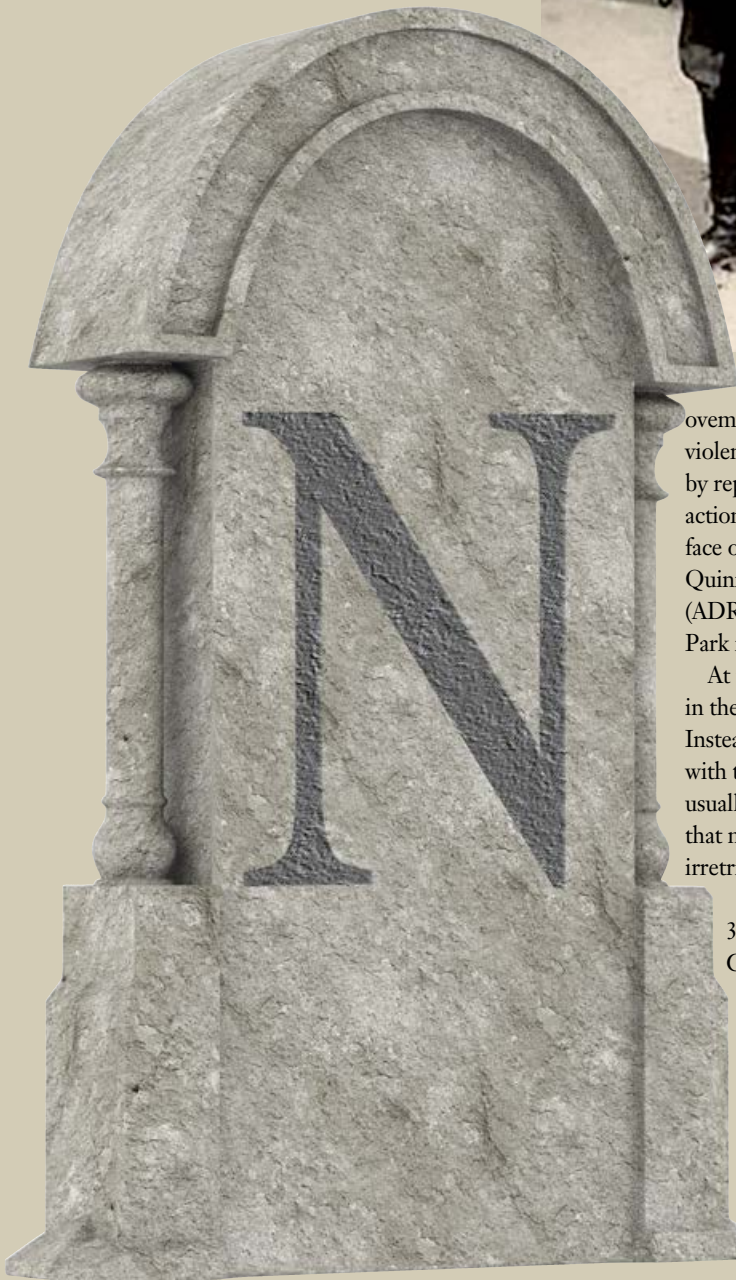
GERARD QUINN HOLDS THE WALLENBERG CHAIR OF LAW AT THE RAOUL WALLENBERG INSTITUTE (UNIVERSITY OF LUND) AND A RESEARCH CHAIR AT THE UNIVERSITY OF LEEDS. HE IS A FORMER EXTERNAL EXAMINER AT THE LAW SOCIETY OF IRELAND

## ≡ AT A GLANCE

- Militarising the police during the War of Independence
- The reprisal shooting of Eileen Quinn
- The Military Court of Inquiry
- Death by misadventure



PIC: ALAMY



November 1920 – 100 years ago this month – marked some of the most intense violence in the Irish War of Independence. A dreadful spiral of atrocity followed by reprisal had set in, seemingly on all sides. Often forgotten were the heroic actions of many solicitors, doctors and indeed coroners around the country in the face of the mounting violence. This story revolves around the killing of Eileen Quinn, who was shot by the Auxiliary Division of the Royal Irish Constabulary (ADRIC) on 1 November 1920 outside her quiet and peaceful home near Coole Park in Galway.

At the time, the British Government had opted not to introduce martial law in the country. To do so would have attracted the opprobrium of world opinion. Instead, it opted to militarise the police, the Royal Irish Constabulary (RIC), with the Black and Tans and later the Auxiliaries. To militarise a police force is usually a fatal mistake in any democratic polity, since any remaining links of trust that may survive between the community and the forces of the State are usually irretrievably broken. Ireland was no exception.

The story begins two days earlier, on Saturday 30 October 1920. About 30 Volunteers ambushed five RIC men on bicycles near Castledaly in Co Galway. The RIC men were transporting rifles between stations. One was wounded and one was killed – Constable Timothy Horan. He was in his early 40s and married with three young children. Local clergy were asked to preach against the killing, and did so on Sunday 31 October.

The following day, Monday 1 November, Eileen (aged 24, with three young children of her own and one on the way) was sitting outside her house, facing the main Gort to Galway road. D Company of the ADRIC (billeted in Lenaboy Castle in Galway) had travelled in two trucks from Galway to Gort earlier that day and had apparently fired several shots indiscriminately in Gort's main square. Later in the afternoon,



PIC: ALAMY

THE CROWN SOUGHT TO EXCLUDE EVIDENCE FROM FR CONSIDINE ABOUT THE LENGTHY CONVERSATION HE HAD HAD WITH EILEEN AS SHE LAY DYING. DR COMYN STRENUOUSLY OBJECTED, AND THE PRIEST'S EVIDENCE WAS ADMITTED



## MILITARY COURTS OF INQUIRY WERE BASED ON MODELS DEVELOPED UNDER SUCCESSIVE ARMY ACTS DATING BACK TO THE 1870s. IT IS PROBABLY FAIR TO SAY THAT THE INTENT WAS TO DISTORT OR HIDE THE TRUTH

D Company (with some RIC) started back toward Galway. At around 3.30pm, they reached Eileen's house, about 5km outside Gort. Most accounts agree that two trucks either slowed down or stopped, and that several shots were fired from at least one truck. Eileen was hit in the groin and bled to death over the next several hours.

### Deliberate aim

Another account, written several years later, is more graphic and recounts an Auxiliary man kneeling down to steady his rifle and take deliberate aim at Eileen, who was sitting just yards away. Her killing was widely seen as a reprisal for the death of the RIC man two days before.

There are copious newspaper accounts of the killing. She was attended to by two local doctors – Dr Sandys and Dr Foley – at great danger to themselves. They managed to stem the bleeding somewhat, which gave her a few more hours of life. A surgeon was sent for in Galway, but he could not procure a motorcar due to the turmoil in the area.

The chief constable of the RIC in Gort came, but refused to take a statement from Eileen. She apparently told him that she “knew who did it”. Most take this to mean that she could identify the shooter in a lineup. No doubt fearing for his own safety, the chief constable adamantly refused to take a statement. The local priest, Fr Considine, also attended her while she lay dying. She communicated extensively with him and informed him of all the circumstances surrounding her shooting. She died later in the evening. Her husband Malachy was distraught, as were her three young children, all of whom were under the age of four.

Approximately three weeks later, two brothers in their early 20s ([Patrick and Henry Loughnane](#)) were brutally tortured and killed by the same company of Auxiliaries not far from Eileen's house. This, too, was largely seen as a reprisal action. It fell to their 17-year old sister (Nora) to identify the bodies.

### Ancient institution

Normally, when a death like Eileen's happens, the local coroners are apprised. Coroners' inquests are an ancient institution dedicated essentially to ‘truth-telling’ about the cause of death. Having this truth is crucial for the families concerned. Further, the truth may trigger the criminal process, and is thus central to the rule of law. And, indeed, the truth may serve a higher political purpose to help change policies and processes in order to avoid harm in the future.

A lesser-appreciated feature of this period was that the [Restoration of Order in Ireland Act 1920](#) (section 1.3(f)) allowed for the suspension of coroners' inquests. Regulation 80 was adopted under the [Restoration of Order in Ireland Act](#) in August 1920. It stipulated that the operation of coroners should be suspended in several (but not all) counties, and replaced by Military Courts of Inquiry. These Military Courts of Inquiry were based on models developed under successive [Army Acts](#) dating back to the 1870s. It is probably fair to say that the intent was to distort or hide the truth, and thus create additional breathing space for the actions of the Auxiliaries and Black and Tans.

Eileen was buried on Thursday 4 November 1920. A Military Court of Inquiry into

her death was convened on the same day as her funeral, which must have caused extreme distress for her husband. It was convened in the formidable and intimidating Gort RIC barracks – one of the largest in the country.

Under regulation 80, Military Courts of Inquiry had three members – all military personnel. By tradition, if not by law, coroners had to be either a solicitor or a medical doctor. There was no requirement that the military members of these Courts of Inquiry had to be either legally or medically qualified. The public and the media could be excluded from part or the entirety of the process. The rules of evidence were relaxed to allow for material that might otherwise be excluded.

The form of the report of an inquiry was determined by the [Army Acts](#). The acts stipulated that such reports should contain the names of the military officers presiding, the name of the deceased, a summary of the evidence presented (the bulk of the report), and one brief paragraph setting out the ‘verdict’ of the Military Court. They usually ran to six pages – no more. There was no space for a deliberative weighing of the evidence – just a conclusory few sentences at the end. Interestingly, variants of these military courts seem to have been used in Kenya, Malaya and the Palestine Mandate, as well as in Ireland.

### Courageous solicitors

Eileen's husband was allowed to attend throughout. Evidence was taken from several RIC men, as well as from the doctors and the priest who attended Eileen. Fortunately, the family was very ably represented by Dr AD Comyn, a solicitor based in Loughrea. Several courageous solicitors around the country like



The former home of Eileen Quinn, the scene of the fatal shooting

Dr Comyn attended these Military Courts to seek justice for the families. The Crown sought to exclude evidence from Fr Considine about the lengthy conversation he had had with Eileen as she lay dying. Dr Comyn strenuously objected, and the priest's evidence was admitted. (There is some evidence to the effect that the Auxiliaries marched up and down the corridor outside the room where the proceedings were taking place. If so, this was presumably done to intimidate those giving evidence.)

Several RIC men gave evidence. One testified to the fact that, while he himself didn't shoot, he heard shots ring out from the truck he was travelling in. He asserted, as did the other RIC witnesses, that it was not unusual for 'precautionary shots' to be fired, especially when coming to a dangerous bend on the road or a forested area from which an ambush might be launched. Interestingly, Eileen's house is situated on an entirely straight stretch of road for about 1km on either side, with little or no afforestation. The military members of the tribunal had discretion to do a site visit. If they had exercised that discretion, they would have seen that the threat of ambush was a pure fiction. No Auxiliary gave evidence – nor was one compelled. It is not known how long the tribunal sat, but it couldn't have been for more than two to three hours.

### Death by misadventure

The verdict, when it came, was 'death by misadventure' as a result of necessary 'precautionary shots'. This added insult to injury and caused a furor in Irish, American, British and Australian newspapers. One Irish

newspaper labelled the verdict 'legalised illegality'.

It led to a debate in the House of Commons, where Sir Hamar Greenwood stoutly defended the behaviour of the Auxiliaries, as well as the verdict. Presumably because of the weight of public opinion, the Government made an *ex gratia* payment to Eileen's husband. An extensive file exists that details an internal legal debate in HM Treasury about which theory of liability should be adopted, in the hope of limiting the precedent value of the payment.

Eileen was my grandmother. Her son, Alfred, then aged three, and who was a witness to her killing, was my father. Although there are copious newspaper accounts of the hearing before the Military Court of Inquiry, no copy of the actual report can be found. Under the *Army Acts*, six copies had to be made by law. Presumably, any official copies still in the possession of the Crown were transferred to London after independence. However, even a trip to the National Archives in London did not reveal any copy of the report (although it did reveal several others).

### Lessons learned

One hundred years on, what should we make of all of this? First of all, four people lay dead in close proximity to one another in the month of November 1920. Eileen Quinn, the Loughnane brothers, and Constable Horan all left behind distraught families. All conflicts have real human costs that reverberate through the generations. In war, and on the ground, there are no real winners.

Secondly, one cannot but be impressed with the two doctors, Fr Considine, and especially Dr Comyn, the family solicitor. They often

went out of their way and indeed courted extreme danger because of their sense of duty. Many families were deeply indebted to them.

Solicitors are not just technical ciphers of the law – they were (and are) socialised to take the rule of law seriously, even if it means great personal risk. (Indeed, it would be fitting if some way could be found of remembering and honouring all the professionals, including the legal professionals like Dr Comyn, 100 years on.)

Thirdly, the events of November 1920 certainly place the work of coroners into sharp relief. They are indispensable institutions devoted to truth-telling. They deserve to be cherished and supported, not least because it is hard to see the rule of law and indeed democracy function without them.

Last, while the events of November 1920 are still raw and vivid, occurring just 100 years ago, we owe our freedom to that generation. But we are not condemned to see the world as they did. Time and space has given us the luxury of being able to rise above the heated emotions of the day. The pathbreaking work of Linda Radzik on the concept of 'moral repair' (see *Making Amends: Atonement in Morality, Law, and Politics*) and the more recent work of Martha Minow on forgiveness in life and in the law (*When Should Law Forgive*) are as good a place as any to begin.

Remembering is a key part of 'moral repair'.

Over this past year, there has been a major art exhibition dedicated to Eileen (*The Uncertainty of History: Remembering Eileen Quinn*, by Bernadette Burns), an RTÉ documentary (*Reprisals – The Eileen Quinn Story*, by Orla Higgins), and some public talks, for example, the Coroners' Society of Ireland. We remember, too, the heroic work of Dr AD Comyn, solicitor, and many other solicitors like him, who insisted on the rule of law, even in tumultuous times. [E](#)

## LOOK IT UP

### LEGISLATION:

- *Restoration of Order in Ireland Act 1920*

### LITERATURE:

- Radzik, Linda, *Making Amends: Atonement in Morality, Law, and Politics* (Oxford 2009)
- Minow, Martha, *When Should Law Forgive* (Norton 2020)



# TOP OF THE WORLD

A successful woman in the turbo-charged world of aircraft leasing, Shairon Sexton shares her interesting career path and how she navigated from a legal to a commercial role.  
**Mary Hallissey** reports

MARY HALLISSEY IS A JOURNALIST AT THE *LAW SOCIETY GAZETTE*

**I**t was a rugby Six Nations home international weekend, and her friends were out on the town, but final-year law student Shairon Sexton was in the UCD library with her head in the books. She had a conditional offer for a master's from Cambridge and needed to graduate near the top of her class to secure it.

Such laser-sharp focus seems typical for the 38-year-old Dubliner – one of a small group of women with a commercial role in the aviation-leasing sector. She is a vice-president of sales and marketing at world-leader, GECAS, which has a fleet of 1,700 aircraft and 220 customers in approximately 75 countries.

Back in UCD, Shairon got the results she needed. She loved her year in

## SHE LAMENTS THAT SHE RECEIVES FAR FEWER REQUESTS FOR MENTORING AND ADVICE FROM YOUNGER WOMEN ON HOW TO GET INTO COMMERCIAL ROLES THAN SHE DOES FROM THEIR MALE COUNTERPARTS

Cambridge, doing her M Phil in politics and international relations. Time spent travelling the world and doing some exciting internships on Capitol Hill and in barristers' chambers was followed by legal training in London with Clyde and Co.

Ultimately though, Shairon felt the pull to return home to Dublin, and took a job at a leading corporate law firm. There, she experienced a long-hours culture, with weekend and overnight work an accepted part of the package.

### Dreams

But through a client, Shairon also got her first taste of the exciting world of aircraft finance. She already knew she wanted a job in one of Ireland's premier sectors. Pharma or tech didn't appeal greatly, but aviation leasing seemed glamorous and attractive.

In 2011, she jumped at the chance to join the in-house legal team at GECAS, working as an associate counsel. She was willing to relocate from her home in Dublin to Shannon to get a foot on the ladder, as well as accepting a temporary step backward in title in order to move forward. She saw the move as a necessary one, once she had identified her dream job.

The role primarily involved working on deal teams, doing everything from drafting and negotiating small amendments to aircraft or engine leases, to leases with new customers, to aircraft or engine-sale agreements, and the innovations of lease agreements.

A naturally confident person, she set her cap at a commercial role while working

in the legal department at GECAS, and began putting out feelers.

"As soon as I joined GECAS as a lawyer, even though I was getting great experience in legal there, I saw that commercial was where I wanted to be. I didn't fall into this, by any means. Nothing falls in your lap; you have to seek out those opportunities.

"What I liked about commercial was that it seemed to be the most suited to my personality and interests, as it's a far broader and more customer-facing role.

Even when I was in a law firm, I liked the client interaction. I liked being out and about."

### Jump

Shairon points out that, back in the '70s and '80s, before the advent of emails and conference calls, some leasing companies had historically only allowed trained lawyers to go into commercial roles, given the enormity of the deals they were making. Her legal background was a distinct advantage. However, that didn't mean the job was hers.

## SLICE OF LIFE

### ■ Most influential?

My parents, and getting accepted to Cambridge University.

### ■ Favourite book?

*To Kill a Mockingbird*. We studied it for the Junior Cert. It's a great book anyway, but our teacher Mrs Delaney really brought it to life.

### ■ Currently watching?

*Patriot Act* with Hasan Minhaj on Netflix – and really interesting documentaries.

### ■ Vinyl, CD or streaming?

Old school, but I prefer to buy music and download to iPhone.

### ■ Place in the sun?

Formentera, an island off Ibiza – it's like the Caribbean of Europe. For staycation, it has to be Lahinch.

### ■ Cats or dogs?

I grew up with Great Danes and, one day, would love to get one.

### ■ Favourite flick?

Too many to choose one, but I recently watched *Three Billboards Outside Ebbing, Missouri*. I was thinking about it for days after, which is always a good sign.

### ■ Earworm

Anything from the 1990s, to remind me of when I was a teenager!

### ■ Music icon

Irish band, Stolen City.

### ■ Sports idol?

I really admire young female Irish jockeys, such as Rachael Blackmore, Katie Walsh, Lisa O'Neill and Katie O'Farrell.



## I WOULD SAY ALWAYS SEEK OUT OPPORTUNITIES – YOU CANNOT EXPECT PEOPLE TO TAP YOU ON THE SHOULDER FOR YOUR NEXT ROLE OR PROMOTION

In September 2015, a role in commercial came up. She made the transition from legal to commercial, joining the Europe and Canada team. Once again, she moved back to Shannon from her home in Dublin, taking a strategic step back from a vice-president role to associate vice-president. It was a relocation and a step backwards in title but, again, Shairon saw the big picture.

“It was definitely worth it, and the job was exactly what I expected. It’s been great, I’ve learnt a lot, signed many deals, and secured a handful of new customers.”

However, she laments that she receives far fewer requests for mentoring and advice from younger women on how to get into

commercial roles than she does from their male counterparts.

“In general, I would say always seek out opportunities – you cannot expect people to tap you on the shoulder for your next role or promotion. Also, if you are considering a switch in careers, don’t be afraid to take a step back in title or to relocate.”

### Light up the sky

Initially, Shairon shadowed others who were longer on the job. A year later, she got her own airline accounts, including SAS, Finnair and Icelandair, dealing with fleet managers at bigger airlines and CEOs at smaller ones.

The job involves constant communication

about evolving aircraft needs, matching supply and demand. The travel also involves sacrificing family time, but Shairon, then in her early 30s, was willing to embrace the challenge. “A lot of people said to me, ‘don’t do it, because you won’t be able to travel when you have kids’. But I was determined, and knew I would make it work.”

**N**ow based in Dublin, Shairon is responsible for managing customer relationships for GECAS’s commercial aircraft lease business. She manages customer accounts in Denmark, Estonia, the Faroes, Finland,

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*"Opportunity knocks quietly, often in disguise"*

**DAC BEACHCROFT**

**DAC Beachcroft bolsters Real Estate capabilities in Dublin with partner hire**



Ronan McLoughlin has joined international law firm DAC Beachcroft as a partner to bolster the firm's Real Estate capabilities in Dublin.

Ronan has significant experience advising on both commercial and residential property matters, ranging from acquisition, development, sales, leasing and property management to property aspects of mergers and acquisitions, project work and financing. His domestic and international clients operate across all sectors and include investors, developers, occupiers, and funders.

Lisa Broderick, partner and location head, said, "Ronan's arrival adds heavyweight transactional Real Estate capabilities to our team, perfectly complementing our existing Corporate and Commercial offering and our ability to offer a fully integrated, seamless service for our clients."

Ronan added, "Even in these turbulent times Ireland's commercial property market continues to perform strongly creating significant opportunities for clients and the firm. With its truly international reach and wider corporate offering, DACB is a great place for me to further develop our expertise and commercial property practice."

DAC Beachcroft has been in Dublin for over a decade and recently moved to new premises at Three Haddington Buildings, Percy Place to accommodate the growth of the team. The Dublin office now has over 75 employees and eleven partners. Focused on delivering bespoke solutions for its clients, DAC Beachcroft's Dublin office has specialists in insurance (professional indemnity and defendant personal injury), health, commercial litigation, employment, regulatory and sports law, corporate, competition, and real estate.

Greenland, Iceland, Latvia, Lithuania, Norway, Poland, Sweden and Britain.

There is no specific graduate training programme, as such, for her commercial role, but she says that her lawyer's training is a massive help. That initial legal department job included reviewing 'letters of intent', working on approvals, drafting aircraft-lease documents, and reviewing customers' comments on those.

### Best of both worlds

Weekly or fortnightly travel is something she takes in her stride, even as the mother of an 18-month-old baby boy. The working week starts with Monday regional calls and then a lunchtime global call, with updates on all current deals.

Typically, on Tuesdays (before COVID), she flies out of Dublin to meet her customers in a variety of European countries. She generally stays city-centre and enjoys a walk or a run. Otherwise, it's working on her laptop and availing of room service after customer meetings.

"Some customers don't want to go for dinner or lunch and prefer office-based meetings, but sometimes they do, especially if we are celebrating a deal. Generally, I'd say my trips are not as exciting or glamorous as people might think. I spend my time dealing with hotel wi-fi and trying to catch up on work, because your day is gone when you're travelling."

Because she covers Europe, there are no long-haul flights involved, and most trips are limited to two nights, either weekly or fortnightly.

"If I was still in a law firm, working all-nighters and weekends, I would probably see my son less than I do now. The aircraft-leasing industry culture is that you generally don't work weekends, unless there's an emergency."

Her strong message to other women aspiring to a commercial role in aviation is that it can be done: "Of course, there are challenges juggling travelling with a family – but it's doable."

Even on her six-month maternity leave, she found herself itching to get back to work.

### Face to face

Shairon believes that business travel will still have an important role to play in the future, because customers want to retain that close relationship.



## IF YOU ARE CONSIDERING A SWITCH IN CAREERS DON'T BE AFRAID TO TAKE A STEP BACK IN TITLE OR TO RELOCATE

"Face-to-face meetings will still be key. If I had only taken on this role at the start of COVID, I would probably be finding it much tougher without those customer relationships that I have built up over the years. When customers know that you know what you're doing, it means so much – and it takes a while to build up that trust."

The Dubliner learned a thing or two from watching her father, Paul Sexton (now retired), build up his substantial garden centre and property business. It's important to cultivate relationships, and not simply ring or meet people when you're trying to sell them something, she believes.

"My father told me that face-to-face contact is always better – and don't always be looking to get or sell something. Relationships are key. And even if things get difficult and a customer relationship is challenged, it has to be 'water off a duck's back'."

Shairon believes she has jet fuel in her blood – her maternal grandfather Denis Herlihy was on the board of Aer Lingus as a senior civil servant. And, as a lawyer, she believes she brings a certain way of thinking to her job.

"You are more attuned to risk and causation. Lawyers are strong at structuring


a deal, thinking two steps ahead, and seeing the risk in a lease and what might go wrong."

### Unchained

Business travel hasn't yet lost its appeal, and Shairon says she has missed it during the COVID restrictions: "I haven't travelled abroad since January, and working from home has certainly been a challenge because I'm in a small apartment and work and play is all rolling into one."

"I much prefer being in the office, talking to people, and having that work/home separation. It helps with finding the necessary balance between the two."

She is in no doubt that the aviation industry will get through this difficult time. "In light of the drop in commercial air travel in 2020, airlines have conserved cash, often deferring orders or not flying their current fleets, and it's difficult to predict when air travel will resume fully," she says.

"While navigating this disruption, GECAS has been working, customer-by-customer, leaning into our areas of expertise to get the best outcome for them and for GECAS. The aviation industry will get through this, and I do believe there are always opportunities that arise from difficult situations," she concludes. 



PIC. SHUTTERSTOCK



# SHARE AND SHARE ALIKE

## ☰ AT A GLANCE

- The provisions of the *Data Sharing and Governance Act* will enable public bodies to share personal data in a broader range of circumstances, where necessary and appropriate
- Its provisions are intended to provide a legal basis for public-sector bodies to share data that has already been collected in line with the GDPR
- They only relate to the onward sharing of this data to other public bodies, not its original collection

While most of the *Data Sharing and Governance Act 2019* has yet to be commenced, its provisions are set to have a big impact, **Michael Barrett** believes

MICHAEL BARRETT IS LEGAL MANAGER FOR THE COMMISSION FOR REGULATION OF UTILITIES AND A MEMBER OF THE LAW SOCIETY'S IN-HOUSE AND PUBLIC SECTOR COMMITTEE

The *Data Sharing and Governance Act 2019* was signed into law by the President on 4 March 2019. Its provisions represent a large development in the management of personal data in the public sector, and they are certain to have a big impact on service users and public bodies alike when they do come into effect.

The act was presented as one of the action items in the *Public Service Data Strategy 2019-2023*, the Government's vision for the improved use of data by public bodies to "support a more joined-up, efficient and effective Government". The act provides statutory support for the strategy, which seeks to facilitate the delivery of integrated digital services for citizens and businesses, with an objective of citizens only needing to share their personal data with State bodies once, where appropriate and efficient.

The first thing to note about the provisions of the act is that they are intended to provide a legal basis for public-sector bodies to share data that has already been collected in line with the requirements of the *General Data Protection Regulations 2016* (GDPR). They only relate to the onward sharing of this data to other public bodies, and not its original collection.

### All I really want to do

Unlike private parties, public bodies cannot rely on the 'legitimate interests' basis for processing personal data in performance of their tasks as public-sector bodies, as provided for in [article 6\(1\)](#) of the GDPR. As a consequence, public bodies can only rely on a lawful basis prescribed under Irish or EU law. The provisions of the act will enable public bodies to share personal data in a broader range of circumstances, where necessary and appropriate.

Under [section 10](#) of the act, its provisions apply to a wide range of public bodies. However, several public bodies are designated as 'exempt bodies' and are not subject to its requirements. These are listed in a schedule to the act and include RTÉ, the Central Bank of Ireland, An Post and the ESB.



The expanded list of circumstances where the act enables the sharing of personal data are listed in section 13 of the act. Where provision hasn't been made under other Irish or European law, public bodies can disclose personal data to one another for the purpose of the performance of their functions, where the disclosure is also for one of the following purposes:

- To verify a service-user's identity,
- To identify and correct errors in the information held,
- To avoid the financial or administrative burden that would otherwise be imposed on a service-user of one of the public bodies concerned if the personal data had to be collected again,
- To establish someone's entitlement to a public service on the basis of information previously provided by them to another public body,
- To facilitate the administration, supervision and control of a service, programme or policy delivered or implemented, or being delivered or implemented by either public body,
- To facilitate the improvement or targeting of a service, programme or policy delivered or implemented, or to be delivered or implemented by either public body,
- To enable the evaluation, oversight or review of a service, programme or policy, and
- To facilitate an analysis of the structure, functions, resources and service-delivery methods of either public body.

Importantly, any such disclosure must be done in accordance with a data-sharing agreement entered into by the public bodies



Cher

concerned, as outlined further below. Sections 64, 65 and 66 of the act also provide for rules, procedures, standards, guidelines and model agreements that the Minister for Public Expenditure and Reform may prepare, prescribe and issue, as considered appropriate.

There are also restrictions where a public body might be in competition with private enterprise. Under section 13 of the act, where the receiving public body is engaged for gain in the production, supply or distribution of goods, or the provision of services, its use of the personal data cannot lead to the distortion of competition in trade in those goods or services in the State.

#### Train of thought

Data-sharing agreements are provided for under part 4 of the act. For public bodies, these agreements and the mechanics of entering into them are likely to involve a



Cher-alike

substantial amount of work. It's important that those responsible for making these arrangements make themselves familiar with the requirements now, so that they're prepared when these sections are commenced.

**U**nder section 19, the agreements must, among other requirements, specify:

- The information to be disclosed,
- The purpose of the data-sharing,
- The function of the public body concerned to which that purpose relates,
- The legal basis for the data-sharing and for any further processing, by the parties to the agreement, of the information to be disclosed under the agreement,
- Whether the impetus for the disclosure of information under the agreement will come from a data subject or a public body,

IN ADDITION TO THE SHARING OF PERSONAL DATA, THE ACT ALSO PROVIDES FOR THE SHARING OF 'BUSINESS INFORMATION', THE DEFINITION OF WHICH INCLUDES (AMONG OTHER THINGS) DETAILS OF A BUSINESS'S ANNUAL TURNOVER, NET ASSETS, AND NUMBER OF EMPLOYEES



## WHERE THE RECEIVING PUBLIC BODY IS ENGAGED FOR GAIN IN THE PRODUCTION, SUPPLY OR DISTRIBUTION OF GOODS, OR THE PROVISION OF SERVICES, ITS USE OF THE PERSONAL DATA CANNOT LEAD TO THE DISTORTION OF COMPETITION IN TRADE IN THOSE GOODS OR SERVICES

- Whether, where information is disclosed under the agreement, the disclosure will be of information in relation to individual data subjects or classes of data subjects,
- Whether the disclosure of information under the agreement will be on a once-off or ongoing basis,
- How the information to be disclosed is to be processed following its disclosure,
- What the related retention requirements are for the duration of the agreement and on its termination, and
- The security measures to be applied.

Where a data-protection impact assessment has been carried out in relation to the data-sharing, the parties must include a summary of the assessment in a schedule to the agreement. The agreement must also include a schedule with a statement summarising the analysis by the parties on the necessity and proportionality of the proposed disclosure.

### If found someone

In addition to the sharing of personal data, the act also provides for the sharing of ‘business information’, the definition of which includes (among other things) details of a business’s annual turnover, net assets, and number of employees. Section 34(3) permits Revenue to disclose business information that is taxpayer information (within the meaning of [section 851A](#) of the *Taxes Consolidation Act 1997*).

Another interesting element of the act is the provision for the designation of ‘base registries’ by the Minister for Public Expenditure. These base registries are envisaged as being central registers of information gathered by public bodies

that may be accessed by one or more other bodies, where necessary, to ensure consistency and efficiency when multiple bodies need to process the same personal data relating to service-users.

This is intended to avoid duplication and to reduce the administrative burden on service-users and public bodies. The registry must have a designated ‘owner’, responsible for ensuring that the personal data is accurate, relevant, and up to date. That owner must prepare a ‘terms-of-service’ agreement, setting out the rules for access.

In line with the principles of the GDPR and the objectives of the *Public Service Data Strategy 2019-2023*, part 8 of the act provides for the establishment of an IT system, referred to as a personal-data access portal. This portal, to be established by the Minister for Public Expenditure, would enable citizens to exercise their GDPR rights in respect of personal data processed by public bodies, and view information relating to any data breaches involving their data. Examples of the types of services to be provided on the portal include the ability to view the information and personal data held, and the data-sharing agreements under which it may be shared between public bodies.

The provision of this data-access portal would be a welcome advance for ‘eGovernment’ in Ireland, giving citizens an enhanced level of transparency and control in the State’s management of their personal data.

### If I could turn back time

To oversee many of the requirements created under the act, part 9 provides for the establishment of a Data Governance Board.

The board’s functions include the provision of advice to the minister, the promotion of compliance across public bodies, and the review of data-sharing agreements, in accordance with the procedure set out in [sections 53 to 62](#) of the act. The board’s membership is to be appointed by the minister, and must include at least two people not employed by a public-sector body. Once established, the board must provide an annual report to the minister on the performance of its functions.

In its [guidance note](#) on data sharing in the public sector, the Data Protection Commission noted the arrival of the act, while also reminding public bodies that the new requirements it creates are in addition to those bodies’ existing obligations under the GDPR and the *Data Protection Acts 1988-2018*. [G](#)

## LOOK IT UP

### LEGISLATION:

- [Data Sharing and Governance Act 2019](#)
- [General Data Protection Regulation 2016](#)
- [Taxes Consolidation Act 1997](#)

### LITERATURE:

- [Data Sharing in the Public Sector](#), Data Protection Commission (2019)
- [Public Service Data Strategy 2019-2023](#), Department of Public Expenditure and Reform (published 21 December 2018; last updated 8 January 2019)

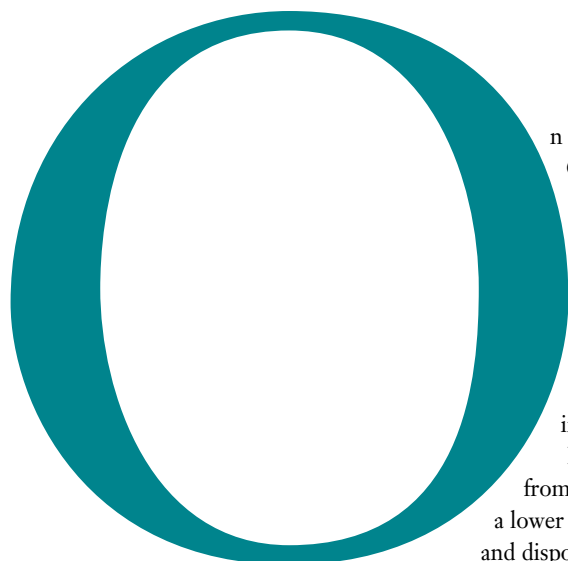
# GREAT EXPECTATIONS

## ≡ AT A GLANCE

- Judicial review proceedings were issued against the Revenue's decision to issue amended tax assessments that increased Perrigo's 2013 corporation tax liability by €1.64 billion
- 'Legitimate expectation' is an aspect of the well-recognised equitable concept of promissory estoppel
- A taxpayer cannot have a legitimate expectation to be given a right to which they are not legally entitled under the tax code

Pharma company Perrigo is relying on the concept of 'legitimate expectation' in an attempt to have revised tax assessments reversed, but what thresholds will it have to meet to succeed? **Brian Duffy** and **Robert Kearns** hear the chimes

BRIAN DUFFY AND ROBERT KEARNS PRACTISE IN TAX, CONTENTIOUS TAX, DISPUTE RESOLUTION AND LITIGATION AT WILLIAM FRY



On 3 June 2020, Perrigo Pharma International (Perrigo) opened its case in the High Court in a bid to quash one of the most contentious tax bills levied on a company in Ireland. In November 2018, the Revenue Commissioners raised amended tax assessments against Perrigo that increased the company's corporation tax liability for 2013 by €1.64 billion.

Perrigo is the parent company of Elan Pharmaceuticals (Elan), having acquired it in 2013. The 2013 assessments were raised against Perrigo on account of the manner in which Elan, prior to it becoming a subsidiary of Perrigo, accounted for the profit on the sale of its interest in the multiple sclerosis drug, Tysabri, to Biogen in 2013.

It is understood that Elan held a Shannon Free Trade Area (SFTA) tax certificate from 1997 to 2005 and, as the holder of an SFTA certificate, was entitled to avail of a lower rate of corporation tax on certain activities, such as trading in the acquisition and disposal of intellectual property (IP). It is believed that Elan accounted for the sale of





PIC: ALAMY

EVEN IF *PERRIGO* ESTABLISHES THAT THE CONDUCT OF REVENUE GAVE RISE TO AN EXPECTATION THAT THE DISPOSAL OF THE IP WOULD BE TREATED AS TRADING, IT WILL BE INTERESTING TO SEE IF IT WILL GIVE RISE TO A SUBSTANTIVE BENEFIT, SUCH AS VACATING THE AMENDED TAX ASSESSMENTS

Tysabri as a trading receipt and as subject to corporation tax at 12.5%. However, Revenue disagreed with this approach and determined that Elan was not trading in IP and that the gain on the disposal of Tysabri should have been subject to capital gains tax at 33%.

**P**errigo maintains that the approach adopted by Elan is consistent with how similar sales were reported to Revenue in the past. The Perrigo chief executive is reported to have stated that the Irish Government and Revenue have violated Perrigo's legitimate expectations to rely on prior tax audits and 20 years of tax history and interactions with the Revenue (*Irish Times*, 9 May 2019).

In response, Perrigo has initiated judicial review proceedings against the Revenue's decision to issue the amended tax assessments. Judgment in the case is expected soon. This article briefly considers the legal concept of 'legitimate expectation' and the thresholds that Perrigo may have to meet to succeed in its case to have the revised tax assessments reversed.

#### A tale of two cities

The doctrine of legitimate expectation is an aspect of the well-recognised equitable concept of promissory estoppel, whereby a promise or representation as to intention may, in certain circumstances, be held to be binding on the representator or promisor (*Webb v Ireland*). It seems clear that the plea of legitimate expectation is one that is exclusively public law in character but, unlike promissory estoppel, it is doubted whether the element of detrimental reliance is necessary to ground the action.

The criteria required to establish a claim of legitimate expectation were set out by Mr Justice Fennelly in *Glencar Exploration plc v Mayo County Council (No 2)*. That decision gave us three principles:

- 1) The public authority must have made a statement or adopted a position amounting to a promise or representation, express or implied, as to how it will act in respect of an identifiable area of its activity (known as 'the representation'),
- 2) The representation must be addressed or conveyed either directly or indirectly to an identifiable person or group of persons, affected actually or potentially, in such a way that it forms part of a transaction definitively entered into, or a relationship between that person or group and the public authority, or that the person or group has acted on the faith of the representation, and
- 3) The representation must create an expectation 'reasonably entertained' by the person or group that the public authority will abide by the representation to the extent that it would be unjust to permit the public authority to resile from it.

#### Bleak house

Accordingly, for a taxpayer to have an actionable claim for legitimate expectation, it is necessary to first consider the kind of representations that Revenue is permitted to make. Interestingly, there is no specific provision in the tax code that deals with the issue of Revenue opinions. However, *The Fifth Report of the Commission on Taxation* defined the term 'advance ruling' as a "statement by the Revenue on how they will

interpret legislative provisions in a given situation".

In *Pandion Haliaetus Ltd v Revenue Commissioners*, the High Court considered the weight to be attached to an advance ruling, and held that the proper approach is to (a) look at the transactions entered into by the taxpayer, and (b) see if, prior to their being entered into, Revenue committed itself to take a particular view of the tax implications involved.

However, the above approach is tempered by the decision in *Wiley v Revenue Commissioners*, which sharply delimits the scope of representations that can give rise to a legitimate expectation. In this case, the Supreme Court held that it simply was not possible for the taxpayer to "pursue on the basis of expectation a remedy which would involve the carrying out by Revenue of activities which they were not empowered to carry out".

**T**he rationale underpinning the decision was that to hold Revenue to an unlawful representation would have the dual effect of unlawfully extending the Revenue's power and destroying the *ultra vires* doctrine by permitting Revenue to arbitrarily extend its power.

#### The old curiosity shop

The key element of a judicial review is that it allows a court to review the manner in which an administrative decision is made, rather than the actual substance of the decision itself. In a judicial review, the court is concerned with the legality of the decision-making process, and not necessarily its merits.

In *Duggan v An Taoiseach*, Mr Justice Hamilton stated: "The doctrine of legitimate or reasonable expectation, being in accord with equitable principles, is recognised by the courts and, if a person establishes that he has a legitimate expectation of receiving a benefit or privilege, the courts will protect his expectation by judicial review as a matter of public law."

The availability of judicial review is a significant addition to the taxpayer's armoury against tax assessments raised by Revenue. However, the preponderance of case law suggests that, no matter the perceived injustice or unfairness that results, a taxpayer cannot have a legitimate expectation to be given a right to which they are not legally entitled under the tax code, and a plea of

THE PERRIGO CASE PRESENTED A NUMBER OF COMPLEX ISSUES FOR THE COURT TO CONSIDER AND, AS THE MATTER IS CURRENTLY SUB JUDICE, WE DO NOT WISH TO SECOND-GUESS THE OUTCOME

## A TAXPAYER CANNOT HAVE A LEGITIMATE EXPECTATION TO BE GIVEN A RIGHT TO WHICH THEY ARE NOT LEGALLY ENTITLED UNDER THE TAX CODE, AND A PLEA OF LEGITIMATE EXPECTATION CANNOT BE USED TO COMPEL REVENUE TO TAKE AN ACTION IF IT DOES NOT HAVE THE POWER TO DO SO

legitimate expectation cannot be used to compel Revenue to take an action if it does not have the power to do so.

Concerning the scope of the plea of legitimate expectation, a distinction has traditionally been drawn between, on the one hand, a legitimate expectation that certain procedures would be followed as a result of some representation scheme or policy, and, on the other, that a substantive benefit would be conferred when some statutory discretion came to be exercised.

Making a claim on the latter has not traditionally been met with success, for reasons set out by Mr Justice McCracken in *Abrahamson v Law Society of Ireland*: “Where a minister or a public body is given by statute or statutory instrument a discretion or a power to make regulations for the good of the public or a very specific section of the public, the court will not interfere with the exercise of such discretion or power, as to do so would be tantamount to the court usurping that discretion or power to itself, and would be an undue interference by the court in the affairs of the persons or bodies to whom or to which such discretion or power was given by the legislature.”

In *Perrigo*’s case, Revenue determined, among other things, that the taxpayer was not trading in IP and that the sale of the IP should have been accounted for as the disposal of a chargeable asset. The question of whether the sale of the IP constituted ‘trading’ is a question of fact, which typically would not be susceptible to judicial review.

However, the matter at issue is not whether the disposal of the IP constituted trading, but whether the conduct of Revenue was such that it constituted a representation that


Revenue accepted that the company was trading. However, even if *Perrigo* establishes that the conduct of Revenue gave rise to an expectation that the disposal of the IP would be treated as trading, it will be interesting to see if it will give rise to a substantive benefit, such as vacating the amended tax assessments.

**T**he Tax Appeals Commission (TAC) does not have the authority to make an order of *certiorari* to quash tax assessments raised by Revenue on grounds of legitimate expectation or otherwise. Therefore, a claim for legitimate expectation should be brought by way of judicial review in the High Court. Judicial review proceedings exist in addition to the taxpayer’s statutory right of appeal of a tax assessment or decision of Revenue to the TAC. Indeed, a tax appeal may be adjourned to facilitate the taking of judicial review proceedings. Moreover, in judicial review proceedings, costs typically follow the event. This means that if a taxpayer succeeds in a legitimate expectation case, it may recover its costs from Revenue, while in the TAC, if the taxpayer wins, costs cannot be recovered from Revenue.

### Hard times

The *Perrigo* case presented a number of complex issues for the court to consider and, as the matter is currently *sub judice*, we do not wish to second-guess the outcome. The case was heard by Mr Justice McDonald over a period of ten days. When legal argument concluded, the court reserved its decision and the matter was adjourned so that McDonald J could consider the arguments and prepare a written decision.

We look forward to the judgment on what is likely to be a seminal case in the area of tax law and, in particular, legitimate expectation. However, the High Court decision might not be the end of the matter. Both parties have a right of appeal – and, with €1.64 billion at stake, it is likely that the losing party may choose to exercise its right of appeal.

If the judicial review is ultimately unsuccessful, we suspect that an appeal will also have been filed with the TAC, and these proceedings will revive. At the time of writing, the matter has been listed for mention on 4 November, when the decision may be issued. 

## LOOK IT UP

### CASES:

- *Abrahamson v Law Society of Ireland* [1996] 1 IR 403
- *Duggan v An Taoiseach* [1989] ILRM 710
- *Glencar Exploration plc v Mayo County Council (No 2)* [2001] IESC 64; [2002] 1 IR 84
- *Pandion Haliaetus Ltd v Revenue Commissioners* [1987] 1 IR 309
- *Webb v Ireland*, Supreme Court, 16 December 1987; [1988] IR 353
- *Wiley v Revenue Commissioners* [1994] IR 160

### LITERATURE:

- Commission on Taxation, *Fifth Report of the Commission on Taxation* (Dublin Stationary Office, 1985)







# HEAVY HEART

## ☰ AT A GLANCE

- Working from home means that many of us are missing out on regular daily physical activity
- However, there are some simple habits and routines that can help us to build more movement into our day
- The Irish Heart Foundation has launched the 'Escape Your Chair Challenge' and the 'Create a Physically Active Workforce' programme to help both employees and employers

Move more and sit less this November, with the Irish Heart Foundation. **Tara Curran** outlines some top tips for those working from home

TARA CURRAN IS PHYSICAL ACTIVITY COORDINATOR AT THE IRISH HEART FOUNDATION



More than half of those working from home as a result of the COVID-19 restrictions estimate that they are sitting down for an average of two hours and 40 minutes longer per day, a new survey has found, with one in four remaining seated for at least three hours more than previously.

The survey was commissioned by the Irish Heart Foundation and conducted by Ipsos MRBI in August. For a number of years, the Irish Heart Foundation has been warning of the dangers of sitting down for long periods. Sitting for prolonged periods of time can increase the risk of heart disease and stroke, increase blood pressure, lower good cholesterol, and can also contribute to excess weight and obesity.

## IT IS RECOMMENDED THAT ALL ADULTS GET AT LEAST 30 MINUTES OF MODERATE INTENSITY ACTIVITY, FIVE DAYS A WEEK. HOWEVER, NEW RESEARCH IS SHOWING THAT THOSE WHO ARE SEDENTARY MAY NEED TO SPEND EVEN MORE TIME EXERCISING

New working-from-home routines mean that a large section of the population is missing out on regular daily physical activity. They are no longer walking or cycling to work, not moving about the office attending meetings, nor popping out for a coffee with a colleague. Instead, working from home sees many of us simply walking to the kitchen or home office, opening the laptop, and sitting for hours on back-to-back video calls.

### Move on

Last September, the Irish Heart Foundation launched its 'Escape Your Chair' campaign and is encouraging people to sign up to the Escape Your Chair Challenge to move for one minute every hour of the working day, with suggested daily movements. Participants will receive regular updates throughout the month, with weekly movement plans, videos, and tips to help them escape their chairs.

In weekly videos, campaign ambassador, fitness expert, broadcaster and author Karl Henry demonstrates some of the movements, including cardio, muscle strengthening, mobility, and balance exercises, which will help keep everyone motivated throughout the month.

It is recommended that all adults get at least 30 minutes of moderate intensity activity, five days a week. However, new research is showing that those who are sedentary may need to spend even more time exercising to offset the risks associated with sitting down for too long. The World Health Organisation is currently working on new physical activity guidelines, which, for the first time, will recognise the risks associated with sitting for prolonged periods.

Being active at moderate intensity means

that the body has to work slightly harder than is comfortable. While doing physical activity at moderate intensity, a person will begin to feel a bit warmer, will become more aware of their heart beating, and it will become slightly more difficult to talk. A brisk walk, jog, swim or cycle all count as moderate intensity movement, if you push yourself slightly out of your comfort zone. It is also recommended that adults should do muscle strengthening activities two or three days a week. Bodyweight exercises include squats and lunges, and lifting weights or everyday tasks like carrying the shopping or digging in the garden all count as muscle-strengthening activities.

### Even it up

It is also recommended that adults over the age of 65 include balance activities two to three days a week. These include things like yoga or simply standing on one leg or walking on an imaginary tightrope. As we age, our balance deteriorates, so while balance exercises are recommended for the over 65s, you are never too young to challenge your balance.

Coupled with the many benefits to physical health, regular physical activity is also hugely beneficial for mental health. Regular movement helps reduce stress and boosts mood and self-esteem. Sometimes, work-associated stresses can get on top of us, so something as simple as taking a break from the desk and stepping outside for a short walk can help clear your head and leave you feeling refreshed.

### Call of the wild

Autumn is a great time for setting new goals, as the kids go back to school and everyone settles into new routines. As the evenings get darker and the weather gets colder, it can be

hard to get motivated to head out for a walk in the evenings. Therefore, breaking the day up with regular physical activity – no matter how small – can be an easier way to get active.

Some simple tips to build more movement into your day include:

- Take on the Escape Your Chair Challenge and move for one minute every hour of the working day,
- Start and end your working day with a ten or 15-minute walk,
- Get out at lunchtime for a walk or run, or do an online exercise class,
- Reduce your video calls from one hour to 50 minutes and take movement breaks between calls,
- Elevate your laptop and do your video calls standing up,
- Set a reminder in your calendar to stand up and move.

The Irish Heart Foundation is encouraging everyone to visit [www.escapeyourchair.ie](http://www.escapeyourchair.ie). Here, you can access a sitting-time calculator to assess how long you spend sitting down throughout the day, sign up to the challenge, and download our new leaflet, 'Well@Home: a simple guide to creating a healthier working-from-home environment'. The leaflet includes tips on keeping active, eating healthily, and minding our mental health.

### Lighter touch

A healthy balanced diet is one of the most important things you can do to improve your overall health, as it can reduce cholesterol, blood pressure and blood sugars, and ultimately keep your heart healthy.

Working from home, the usual habits



PICTURE: SHUTTERSTOCK

around what and when people eat have changed – whether it is because there is constant access to the fridge, or the stresses of trying to balance childminding with work. The challenges of working from home can often make you feel less in control of your diet and eating habits.

‘Mindful eating’ is being conscious of what you are eating and why. It is about getting back in touch with the experience of eating and enjoying food. The goal is to base meals and food choices on physical cues like hunger, rather than emotional ones like stress or unhappiness. So many of us are out of touch with our feelings of hunger and fullness. We often eat not because we are hungry, but because food is there.

Some simple healthy-eating habits while working from home include:

- Plan your meals, do a food shop, and stick to your plan,
- If possible, try not to work in the kitchen,
- If you are working in the kitchen, keep snacks in the cupboards, not in view,
- Take a break for lunch and eat away from your workstation,
- Avoid grazing at your desk,
- Drink plenty of water – sometimes we confuse thirst for hunger,
- Avoid excess alcohol in the evenings, as it can create cravings the next day.

### Alone

For many, working from home requires adapting to a new way of life. Research has shown that many people have reported feelings of loneliness, stress, and anxiety. It is completely normal to feel worried and stressed. However, it is vitally important to mind your mental health.

If you are struggling, it is important that you seek help by contacting your GP.

A campaign (developed by the Department of Health and the HSE in collaboration with a range of cross-Government partners) offers support and resources to help deal with the stress, anxiety and isolation currently experienced by many in Ireland. For more information and support, please see [gov.ie/together](http://gov.ie/together) and [yourmentalhealth.ie](http://yourmentalhealth.ie).

Some tips for minding our mental health while we work from home:

- Exercise regularly and choose activities you enjoy,
- Get out in the daylight and fresh air – there are extra mental-health benefits to exercising outdoors,
- Keep regular sleep routines,
- Maintain a balanced diet,
- Stay connected to friends, family, and colleagues,
- Find ways to relax, such as reading a book,

getting creative, or meditating,


- Limit the time you spend scrolling on social media.

You can see from these tips that physical and mental health are very closely linked: healthy habits you adopt in one area of your life will have a knock-on effect in all areas of your health. Likewise, breaking an unhealthy habit will have a positive effect on both your physical and mental health.

### Together now

The Irish Heart Foundation is calling on employers to support their staff to adopt healthy working-from-home routines. Promoting shorter video calls, allowing movement breaks during longer meetings, and respecting regular working hours will all help to support staff to mind both their physical and mental health.

We also have an online training course available to employers called ‘Create a Physically Active Workforce’, which will guide them on how to create their own workplace physical activity plan that supports those working from home, as well as office-based staff.

All resources are available to download on [escapeyourchair.ie](http://escapeyourchair.ie), so sign up and get moving. 

# BEHIND THE MASK

Lawyers operate in a high-performance culture, but often give too deeply of themselves, the inaugural Law Society ‘Business of Wellbeing’ summit heard. **Mary Hallissey** reports

MARY HALLISSEY IS A JOURNALIST AT *THE LAW SOCIETY GAZETTE*



HAPPY AND FULFILLED EMPLOYEES PERFORM BETTER. PSYCHOLOGICAL SAFETY, WITH THE ABILITY TO SPEAK OUT ABOUT CONCERNS OR ASK FOR HELP – WITHOUT REPERCUSSIONS – IS A KEY PART OF THAT

The fear of stigma attaching to any disclosure of mental ill-health is a huge issue for workplace wellbeing, the first [Law Society Business of Wellbeing](#) online summit heard on 30 September. And while the law is a noble profession, it can be a draining one, attendees heard.

There was both a moral and a business case for managers at the highest level taking full ownership of mental-health issues among their employees, speakers suggested, but admitted that we were still at the infancy stage of wellbeing interventions being introduced in the legal workplace. Legal workloads can be significant, which may bring on mental-health difficulties, but lawyers were often expected to display ultra-resilience in the face of extreme challenges.

Law Society past-president Michael Quinlan, who championed psychological wellbeing during his term of office (2017/18), said that that good mental health and good physical health should be held in equal regard: “You go to your doctor if you have a pain, and the doctor may decide to give you treatment or a tablet. But, if you perceive yourself to be suffering from a mental-health problem, you won’t go and get treatment, because you could be labelled, or you fear that your job might be in jeopardy.”

## Counselling on tap

Incoming Blackhall PPC trainees are now given access to numerous mental-health resources, the summit heard, with counselling sessions on tap. They also have access to the Law Society’s [Professional Wellbeing Hub](#), as well as [LegalMind](#) – an independent, confidential, mental-health support for Law Society members and their dependants.

Psychotherapist Antoinette Moriarty, who is the Law School’s Counselling Service manager, said that the summit’s theme was about encouraging a healthy and productive legal profession. Helping employees and teams to thrive had the corresponding benefit of improving both business and the bottom line, she enthused. Moriarty added that younger clients and the next generation of lawyers would drive positive changes in mental health, because they were far more discerning about how and with whom they did business, and were more driven by ethical concerns.

Law Society President Michele O’Boyle said that investing in professional wellbeing made good business and legal sense. Professional wellbeing was now at the core of Law Society training for new solicitors.

Teri Kelly, the Society’s director of Representation and Member Services, explained that the summit was an important part

of a much larger project that had the profession’s good mental health as its goal.

Research conducted by the Law Society during 2018 had uncovered high indicative levels of stress and depression in the profession – higher than the average population score in the EU. The main sources of stress were substantial workloads, high client expectations, and not having enough time to complete work. This was the genesis for the Professional Wellbeing Hub, Kelly explained. And she added that the stress and uncertainty of the current pandemic had affected people’s wellbeing both privately and professionally.

## Taking stock

Speaker Richard Martin spoke frankly about his nervous breakdown, at the height of his professional life as an employment lawyer in London. This had led to a long period of recovery, and had forced him to take stock of his life up to the point of his breakdown (see his article in the [October Gazette](#), p38).

Martin remarked that, as an employment lawyer, he often dealt with people at stressful times in their lives. Many leading law firms had worked to raise awareness of the importance of good mental health and had developed better-quality conversations around the issue, he said. He warned, however, that



PIC: SHUTTERSTOCK

high stress levels could have a negative effect on work quality. To try to address the issues he had encountered, he had helped to develop the *Mindful Business Charter*, which nine British law firms and three banks had signed up to in 2018.

Barrister and business coach Katie da Gama said that authenticity and belonging engendered a sense of wellbeing at work. She described this as being able to ‘show up as me’, without judgment or repercussions. She also offered facts and figures on the business case for wellbeing in the legal profession.

### Fear-inducing cultures

LK Shields partner Jeanne Kelly introduced Stephen Bowcott, chief executive of John Sisk and Son, the largest construction company in Ireland, with 10,000 employees.

“Setting impossible targets creates fear, and fear makes people do unethical things,” Bowcott said. “Toxic and fear-inducing cultures, and threats of being fired or a comparative ‘leader-board’ culture, can drive employees to burnout, fraud and forgery,” he suggested.

He added that workplace culture had a profound effect, not

only on employees, but also on the bottom line. “Happy and fulfilled employees perform better,” Bowcott said. “Psychological safety, with the ability to speak out about concerns or ask for help – without repercussions – is a key part of that.”

Former lawyer and founder of the Wellbeing Republic, Nick Bloy, said that social and emotional intelligence was a key skill for leaders, as was having the courage to care for, and sit with, people who were vulnerable. “People shy away from those important conversations, because people don’t know how

THE MAIN SOURCES OF STRESS ARE SUBSTANTIAL WORKLOADS, HIGH CLIENT EXPECTATIONS, AND NOT HAVING ENOUGH TIME TO COMPLETE WORK



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to conduct them,” he observed. “It also takes courage for leaders to lay down the ‘mask of perfection’. This only increases the suffering of those coming up the leadership ranks.”

Guy Setford described his ‘consultant’ model legal business, which offers a flexible way of working for lawyers. Setford employs lawyers working remotely throughout Britain. “The lawyers who work in the business have choice about everything – they choose what they earn, and they do not have targets,” he explained.

During the webchat question-and-answer session, many delegates gave anonymous, honest feedback, and said that they, and

their friends, had left private practice because of greed and unrealistic billing targets in large firms.

Summing up, Jeanne Kelly said that firms needed to be more cognisant of the kind of life that their employees wished to have. Being a partner in a big firm was not necessarily what people wanted, she observed.

### High-performance culture

Matheson partner Tara Doyle commented that the legal profession had a high-performance culture, and that lawyers often gave deeply of themselves in dealing with clients, and taking their burdens to heart.

The difficulties of achieving a work/life balance had been exac-

erbated during the global pandemic, she said, since employees were being asked to work from a bedroom or study, or perhaps a cramped apartment.

### Boundaries


The summit heard that both clients and firms should work together to respect work and home-life boundaries.

One attendee referred to a new mother who, on her return from maternity leave, had been expected to continue dealing with the same unsustainable workload and hours. In that instance, the client weighed in on her behalf, and essentially forced the firm to give the new mother the flexibility she needed.

UCC psychologist Sharon Lambert said that lawyers who felt stressed should consider going for psychotherapy, and look on it as a ‘facial for the brain’, instead of turning to unhealthy substance use.

Dr Lambert said that working in criminal justice had its frustrations, which led to stress and burnout. In a fascinating session with mental-health activist [Blind-boy Boatclub](#), Dr Lambert was asked about vicarious trauma and whether lawyers could be invested emotionally, as well as professionally, with their clients.

Dr Lambert responded that vicarious trauma could happen for legal practitioners dealing with clients when exposed to, for example, difficult family law or sexual-abuse cases. “How much of yourself are you giving away?” she asked. “How much of you is left at the end of the day?” She suggested that, while lawyers might invest energy into trying to compartmentalise the difficulties of dealing with clients, this then took energy away from other important areas.

The summit, which was organised by Julie Breen (Professional Wellbeing Project coordinator at the Law Society) received highly positive feedback from the 700 practitioners who logged in. 

ONE ATTENDEE REFERRED TO A NEW MOTHER WHO, ON HER RETURN FROM MATERNITY LEAVE, HAD BEEN EXPECTED TO CONTINUE DEALING WITH THE SAME UNSUSTAINABLE WORKLOAD AND HOURS. IN THAT INSTANCE, THE CLIENT WEIGHED IN ON HER BEHALF, AND ESSENTIALLY FORCED THE FIRM TO GIVE THE NEW MOTHER THE FLEXIBILITY SHE NEEDED

## Q FOCAL POINT

### EMPLOYEE WELLBEING AND THE LAW

The law requires that employers do not directly or indirectly discriminate against those with mental-health issues, ByrneWallace employment law partner Michelle Ní Longáin explained.

She gave an overview of how the law engages with wellbeing and mental-health issues across various jurisdictions.

Irish law is somewhat stronger than either EU or British law, in that it requires no discrimination between disabilities, the summit heard.

The definition of disability in Irish law is broader than that required under EU law, in that it includes a person who has a condition, illness or disease. Those with mental-health conditions must not be treated less favourably than those with a physical illness.

“A person who is getting stressed at work, or overwhelmed, doesn’t necessarily have a disability – but the definition of disability in Irish law and employment equality law is

broader than the definition that is required in EU law or in the law of England and Wales,” Ní Longáin explained.

She said that, often, employers had “beautiful policies” in place, but that they had to be careful not to over-promise and under-deliver by basing them on templates from a large employer, when the setting was actually a smaller firm.

Employers should, as a matter of course, have policies on bullying and harassment. However, an employee-assistance programme was not a cure-all, she warned, but was simply expected.

She examined where liability and legal obligations lay in terms of personal injury law, with foreseeability as a key factor. ‘Reasonable accommodation’ was a very powerful provision under Irish law, she said, requiring employers to put in place appropriate, effective and practical measures that related to the needs of the particular employee.



# COVID-19 TRIGGERS WELCOME CIVIL LITIGATION REFORMS

Many legal reforms that would have taken years to implement in normal circumstances have been introduced in a matter of months as a result of COVID-19. **Liam Kennedy, Stephen King** and **Eimear Digney** accentuate the positives

LIAM KENNEDY SC IS A PARTNER AND COMMERCIAL LITIGATOR, DR STEPHEN KING IS A SENIOR ASSOCIATE IN LITIGATION AND DISPUTE RESOLUTION, AND EIMEAR DIGNEY IS A COMMERCIAL LITIGATION SOLICITOR AT A&L GOODBODY



APPROXIMATELY 1,000 JUDICIAL HEARINGS HAVE BEEN CONDUCTED REMOTELY, MAINLY BY VIDEO-CONFERRING, SINCE THE INTRODUCTION OF COVID RESTRICTIONS

The sudden and dramatic pressures created by COVID-19 have led to legislative reforms that the Law Society has long been seeking. The *Civil Law and Criminal Law (Miscellaneous Provisions) Act 2020* provides statutory recognition for innovations adopted by the Irish judiciary and the Courts Service over recent months.

Those changes (such as allowing for electronic trial bundles and remote court hearings) helped to reduce the impact of COVID on the administration of justice. The act also introduces other changes that not only respond to the crisis, but also help our justice system evolve to reflect societal and technological developments and requirements.

At a glance, the main reforms are:

- Statutory provision for remote judicial hearings, and the electronic issuing and filing of court documents,
- ‘Statements of truth’ to be available in many circumstances as an alternative to antiquated processes for

swearing affidavits and statutory declarations,

- New rules to make it easier to introduce business records as evidence in civil proceedings.

## Remote hearings

Approximately 1,000 judicial hearings have been conducted remotely, mainly by videoconferencing, since the introduction of COVID restrictions. In normal circumstances, such a development would have taken years to implement. However, rapid testing of readily available technology was undertaken by the Courts Service and representatives of the Law Society and the Bar, with the active leadership and encouragement of the judiciary, to develop and implement models to allow court hearings to proceed remotely.

The successful pilots led to a rapid roll-out of remote hearings where possible (subject to the availability of the necessary technology and facilities in particular courts). The experience has demonstrated that remote hearings can be an adequate

replacement for physical hearings in many circumstances, with the potential to reduce delays in litigation.

The experience has also required the Courts Service, the judiciary, and lawyers for all parties involved in remote hearings to familiarise themselves with the technology, which may lead to improvements and efficiencies in the way litigation is dealt with, even when we have at last moved beyond the restrictions.

The act formally acknowledges these innovations by providing jurisdiction to hold remote hearings, and for court rules and practice directions to be introduced to deal with the related processes and procedures.

## How remote hearings work

The act effectively codifies many practices adopted over recent months. It envisages that the Chief Justice and the presidents of the various courts may direct that certain categories or types of proceedings may be heard remotely in their respective courts. Parties can also apply



REMOTE HEARINGS WERE INTRODUCED EXTREMELY QUICKLY IN RESPONSE TO COVID, BUT SUCH INNOVATIONS HAVE ENORMOUS LONG-TERM POTENTIAL TO IMPROVE THE EFFICIENCY AND COST-EFFECTIVENESS OF THE ADMINISTRATION OF JUSTICE AND TO OFFER A BETTER SERVICE TO THE PUBLIC

for a remote hearing, and individual courts have the discretion to make such directions. If such an application is not agreed by all parties, the court will decide whether it would be fair to all parties or in the interest of justice to conduct the hearing remotely.

The act confirms that remote hearings will have the same status as proceedings in a physical courtroom: the court's powers will be the same (including as to the compulsion of testimony or document production), and parties and witnesses will have the same rights and obligations.

Even without the act, remote hearings in the higher courts would have been difficult to challenge because of those courts' inherent jurisdiction to regulate cases before them. However, there may have been more scope for such a challenge in the District and Circuit Courts, being established by statute. The act addresses any such concern by providing that remote hearings in the District and Circuit Courts are deemed to take place in the court where they would otherwise have occurred, and judges may exercise their normal powers accordingly.

Remote hearings were introduced extremely quickly in response to COVID, but such innovations have enormous long-term potential to improve the efficiency and cost-effectiveness of the administration of justice and to offer a better service to the public. For example, the success of remote hearings in dealing with call-overs could be invaluable in towns and cities that High Court and Circuit Court judges only visit periodically.

In practice, when the judge is in town, there is a huge volume of work, and there can be significant delays until the next time the court is on circuit, with cases proceeding on a stop-start basis as a result. However, a

great deal of court work, such as procedural applications, could be dealt with by remote hearings, keeping cases moving around the country and saving the courts even more valuable time on circuit for matters that need to be dealt with in person. The ability to conduct remote hearings throughout the country would enable cases brought outside Dublin to be progressed to trial or settlement far more quickly than has traditionally been the case, and it would also make it easier for all parties, including clients and their lawyers, to participate in such hearings as appropriate.

### Electronic filings

The act also formally recognises the innovations initiated by the judiciary and the Courts Service (with the active support of the Law Society) for the use of electronic trial bundles, electronic filing of court documents, and the delivery of judgments electronically. Notwithstanding that some of these processes have already been implemented in response to COVID, this digital modernisation of the Irish judicial system is to be welcomed in general. It is particularly welcome that the legislation now provides for proceedings to be filed electronically, another reform long advocated by the Law Society. Court rules are now awaited to implement the key provisions.

The act envisages that court rules may require the following processes to safeguard the integrity of court filings:

- Authentication of documents that are filed, lodged or issued electronically,
- Verification of the identity of a person transmitting a document (including by their personal public service number), and
- Confirmation as to whether the electronic transmission is in place of, or is an alterna-

tive to, any other method by which a document could be filed, lodged or issued.

### Statements of truth

The provision for written evidence to be given in a 'statement of truth' as an alternative to affidavits is another welcome reform. It reflects many other common law jurisdictions where religious oaths are not required.

The old rule required a witness providing written evidence in civil proceedings to swear an oath before God to confirm the truth of their evidence, and to do so in the physical presence of a person empowered to administer oaths. If a witness objected to swearing in this way, they were required to make a solemn affirmation in the physical presence of the person empowered to administer the affirmation. The Law Society has long sought reform, arguing that requiring a witness to declare their religious belief is not appropriate in a 21<sup>st</sup> century society – and that it raises privacy concerns. Practical issues also arise with respect to COVID when a witness must be in the physical presence of the person administering the oath or affirmation.

It is anticipated that new court rules will allow a non-religious statement of truth that may:

- Contain a statement that the person making the statement has an honest belief that the facts are true,
- Allow it to be signed in an electronic format prescribed by those rules, and
- Outline other requirements relating to the content, verification, authentication or form with which such statements must comply.

As religious oaths or affirmations will still be required when oral evidence is given in court, the Law Society continues to advocate replacing the oath-based system in its entirety.

**Records presumed admissible**

Often, the obvious way to prove a point would be by reference to routine business records, such as delivery dockets, purchase orders, or invoices. However, technically, such documents would need to be proven by a witness at trial, failing which they would normally be inadmissible as evidence in civil proceedings. In practice, litigants often agreed to admit such records. However, the rule could lead to difficulties, delay, and increased costs if parties insisted on formal proof of documents, particularly if they were created years ago.

The act introduces a new statutory presumption that business records will be admissible in civil proceedings. This brings Irish civil procedures more in line with Irish criminal law practice, the approach taken to banking records, and the approach to evidence in civil proceedings in other common law jurisdictions.

Business records will now be admissible as evidence of the truth of the facts asserted in such records, including records originating outside Ireland, where:

- Direct oral evidence would be admissible regarding the fact in the record,
- The information was compiled in the ordinary course of a business,

- The information was supplied by a person who had, or may reasonably be supposed to have had, personal knowledge of the matter (irrespective of whether the person who compiled the information is identifiable), and
- The information is a reproduction of non-legible information in a legible form, and that reproduction occurred in the course of the normal operation of the reproduction system concerned.

Parties will still need to prove records in the usual manner if they do not meet these criteria.

The criteria suggest that business records may be admissible even if the person providing them as evidence (for example, a company secretary) was not the original author, provided they were compiled in the ordinary course of business. Further, the act permits, if necessary, the admission of oral or documentary evidence from a person who can explain the information in the documents.

Where the original business records no longer exist, a party can produce copies if they are duly authenticated (including as to reliability) in a manner approved by the court.


Notice of a party’s intention to seek to introduce business records as evidence must be provided to the other party. A notice of objection can be delivered if a party wishes to object to the admissibility of all or part of the documents.

A court can still refuse to admit business records if it has concerns regarding the reliability and authenticity of the records. The court can also decide the weight and reliance that should be placed on the records.

The credibility of the source of a business record can also be challenged, including by evidence of contradictory statements.

Business records will not be admissible in certain situations, such as where they are privileged or compiled in contemplation of criminal, civil or disciplinary investigations or proceedings (subject to exceptions in the act).

**Positive impact**

Notwithstanding that these reforms were enacted quickly and in response to urgent needs, the modernisations introduced will have a lasting and significant practical and positive impact on the conduct of civil litigation in Ireland during, but also after, the pandemic crisis. 

A GREAT DEAL OF COURT WORK, SUCH AS PROCEDURAL APPLICATIONS, COULD BE DEALT WITH BY REMOTE HEARINGS, KEEPING CASES MOVING AROUND THE COUNTRY AND SAVING THE COURTS EVEN MORE VALUABLE TIME ON CIRCUIT



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# CIVIL LEGAL AID AT CRITICAL JUNCTURE

Ireland is at a critical juncture, and it is time to recognise the role that access to justice can play in protecting and empowering vulnerable groups, writes **Rose Wall**

ROSE WALL IS CEO OF COMMUNITY LAW & MEDIATION AND IS A MEMBER OF THE LAW SOCIETY'S HUMAN RIGHTS AND EQUALITY COMMITTEE

AT A MINIMUM, THE MEANS TEST TO QUALIFY FOR LEGAL AID MUST BE MADE MORE INCLUSIVE, AND THE STATUTORY LIMITATIONS OF THE CIVIL LEGAL AID SCHEME MUST BE REMOVED, SO THAT PEOPLE CAN ACCESS LEGAL AID IN ALL AREAS OF LAW DURING THIS TIME

Ireland's first independent community law centre opened its doors in Coolock 45 years ago. Today, **Community Law & Mediation (CLM)** provides free legal advice, advocacy, mediation and education services to more than 3,000 people annually, many of whom are vulnerable and are dealing with the effects of inherited poverty and inequality.

Set up in 1975 and modelled on the American neighbourhood law centre, the purpose of Coolock Community Law Centre, as CLM was originally known, was not only to cater for the legal needs of the local community, but also to serve as a blueprint for how legal aid could be delivered across the country. Led by solicitor and community activist Dave Ellis, and later by

Colin Daly (now President of the District Court), it played a fundamental role in the development of the community law movement in Ireland.

## On behalf of the community

At a time of recession and high unemployment, the law centre survived many funding crises to campaign on behalf of the community on issues such as employment rights, access to social welfare, divorce, the position of lone parents, domestic violence, and homelessness.

It represented families of the Stardust victims and took important test cases in the area of social welfare, such as *McConnell vs the Eastern Health Board* (1981) and *State (Hoolahan) v Minister for Social Welfare* (1986). It also

successfully challenged the constitutionality of the law under which a person could be sent to prison over failure to pay a debt in *McCann v Judges of Monaghan District Court & Others* (2009).

Later, the law centre expanded both its catchment area – to Dublin North Central and North East electoral constituencies – and its services, to include mediation and conflict coaching. A second law centre opened its doors in Limerick city in 2013, following engagement with community representatives and activists there, which provides legal advice and advocacy services in the communities identified for regeneration and other areas experiencing disadvantage in Limerick.

This commitment to social justice and social inclusion continues to inspire Community Law & Mediation's work today. Under its *Strategic Plan 2019-2023*, the community that CLM serves now includes anyone who, because of economic, social or other disadvantage, is unable to otherwise access the services CLM provides. Its work is centred on empowering people to vindicate their rights, be it through legal advice and advocacy, mediation, 'know your rights' talks, or legal training courses. Law reform work continues, with recent initiatives focusing on access to civil legal



Rose Wall and Chief Justice Frank Clarke at the launch of the *Strategic Plan 2019-2023*

PICTURE: SHUTTERSTOCK



aid, employment and equality rights, access to education, access to housing and Traveller accommodation, access to justice for people with intellectual disabilities, and gender equality.

**Barriers still exist**

Unfortunately, many of the barriers that deterred people from asserting their rights and from accessing legal services in 1975 continue to exist today. While the Civil Legal Aid Scheme, introduced in 1979, attempted to address issues relating to cost, it is too limited in scope and does not cover certain areas of law, including employment and equality complaints before the Workplace Relations Commission or appeals before the Social Welfare Appeals Office.

In addition, the existing means test to qualify for legal aid is overly strict and out of touch with the reality of the cost of living, with the result that many who cannot afford the services of a private solicitor do not qualify for legal aid.

CLM and its colleagues in the other independent law centres play a vital role in meeting the needs of vulnerable people who are not catered for under the

Civil Legal Aid Scheme. They also perform important public information, education, and law reform functions that are not currently provided for by the State. One woman who contacted Community Law & Mediation’s legal service with an employment issue described it as a ‘lifeline’, as she had given up hope of getting any help or support elsewhere.

None of this could be achieved without the support of a dedicated group of legal and mediation volunteers, who generously commit their time to giving advice in the legal advice clinics or resolving family or community disputes through mediation. In fact, volunteers form the very backbone of Community Law & Mediation.

**More to do**

So what about the next 45 years?

Firstly, the onset of the COVID pandemic and its impact on families, homes and jobs has created an even greater urgency around the need for comprehensive and timely access to justice. Demand for CLM’s services has never been greater, and requests for legal advice in relation to employment have more than doubled as people face the prospect of losing their jobs. There has also been a substantial increase in demand for advice on housing and family issues.

At a minimum, the means test to qualify for legal aid must be made more inclusive, and the statutory limitations of the Civil Legal Aid Scheme must

be removed, so that people can access legal aid in all areas of law during this time. In this context, reports of a commitment by Justice Minister Helen McEntee to review the Civil Legal Aid Scheme and the eligibility criteria are very welcome.

Secondly, as climate change accelerates and the urgent actions required to mitigate it are implemented, it will be vital to ensure that the groups we work with are not disproportionately affected. Indeed, we have already seen stark disparities and inequalities in how vulnerable groups have experienced the pandemic.

CLM’s new Centre for Environmental Justice will seek to engage communities experiencing poverty, social exclusion, or inequality and provide them with legal information, advice, advocacy support and representation in the area of environmental justice. It is planned to officially launch the new centre in January 2021.

Forty-five years on, Ireland is at a critical juncture as it deals with the two defining issues of our time. It is time to recognise the role that access to justice can play in protecting and empowering vulnerable groups.

**Q FOCAL POINT**

**CASEBASE DATABASE**

‘Casebase’ contains more than 100 reports of decisions of the Social Welfare Appeals Office and has just been updated to make it an accessible, easy-to-use and useful resource for people who are considering appealing a decision on their entitlement to a social welfare payment, or for solicitors who might be assisting a person with an appeal (see [www.communitylawandmediation.ie/social-welfare-casebase](http://www.communitylawandmediation.ie/social-welfare-casebase)).

# FIGHTING FIRE WITH FIRE

The EU Commission is seeking reform to develop a comprehensive EU policy to combat money-laundering and terrorist-financing. **Cormac Little** assesses the strengths and weaknesses of its action plan, published last May

CORMAC LITTLE SC IS A PARTNER IN WILLIAM FRY. HE IS VICE-CHAIR OF THE LAW SOCIETY'S EU AND INTERNATIONAL AFFAIRS COMMITTEE AND IS A MEMBER OF THE ANTI-MONEY-LAUNDERING TASK FORCE

THE ACTION PLAN ALSO CRITICISES THE LACK OF JOINT ANALYSIS BY FIUs OF REPORTED SUSPICIOUS TRANSACTIONS THAT HAVE A CROSS-BORDER IMPACT

Given the constantly evolving nature of the use of the financial/asset transfer system for illicit purposes by criminals/terrorists, there is a need for regular revisions to the EU legal framework combating the laundering of the proceeds of crime or the financing of terrorist groups. Such legislation is commonly referred to as anti-money-laundering/countering the financing of terrorism (AML/CFT) rules.

The fight against money-laundering/terrorist-financing has been a key part of the EU's legislative agenda since the first *AML Directive* was adopted in the early '90s. Notwithstanding these efforts, which have, in the interim, triggered further reforms, the European Commission believes that the current AML/CFT framework requires a major overhaul, given the significant inconsistencies in the way these rules are applied and enforced by member states.

Money-laundering is the process by which the proceeds of crime are 'washed' through the financial system for the purposes of disguising their true origin. It involves an act to conceal, transfer, or convert the proceeds of

a profit-making crime, such as theft, fraud or drug trafficking.

On the other hand, terrorist-financing is the collection of funds for the purposes of causing death or serious bodily injury to civilians, while also intimidating a population and/or seeking to compel a government/international organisation to alter or drop a particular policy.

Money-laundering and terrorist-financing are both outlawed by the *Criminal Justice (Money Laundering and Terrorist Financing) Acts 2010-2018*, which implement EU Directive 2015/849 on the prevention of the use of the financial system for the purposes of money-laundering or terrorist-financing ('4AMLD') into Irish law. 4AMLD was later amended by Directive 2018/843, dated 30 May 2018 ('5AMLD').

## Significant reform

In light of the belief that significant reform is required, a European Commission action plan was published in early May 2020. The plan calls for an integrated EU AML/CFT system, including both the adoption of a harmonised set of rules and the establishment of an EU-level supervisory body.

## Six pillars

The commission's proposal contains six separate pillars or objectives – each of which gives rise to important considerations, as follows:

- 1) Establishing a single EU rule book on AML/CFT,
- 2) Creating an EU-level AML/CFT supervisory body,
- 3) Improving support mechanisms for national financial intelligence units (FIUs),
- 4) Enforcing European-level criminal laws and information exchange,
- 5) Ensuring the effective implementation of existing EU AML/CFT rules, and
- 6) Strengthening the international dimension of the EU's AML/CFT framework.

## A single EU rule book?

The action plan argues that EU AML/CFT rules should become more specific and less subject to diverging implementation by member states. The commission is concerned that inconsistent approaches across member states lead to loopholes that might be exploited by criminals/terrorists.

Separately, such divergence may also increase costs for businesses that operate on a cross-



PIC/ALAMY

border basis and must, therefore, tailor their approach from jurisdiction to jurisdiction. Accordingly, in order to address this incoherence while promoting legal certainty, the commission proposes that certain provisions of both 4AMLD and 5AMLD should be contained in an EU regulation that would be directly applicable in each member state. Direct applicability means that the relevant law is binding in its entirety, without the need for any national transposition measures.

At a minimum, the commission suggests that an EU AML/CFT regulation should address matters such as the list of designated/

obliged persons (for example, banks, accountants and independent lawyers), customer/client due-diligence requirements, and the reporting of suspicious transactions. The action plan also recommends that the scope of the EU's AML/CFT framework be expanded to reflect technological innovation. For example, the providers of virtual-asset services might be added to the list of designated persons.

#### **Main difficulties**

However, there are two main difficulties with the commission's proposal.

Firstly, EU directives, given

that they leave the form of implementation up to an individual member state's discretion, provide for greater flexibility than EU regulations. Flexibility is crucial, since an increased regulatory burden lies on obliged persons across a range of different industries and sectors, such as financial services, gambling, audit/tax advisory, and company secretarial – all of which are also subject to their own bespoke regulation.

Secondly, while EU regulations theoretically do not require national implementation, they do sometimes allow for national measures aimed to ensure their effectiveness. For example, the action

THE ACTION PLAN ARGUES THAT EU AML/CFT RULES SHOULD BECOME MORE SPECIFIC AND LESS SUBJECT TO DIVERGING IMPLEMENTATION BY MEMBER STATES



MAINTAINING THE INDEPENDENCE OF LAWYERS FROM STATE INTERFERENCE IS A NECESSARY ELEMENT OF THE RULE OF LAW. THEREFORE, ANY PLANS BY THE COMMISSION TO GRANT AN EU AML/CFT BODY WITH A SUPERVISORY ROLE OVER THE LEGAL PROFESSION ARE BEING – AND WILL CONTINUE TO BE – MET WITH STRONG OPPOSITION

plan does implicitly contemplate allowing member states to adopt more detailed rules to adapt to changing circumstances. Accordingly, an EU regulation might result in patchy harmonisation on the basis that certain member states would implement all necessary national measures, whereas others would not. Any potential EU AML/CFT regulation may, therefore, not be any more effective in combating money laundering/terrorist financing than the current directive-led approach.

#### EU-level supervision

Supervision of obliged persons is crucial to the effective enforcement of AML/CFT rules. Currently, AML/CFT supervision in the EU is delegated to each member state, resulting in uneven effectiveness. The commission is conscious that the failings of an FIU (or other AML/CFT regulator) in one member state is a significant risk for the EU's financial system. The action plan therefore recommends the establishment of an integrated AML/CFT supervisor at EU level. This, the commission believes, will address regulatory fragmentation, while encouraging the effective enforcement of AML/CFT rules.

The plan also proposes that the EU-level supervisor be entrusted with direct powers over certain designated entities for which it might have exclusive or shared responsibility. Such rights might include the ability to review internal AML/CFT policies. The commission also recommends that the EU-level supervisor should cover all risk areas. In other words, this supervisor should have the ability to harmonise practices across the EU while ensuring high-level supervision across all sectors. The action plan sets out the pros and cons of entrusting the European Banking Authority (EBA) with the task of overseeing designated persons outside the financial sector. (The EBA is already charged with strengthening AML/CFT

compliance efforts in that industry.) As an alternative, a new entity dedicated to AML/CFT supervision across all economic sectors might be established. While it would take longer for this body to become operational, it would be able to implement a more focused approach.

Whether the ambit of the EBA is extended, or a bespoke EU-wide AML/CFT supervisory body established, the commission's proposal would give either body a right of supervision over the legal profession. This potential interference with the operation of lawyers poses a significant threat to the independence of the profession. Clients need to be confident that their lawyers can give advice without interference from governments and other public authorities. If clients do not believe they can freely consult their lawyers, the rule of law is potentially threatened.

#### Support for FIUs

The action plan identifies several weaknesses in how FIUs exchange information and cooperate. (Under section 40A of the acts, An Garda Síochána is appointed as the Irish FIU – it is, among other things, responsible for receiving suspicious transaction reports from designated persons.) The action plan expresses concern at the lack or limited nature of the feedback given to such entities to help them in the fight against money-laundering and terrorism.

The commission also refers to the obsolete nature of [FIU.net](#) – this website is supposed to facilitate information exchange between FIUs. The commission therefore wishes to replace Europol as the operator/host of [FIU.net 2020](#) in the coming months.

The action plan also criticises the lack of joint analysis by FIUs of reported suspicious transactions that have a cross-border impact. The commission pro-

poses that an EU-level coordination and support mechanism for FIUs would remedy these weaknesses by taking a lead role in identifying suspicious transactions and other trends/factors relevant to the assessment of the risks of money-laundering/terrorist-financing.

#### Enforcing provisions

The action plan notes the progress made in terms of facilitating judicial and police cooperation in the area of AML/CFT rules. Notably, the provisions giving law enforcement authorities direct access to certain account mechanisms will give FIUs certain key financial information, while promoting cross-border cooperation.

The commission also refers to the importance of public/private partnerships (PPPs) in the context of making better use of financial intelligence. PPPs can take various forms, and the commission proposes to encourage FIUs to facilitate PPPs by sharing details of relevant trends with the private sector.

#### Effective implementation

The commission also intends to ensure effective transposition and implementation of existing AML/CFT directives while committing to the launch of infringement proceedings against member states for failing to transpose 5AMLD, as it did for 4AMLD. (For example, Ireland was fined €2 million by the ECJ in July 2020 for failing to implement 4AMLD in time.) The latter also proposes to monitor the establishment by member states of the public registers of beneficial ownership, while seeking to ensure that they are populated with high-quality data.

#### International dimension

In parallel with the action plan, the commission published a revised methodology on the assessment of high-risk third countries. The commission also plans to play a more prominent role in setting

international standards in AML/CFT rules. For example, Brussels will continue to take a ‘front-line’ role in addressing the challenges posed by opaque corporate structures. As part of its role as a global leader in AML/CFT, the commission wishes to represent the EU at the Financial Action Task Force (FATF).

The commission also stresses the need to protect the EU’s financial system and will identify high-risk countries by using a methodology that leans on the efforts of FATF. Finally, the commission is developing a facility to provide technical assistance to third countries to address weaknesses in their domestic AML/CFT framework.


**Overall assessment**

Given the regular investigations into, and uncovering of, money-laundering schemes at both international and national levels, the commission’s wish to ensure a comprehensive and rigorous approach to tackling such crimes should only be welcomed.

That said, there are certain elements of the action plan that deserve careful consideration. The commission’s intention to



transform certain key AML/CFT provisions into an EU regulation may not achieve (given the disparate nature of national legal and regulatory systems) its intended aim of strengthening compliance. Moreover, AML/CFT rules are constantly trailing the ever-evolving schemes put in place by criminals/terrorists to transfer funds. Accordingly, it is doubtful whether an EU regulation will be sufficiently flexible and dynamic to meet such challenges.

Finally, any reform of EU AML/CFT rules must fully respect the principles of independence and self-regulation of the legal profession. Maintaining the independence of lawyers from State interference is a necessary element of the rule of law. Therefore, any plans by the commission to grant an EU AML/CFT body with a supervisory role over the legal profession are being – and will continue to be – met with strong opposition. 

WHETHER THE AMBIT OF THE EBA IS EXTENDED, OR A BESPOKE EU-WIDE AML/CFT SUPERVISORY BODY ESTABLISHED, THE COMMISSION’S PROPOSAL WOULD GIVE EITHER A RIGHT OF SUPERVISION OVER THE LEGAL PROFESSION



# Hibernian Law Journal

## CALL FOR ARTICLE SUBMISSIONS

**Deadline: Saturday, 5 December 2020**  
**Submit to: [editor@hibernianlawjournal.com](mailto:editor@hibernianlawjournal.com)**

The Journal is now accepting article submissions (5,000- 15,000 words) for Volume 20

- Publish in our double-blind peer reviewed Journal (Volume 20, Summer 2021)
- Prize for Best Article and Best Trainee Article
- Trainees who successfully publish an article are eligible for one exemption from PPC2 elective

Further info and guidelines at: [hibernianlawjournal.com](http://hibernianlawjournal.com)



### CPD CLUSTER WEBINARS

DATE	EVENT	CPD HOURS	DISCOUNTED FEE*	FULL FEE
13 November	<b>General Practice Update 2020</b> with Live Q&A session In Partnership with Waterford Law Society, Kilkenny Bar Association, Carlow Bar Association & Wexford Bar Association.	3.5 General, 0.5 Regulatory Matters (Accounting & AML Compliance). Total 4 hours (by eLearning)	€135	
20 November	<b>Practitioner Update 2020</b> with Live Q&A session In partnership with Kerry Law Society & Southern Law Association.	3.5 General, 0.5 Management & Professional Development Skills. Total 4 hours (by eLearning)	€135	
2 December	<b>Practice &amp; Regulation Symposium 2020</b>	2 Management & Professional Development Skills, 2 Regulatory Matters (Accounting & AML Compliance). Total 4 hours (by eLearning)	€135	

Full details are available at [www.lawsociety.ie/cpdcourses](http://www.lawsociety.ie/cpdcourses)

### ANNUAL CONFERENCE WEBINARS & MASTERCLASSES

10 & 18 November	<b>Personal Injuries Litigation Masterclass 2020</b> Online with Live Q&A	7 General (by eLearning)	€350	€425
12 November	<b>Business Law Update 2020</b> Online with Live Q&A	3 General (by eLearning)	€160	€186
26 November	<b>Employment Law Annual Updates</b> Online with Live Q&A	1 General, 2 Management & Professional Development Skills. Total 3 hours (by eLearning)	€160	€186
27 November	<b>Family &amp; Child Law Conference 2020</b> Online with Live Q&A	3 General, 1 Management & Professional Development Skills. Total 4 hours (by eLearning)	€160	€186
10 December	<b>Annual Human Rights</b> Online, On-demand	1 General (by eLearning)	Complimentary	

### OTHER COURSES

Available Now	<b>GDPR in Action: Data Security and Data Breaches</b> Online, On-demand	1 Regulatory Matters (by eLearning)	€95	
Available Now	<b>Employment Law Online Masterclass</b> Online, On-demand	7 General (by eLearning)	€210	€255

For a complete listing of upcoming courses including online GDPR, Fintech, Regulatory Matters, visit [www.lawsociety.ie/cpdcourses](http://www.lawsociety.ie/cpdcourses) or contact a member of the Law Society Professional Training team on **P** 01 881 5727 | **E** [Lspt@lawsociety.ie](mailto:Lspt@lawsociety.ie)

## REPORT OF LAW SOCIETY COUNCIL MEETING

## 11 SEPTEMBER 2020

**Resolutions passed**

The Council approved and adopted the following:

- The *Solicitors Professional Indemnity Insurance Regulations 2020*,
- The *Solicitors (Money Laundering and Terrorist Financing) Regulations 2020*, and
- Amendments to Council Regulation 44 to delegate to the Regulation of Practice Committee the powers conferred under section 187 of the *Legal Services Regulation Act 2015*, amending section 9 of the *Solicitors (Amendment) Act 1960*.

**Other bodies**

The Council approved the appointment of the president to

the Circuit Court Rules Committee, as well as appointments to the Legal Services Regulatory Authority and the Legal Practitioners Disciplinary Tribunal.

**Legal services excellence**

Following extensive work over many years, the Legal Services Excellence Standard (LSE) was presented to the meeting. It is a bespoke standard that has been developed for solicitors, by solicitors.

The LSE was developed in conjunction with the National Standards Authority of Ireland, which had played a significant role in approving each element of the standard and had agreed to act as the independent auditing body


in respect of roll-out to the profession.

**Professional indemnity**

The meeting heard that the PII Committee would introduce a risk-management audit for firms entering the Run-off Fund, which would be conducted by the SPF Manager, costing in the region of €400 per audit. The benefit to the profession was one-to-one guidance and advice provided by the SPF Manager on a firm's cessation, which would benefit the SPF, as it created a personal relationship with the firm. It also reduced the chance of claims and increased the chances of finding a succeeding practice as a result of a proper wind-down.

**Education Committee**

The Council noted the trojan work that was ongoing at the Law School to ensure that exams and courses continued throughout COVID-19:

- *FEIs* – additional exams in tort and EU law, which had been postponed in March, had been held in August at 22 centres in Dublin and Cork, and 1,063 candidates had taken the exams,
- *PPC* – 417 trainees had registered for the final PPC1, which was underway, and a Law School ambassador programme of ten PPC2 trainees had been put in place to represent the Law School throughout the year. 



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## NEW SOLICITORS (MONEY LAUNDERING AND TERRORIST FINANCING) REGULATIONS 2020

The Council of the Law Society, with the concurrence of the Legal Services Regulatory Authority, has approved the introduction of the *Solicitors (Money Laundering and Terrorist Financing) Regulations 2020* (SI 377 of 2020). These regulations replace the *Solicitors (Money Laundering and Terrorist Financing) Regulations 2016* (SI 533 of 2016) and have an operative date of 1 November 2020. The *Solicitors (Money Laundering and Terrorist Financing Regulations) 2016* are now revoked.

The new regulations update the previous regulations to provide for the legislative amend-

ments brought about by the provisions of the *Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Act 2018*.

The statutory instrument does not impose any new obligations on solicitors with regard to their statutory AML obligations, nor does it confer any new powers on the Law Society regarding its statutory role as the competent authority for solicitors (in the context of monitoring and securing their compliance with AML obligations).

Solicitors are reminded of their obligations under the current

anti-money-laundering legislation, the *Criminal Justice (Money Laundering and Terrorist Financing) Act 2010* (as amended).

Law Society inspections are conducted to ensure compliance with these acts and regulations, as well as the *Solicitors Acts 1954-2015, Legal Services Regulation Act 2015*, and the *Solicitors Accounts Regulations 2014*. As part of the Society's monitoring process, solicitors are required to demonstrate that they have policies and procedures in place for the prevention and detection of money-laundering and terrorist-financing offences.

Solicitors are reminded that failure to comply with the *Solicitors (Money Laundering and Terrorist Financing) Regulations 2020* may result in one or more of the following courses of action:

- Requirement to take remedial action,
- Requirement to attend a meeting of the Regulation of Practice Committee to explain failure to comply, and
- Referral to the Legal Practitioners Disciplinary Tribunal.

*John Elliot, Registrar of Solicitors and Director of Regulation*

## AML SUPPORTS FOR SOLICITORS

Solicitors who are currently in compliance with their statutory anti-money-laundering (AML) duties (last updated in November 2018) will already be in compliance with the new *Solicitors (Money Laundering and Terrorist Financing) Regulations 2020* – these regulations simply reflect current statutory obligations.

### Existing supports

If you are new to solicitor AML compliance, the Society's existing AML supports contain everything necessary to ensure compliance.

Launched in the *President's eBulletin* (19 November 2018), key AML resources are accessible any time by visiting [www.lawsociety.ie/aml](http://www.lawsociety.ie/aml) and include:

- Three infographics that communicate solicitor AML obligations visually,
- Four 'sample adaptable forms', specifically:
  - a) Business risk assessment,
  - b) Policies, controls and procedures,
  - c) Risk factor questionnaire for customer risk assessment, and

d) 'Document your thought process' form for customer risk assessment,

- *2018 AML Guidance* (which supplements the *2010 Guidance Notes*).

Solicitors can avail of free Law Society AML training designed to help solicitors comply with their statutory AML duties, currently available by visiting [www.lawsociety.ie/legaledtalks](http://www.lawsociety.ie/legaledtalks). Training covers the current statutory framework, becoming risk aware, and top tips for AML compliance. **This training will be especially helpful to anyone looking at solicitor AML compliance for the first time.**

### Identity-theft solutions

The COVID-19 crisis presents new opportunities for identity theft while, at the same time, public-health restrictions limit the key fraud and crime prevention tool of face-to-face identity verification. Non-face-to-face instructions can be a red flag, but telephone and video instructions

are suddenly the norm. In a rapid response to help solicitors navigate these challenges and to enable business continuity, guidance and solutions for solicitor AML during COVID-19 were published in March 2020. Access this guidance any time by visiting [www.lawsociety.ie/aml](http://www.lawsociety.ie/aml).

### AML Helpline

The AML Helpline ([aml@lawsociety.ie](mailto:aml@lawsociety.ie)) supports solicitors in identifying potential money-laundering risk and navigating complex compliance considerations. AML legislation requires solicitors to make subjective decisions, for example, about the adequacy of customer-due-diligence material in specific scenarios, whether a specific money-laundering or terrorist-financing risk arises on a case-by-case basis, or whether the reporting obligation arises in specific circumstances.

**While the Society cannot provide legal advice nor confirm the adequacy of AML documentation/approach in specific scenarios, the AML**

**Helpline endeavours to assist solicitors in swiftly navigating relevant AML guidance.**

Solicitors can email a short note of their query to [aml@lawsociety.ie](mailto:aml@lawsociety.ie) (please include information about the type of legal service being provided, and remember *not* to include confidential client data).

By its nature, AML compliance is complex, challenging and, at times, over-burdensome. However, it is a fact that the legal profession across the world is consistently being targeted by money-launderers.

The Financial Action Task Force's 2013 report on *Money Laundering and Terrorist Financing Vulnerabilities of Legal Professionals* clearly outlines the relevant typologies and red-flag indicators.

Developing a good understanding of legal-sector money-laundering risk is vital to adopting the risk-based approach to preventing money-laundering, and also ensuring effective AML compliance.

*Emma-Jane Williams is AML policy manager at the Law Society*

## CONVEYANCING COMMITTEE

## VACANT SITE REQUISITIONS

In May 2020, the Conveyancing Committee (as announced in its practice note published in the June 2020 issue of the *Gazette*) published a briefing note drawing practitioners' attention to the conveyancing implications of the *Urban Regeneration and Housing Act 2015* (as amended by the *Planning and Development (Amendment) Act 2018*).

The act provides for the establishment and maintenance of a register of vacant sites by each individual planning authority, and for the charging of an annual levy on such properties.

Given the potential impact of the act on property, the committee has prepared an additional requisition on title relating to the

act (as set out below), and suggests that it is either furnished by the vendor with the contract for sale, or raised by the purchaser prior to the date of sale.

The *Standard Requisitions on Title* will be amended in due course to include this new requisition.

#### URBAN REGENERATION AND HOUSING ACT 2015 (as amended) 'the Act'

1. a. Is or was the property a Vacant Site as defined in section 5 of the act and entered on the vacant sites register pursuant to the act. If so, furnish details.
2. a. Has a vacant site levy become due and payable in

respect of the property pursuant to the act.

- b. If so, furnish certificate(s) of discharge for each year a levy was due to the planning authority in respect of the property.
3. Is the vendor aware of any intention or proposal by the planning authority to enter the property onto the vacant sites register. If so, furnish details.
4. a. Has any notice (including, without limitation, notice of the planning authority's [or An Bord Pleanála's] intention or proposal to enter the property onto the vacant sites register, notice of the entry of the property on the vacant sites register and/or notice of the determi-

nation of the market value by the planning authority and/or notice under section 11 of the act) or demand been served upon or received by the vendor, or has the vendor notice of any intention or proposal to serve any notice or demand relating to the property or any part of it under or by virtue of the act.

- b. If so, furnish copies.
5. a. Has the vendor served any appeal or notice on the planning authority, An Bord Pleanála, the Valuation Tribunal, the High Court or any other relevant party under or by virtue of the act relating to the property.
- b. If so, furnish copies.

## CONVEYANCING COMMITTEE

## COMMERCIAL LEASES SERVICE CHARGES: SAMPLE CLAUSES AND COMMENTARY

The Conveyancing Committee's Commercial Landlord and Tenant Task Force has compiled a briefing note for guidance purposes for the assistance of practitioners dealing with commercial leases. Sample clauses were drafted with commentary on same in order to show what issues may arise in practice and provide some guidance on how they might be dealt with. Bear in mind that the

draft samples are not to be treated as precedents, and all these matters are for negotiation in every individual case.

The materials are available in the guidelines/landlord and tenant area under the 'Resources' tab on the committee's home page, which can be viewed at [www.lawsociety.ie/Solicitors/Representation/Committees/Conveyancing](http://www.lawsociety.ie/Solicitors/Representation/Committees/Conveyancing).

## CONVEYANCING COMMITTEE

## GUIDELINES ON EXPERT EVIDENCE IN RELATION TO CONVEYANCING PRACTICE

The Conveyancing Committee's practice note/guidelines on expert witnesses in conveyancing disputes have been updated. The updated guidelines are available on the website in the guidelines

section, under the 'Resources' tab of the committee's home page, which can be viewed at [www.lawsociety.ie/Solicitors/Representation/Committees/Conveyancing](http://www.lawsociety.ie/Solicitors/Representation/Committees/Conveyancing).

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**WILLS**

**Bradley, James Finton (deceased)**, late of 81B Elgin Avenue, London W9 2DB, and formerly of Doon, Kiskeam, Mallow, Co Cork, who died on 27 November 2019. Would any person having knowledge of any will made by the above-named deceased please contact Matthew Bermingham & Co, Solicitors, 12 Patrick Street, Fermoy, Co Cork; DX 19011 Fermoy; tel: 025 32727, email: [info@berlaw.ie](mailto:info@berlaw.ie)

**Comer, Very Reverend Liam (William) PP (deceased)**, late of Ardfert, Co Kerry, and Maryville, Western Road, Clonakilty, Co Cork, who died on 18 April 2020. Would any person having knowledge of a will made by the above-named deceased please contact Jackie Harte, Michael Sheil & Partners, Solicitors, Temple Court, Temple Road, Blackrock, Co Dublin; tel: 01 288 1150, email: [info@msheil.ie](mailto:info@msheil.ie)

**Cosgrave, Patricia (otherwise Margaret Patricia) (deceased)**, late of 40 Ulverton Road, Dalkey, Co Dublin, who died on 28 June 2020. Would any person holding or having knowledge of a will made by the above-named deceased please contact PCL Halpenny & Son, Solicitors, 96 Upper George's Street, Dun Laoghaire, Co Dublin; tel: 01 280 1315, email: [mhalpenny@pclhalpenny.ie](mailto:mhalpenny@pclhalpenny.ie)

**Davis, Dr Donal (deceased)**, late of Apartment 16, Aranmore, 13-17 Pembroke Road, Dublin 4, who died on 13 October 2020. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Ruth Casey, John Casey & Company, Solicitors, Bindon House, Bindon Street, Ennis, Co Clare; tel: 065 682 8159, fax: 065 682 0519, email: [ruth.casey@caseylaw.biz](mailto:ruth.casey@caseylaw.biz)

**Duggan, Anne-Marie Jacqueline (otherwise Jackie) (deceased)**, late of 5 Beechwood Road, Ranelagh, Dublin 6, who died on 8 May 2020. Would any person holding or having knowl-

**RATES****PROFESSIONAL NOTICE RATES****RATES IN THE PROFESSIONAL NOTICES SECTION ARE AS FOLLOWS:**

- **Wills** – €152 (incl VAT at 21%)
- **Title deeds** – €304 per deed (incl VAT at 21%)
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ALL NOTICES MUST BE PAID FOR PRIOR TO PUBLICATION. ALL NOTICES MUST BE EMAILED TO [catherine.kearney@lawsociety.ie](mailto:catherine.kearney@lawsociety.ie) and PAYMENT MADE BY ELECTRONIC FUNDS TRANSFER (EFT). The Law Society's EFT details will be supplied following receipt of your email. **Deadline for December 2020 Gazette: 16 November 2020.**

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

edge of a will made by the above-named deceased please contact Harry Mooney & Co, Solicitors, 7 Orchardstown Park, Rathfarnham, Dublin 14; tel: 01 441 5031, email: [info@harrymooney.ie](mailto:info@harrymooney.ie)

**Duggan, John Francis (otherwise Sean) (deceased)**, late of 49 Rathmore Park, Raheny, Dublin 5, who died on 4 November 1992. Would any person holding or having knowledge of a will made by the above-named deceased please contact Harry Mooney & Co, Solicitors, 7 Orchardstown Park, Rathfarnham, Dublin 14; tel: 01 441 5031, email: [info@harrymooney.ie](mailto:info@harrymooney.ie)

**Henry, William Gerard (otherwise Paul) (deceased)**, also known as Liam Henry/Liam O'Hinneirí, formerly of 11 Seabury View, Malahide, Co Dublin. Would any person having knowledge of the whereabouts of a will made by the above-named deceased please contact MP Black & Co, Solicitors, 2 Main Street, Malahide, Co Dublin, K36 AH76; tel: 01 845 0538, fax: 01 845 2586, email: [roisin@mpblack.ie](mailto:roisin@mpblack.ie)

**Holt, Thais Bethena (deceased)**, late of 10 Woodavans, Clondalkin, Dublin 22, who died on 16 July 2020. Would any person having knowledge of the whereabouts of a will made by the above-named deceased please contact Killian

O'Mullane, Murphy English & Co, Solicitors, 'Sunville', Cork Road, Carrigaline, Co Cork; tel: 021 437 2425, email: [killian@murphyenglish.ie](mailto:killian@murphyenglish.ie)

**Larkin, Mary (née Collins) (deceased)**, late of Pound Street, Templetoohy, Thurles, Co Tipperary (retired insurance clerk), who died on 17 October 2014 (widow of the late Thomas Larkin). Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Tina Ennis, Matheson, Solicitors, 70 Sir John Rogerson's Quay, Dublin 2; tel: 01 232 2034, email: [tina.ennis@matheson.com](mailto:tina.ennis@matheson.com)

**Kealy, Rosemary (Rosemarie, otherwise Rose Mary)**

**(deceased)**, late of 9 Forest Park, Rivervalley, Swords, Co Dublin, and formerly of 214 Ratoath Road, Cabra, Dublin 7, who died on 24 June 2020. Would any person having knowledge of the whereabouts of any will made or purported to have been made by the above-named deceased, or if any firm is holding same, please contact Early & Baldwin, Solicitors, 27/28 Marino Mart, Fairview, Dublin 3; tel: 01 833 3097, fax: 01 833 8043, email: [info@baldwinegal.com](mailto:info@baldwinegal.com); ref: MOD/12678

**Keegan, Bridget (deceased)**, late of 17 Cherryfield Park, Hartstown, Dublin 15, who died on 15 April 2020. Would any person having knowledge of any will made by the above-named deceased please

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contact Dixon Quinlan, Solicitors, 8 Parnell Square, Dublin 1; tel: 01 878 8600, email: [michael@dixonquinlan.ie](mailto:michael@dixonquinlan.ie)

**Kennedy, Patrick Francis (otherwise Frankie Kennedy) (deceased)**, late of Kilcorby House, Kilcorby, Belturbet, Co Cavan, formerly of 243 Seapark, Malahide, Co Dublin, and formerly of 2 The Old Golf Links, Coast Road, Malahide, Co Dublin, who died on Saturday 21 December 2019. Would any person holding or having knowledge of a will made by the above-named deceased please contact Rory O'Neill, Mallon Solicitors LLP, The Glencarn Centre, Main Street, Castleblayney, Co Monaghan; tel: 042 974 0293, email: [rory@seamusmallon.net](mailto:rory@seamusmallon.net)

**McGuire, Josephine (deceased)**, late of 4a Aughrim Villas, Aughrim Street, Dublin 7, who died on 9 May 2015. Would any person having knowledge of any will made by the above-named deceased please contact Dixon Quinlan Solicitors, 8 Parnell Square, Dublin 1; tel: 01 878 8600, email: [michael@dixonquinlan.ie](mailto:michael@dixonquinlan.ie)

**Malone, Breda (deceased)**, late of 28 Pinewood Park, Dublin 14. Would any person having knowledge of the whereabouts of a will dated 3 July 2001 or any will made by the above-named deceased, please contact Fagan Bergin Solicitors, 57 Parnell Square West, Dublin 1; tel: 01 872 7655, email: [jkavanagh@faganbergin.com](mailto:jkavanagh@faganbergin.com)

**Moore, May (ors Mary) (deceased)**, late of Tomay Cottage, Ballymana, Killinarden Hill, Tällaght, Dublin 24, who died on 14 August 2020 (a widow, her husband Thomas Moore having predeceased her). Would any person having knowledge of the whereabouts of any will made by the above-named deceased, or if anyone is holding same or a copy thereof, please contact Anjana Hanratty, solicitor, Liam Keane & Partners, Solicitors, The Old Toll House, Dunshaughlin, Co Meath; tel: 01 825 0825, email: [ahanratty@lkip.ie](mailto:ahanratty@lkip.ie)

**Quinn, Myles, (deceased)**, late of 25 Loch (Lough) Conn Avenue, Ballyfermot, Dublin 10, who died on 31 December 2019. Would any person having knowledge of any will made by the above-named deceased please contact Johnston Solicitors, 306 Ballyfermot Road, Ballyfermot, Dublin 10; email: [info@johnstonsolicitors.ie](mailto:info@johnstonsolicitors.ie)

**Ryan, Francis (Frankie) Hugh (deceased)**, late of 3 Commons East, Swords, Co Dublin, who died on 3 February 2020. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Hilary O'Connor, Maurice Leahy Wade & Company, Archway House, The Plaza, Swords, Co Dublin; tel: 01 840 6505, email: [hilary@leahywade.ie](mailto:hilary@leahywade.ie)

**Ryan, Timothy (deceased)**, late of Gortyvehane, Oola, Co Limerick, who died on 10 March 2020. Would any solicitor holding or having knowledge of a will made by the above-named deceased please contact John G O'Donnell, solicitor, 6 St Michael Street, Tipperary; tel: 062 51096, email: [jodonnelllegal@eircom.net](mailto:jodonnelllegal@eircom.net)

#### TITLE DEEDS

**In the matter of the Landlord and Tenant Acts 1967-2005 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978 and in the matter of the property known as the Mariner's School, Enniscrone, Co Sligo: an application by Malachy Kennedy to acquire the fee simple in the above-named property**

Take notice any person having an interest in the freehold estate of the following property: all that and those the former schoolhouse known as The Mariner's School, comprising 0.074 hectares or thereabouts metric measure, situate at Carrowhubcock South, Enniscrone, in the barony of Tireragh and county of Sligo.

Take notice that Malachy Kennedy intends to submit an application to the county registrar for the county of Sligo for the acquisition of the freehold interest and

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

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

*Date: 6 November 2020*

*Signed: John J Gordon & Son (solicitors for the applicant), Ballina, Co Mayo*

**In the matter of the Landlord and Tenant Acts 1967-2005 and in the matter of the Landlord and Tenant (Ground Rents) No 2 Act 1978 and in the matter of the application by Joseph Power and in the matter of the premises situate at and known as 133 North Strand Road, Dublin 3**

Take notice that Joseph Power intends to submit an application to the county registrar for the city of Dublin for the acquisition of the freehold interest in the property known as 133 North Strand Road, Dublin 3, and any party asserting that they hold the superior interest in the aforesaid property is called upon to furnish evidence of title to the aforementioned property to the below-

named solicitors within 21 days from the date of this notice.

The said premises are held under an indenture of lease made on 13 July 1938 (hereinafter called 'the lease') and made between Jane Nestor of the one part and Patrick O'Neill of the other part for a term of 100 years from 1 June 1938, subject to the yearly rent of £84 and to the covenants and conditions contained, which said property is part of the lands demised by a superior lease dated 12 April 1880 and made between Michael O'Brien of the one part and John Condon of the other part for a term of 500 years from 1 May 1880, subject to the rent of nine pounds, six shillings per annum and to the covenants and conditions contained.

In default of such notice being received, the said Joseph Power 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 aforesaid property are unknown or unascertained.

*Date: 6 November 2020*

*Signed: Carley & Connellan Solicitors (solicitors for the applicant), 10 Angelsea Street, Dublin 2*

**In the matter of the Landlord and Tenant Acts 1967-2019 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978 and in the matter of the lands at Mulberry Lane to the rear of 22-26 Main Street, Donnybrook, Dublin 4**

Take notice that Andrew Hanley (Senior), Peter Hanley, Andrew



**Ensor O'Connor in Enniscorthy, Co Wexford seeks newly-qualified solicitor for conveyancing position for one-year contract and with a view to possible permanent position thereafter. Knowledge of Keyhouse an advantage.**

**Applications by email to [phannon@ensoroconnor.ie](mailto:phannon@ensoroconnor.ie) by Friday 13<sup>th</sup> November 2020.**

Hanley (Junior), Philip Hanley and Philip O'Reilly intend to submit an application to the county registrar for the county of the city of Dublin for the acquisition of the fee simple and all intermediate interests in the land described in the schedule hereto, which said lands they hold under a reversionary lease dated 4 January 1946 and made between Alice Caulfeild of the one part and Timothy Kiely of the other part, and take notice that any party asserting that they hold a supe-

rior interest in the said lands or any part thereof and, in particular, that they are the successors in title of Elizabeth Mary Hippisley and/or Charlotte Antonia Sullivan, the grantors under a *Renewable Leasehold Conversion Act* grant dated 25 February 1881, Elizabeth Mary Hippisley and Charlotte Antonia Sullivan to Eliza Finnemor, are hereby called upon to furnish evidence of their title to such interest to the below named within 21 days from the date of this notice, and

take notice that, in default of any such evidence being received, the applicants intend to proceed with the said intended application at the end of 21 days from the date of this notice and to apply to the county registrar for the county of the city of Dublin for such directions as may be appropriate on the basis that the persons entitled to the fee farm grantor's interest under the aforesaid *Renewable Leasehold Reversion Act* grant and any interests superior thereto are unknown and unascertained.

*Schedule:* all that and those that part of the lands demised by a reversionary lease dated 4 January 1946 and made between Alice Caulfeild of the one part and Timothy Kiely of the other part, which was assigned to Ren Tel Limited by a deed of assignment dated 24 February 1970 made between Kiely's Bottling Company Limited of the one part and Ren Tel Limited of the other part, and which is included within the lands therein described as all that and those the hereditaments and premises at the rear of 20,

22, and 24 Main Street, Donnybrook, situate in the parish of Donnybrook and city of Dublin, as more particularly delineated on the map annexed hereto and thereon edged green.

*Date: 6 November 2020*

*Signed: Lennon Solicitors (solicitors for the applicant), 13 St Stephen's Green, Dublin 2*

**In the matter of the *Landlord and Tenant Acts 1967-2019* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of the lands at Mulberry Lane to the rear of 22-26 Main Street, Donnybrook, Dublin 4**

Take notice that Andrew Hanley (Senior), Peter Hanley, Andrew Hanley (Junior), Philip Hanley and Philip O'Reilly intend to submit an application to the county registrar for the county of the city of Dublin for the acquisition of the fee simple and all intermediate interests in the land described in the schedule hereto, which said lands they hold under a reversionary lease dated 30

CORPORATE EVENTS, WEDDINGS, INTERIORS, PORTRAITS  
GREAT RATES – NO HIDDEN COSTS

C I A N R E D M O N D  
P H O T O G R A P H E R

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C I A N . R E D M O N D . P H O T O @ G M A I L . C O M

CLIENTS INCLUDE: LAW SOCIETY GAZETTE, LAW SOCIETY OF IRELAND, INSTITUTION OF OCCUPATIONAL SAFETY AND HEALTH, DUBLIN SOLICITORS BAR ASSOCIATION, ALLTECH CRAFT BREWS AND FOOD

August 1946 and made between Alice Caulfeild of the one part and Timothy Kiely of the other part, and take notice that any party asserting that they hold a superior interest in the said lands or any part thereof and, in particular, that they are the successors in title of Elizabeth Mary Hippisley and/or Charlotte Antonia Sullivan, the grantors under a *Renewable Leasehold Conversion Act* grant dated 25 February 1881, Elizabeth Mary Hippisley and Charlotte Antonia Sullivan to Eliza Finnermor, are hereby called upon to furnish evidence of their title to such interest to the below named within 21 days from the date of this notice and take notice that, in default of any such evidence being received, the applicants intend to proceed with the said intended application at the end of 21 days from the date of this notice and to apply to the county registrar for the county of the city of Dublin for such directions as may be appropriate on the basis that the persons entitled to the fee farm grantor's interest under the aforesaid *Renewable Leasehold Reversion Act* grant and any interests superior thereto are unknown and unascertained.

*Schedule:* all that and those the hereditaments and premises firstly demised by an indenture of lease dated 30 August 1946

and made between Alice Caulfeild of the one part and Timothy Kiely of the other part and therein described as "that plot of ground lying on the north side of the road leading from Dublin to Donnybrook and containing on the north-east side 56 feet, 6 inches; on the north-west side, 44 feet; on the south-west side, 57 feet; and on the south-east side, 46 feet", which said lands are situate in the parish of Donnybrook and city of Dublin.

*Date:* 6 November 2020

*Signed:* Lennon Solicitors (solicitors for the applicant), 13 St Stephen's Green, Dublin 2

**In the matter of the Landlord and Tenant Acts 1967-2005 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978 and in the matter of an application by Fergal Allen and in the matter of no 42B Eyre Street, Newbridge, Co Kildare**

Take notice that any person having any interest in the freehold estate or any lesser or intermediate interest in the lands and premises situate at Eyre Street, Newbridge, Co Kildare, and now known as Alfac House, Eyre Street/Francis Lane, Newbridge, Co Kildare (unit 1, apt 2, apt 3, and apt 4) (eircodes W12 AO04, W12 HX46, W12 FK76, W12

RX37), and being part of the lands demised by a lease dated 30 December 1955 made between Martha Letitia Norah Marjorie Powell and Thomas George Eyre Powell of the one part and John Murphy and Mary Murphy of the other part, for a term of 99 years from the first day of November 1957 at the yearly rent of £12.10 shillings thereby reserved and the covenants and conditions therein contained, should give notice of their intentions to the undersigned solicitors.

Further take notice that Fergal Allen, being the person entitled to the lessees' interest under the said lessees' interest in the premises the subject of the proposed application under the said lease, intends to submit an application to the county registrar for the county of Kildare at the Courts Service, the Courthouse, Naas, Co Kildare, for the acquisition of the fee simple interest in the said property and all intermediate interest in same, and any party asserting that they hold a superior interest in the aforesaid premises (or any of them) are called upon to furnish evidence of the title to the aforementioned premises to the below named within 21 days from the date of this notice.

In default of any such notice being received, the applicant intends to proceed with the appli-

cation 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 Kildare for directions as may be appropriate on the basis that the persons beneficially entitled to the superior interest including the freehold reversion in each of the aforesaid premises are unknown or unascertained.

*Date:* 6 November 2020

*Signed:* Maher Broderick (solicitors for applicant), 6 The Courts, Main Street, Newbridge, Co Kildare

## RECRUITMENT

**Tully Rinckey LLP, an international law firm, is seeking a corporate partner to join our Dublin office.** This opportunity presents an established cross-marketing platform between the firm's conveyancing, litigation, labour and employment, and funds partners on high-value, complex deals. Solicitors are supported by a highly skilled team of business development, marketing, public relations, and administrative professionals with proven track records in the industry. Interested candidates can email their CV to [hirings@tullylegal.com](mailto:hirings@tullylegal.com)

## LEGAL EZINE FOR MEMBERS

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

Make sure you keep up to date: subscribe on [www.lawsociety.ie/newsletters](http://www.lawsociety.ie/newsletters) or email [eZine@lawsociety.ie](mailto:eZine@lawsociety.ie).





PRO BONOBO

## LEGAL REPRIEVE FOR PC BOAR?

Official threats to a wild Berlin boar that stole a nude bather's computer have sparked a grass-roots campaign to save it, *The Guardian* reports. The laptop hog became famous after a series of photos of it being pursued by a naked Berliner at Teufelssee lake went viral in August.

Foresters say that she and her piglets may pose a danger and that they would have to be "withdrawn as a matter of priority" – a Teutonic euphemism. The remarks prompted campaign group Action Fair Play to call a demonstration, while an online petition has collected thousands of signatures.

The *schwein* may in fact be saved by German bureaucracy. A spokesman for Berlin's forestry



commission said: "It is the wrong time of year. It is forbidden to shoot them right now."

## US PREPARES FOR WORLD WAR Z

The Pentagon has a plan to defend against a zombie apocalypse, *Open Culture* reports, and it's available to read online.

Written in 2011 as an exercise to formulate a 'nonspecific invasion contingency plan', *CONOP 8888* states that its fictitious scenario "was not actually designed as a joke".

Its introduction says: "Zombie infections have the potential to seriously undermine national security and economic activities that sustain our way of life. Therefore having a population that is not composed of zombies or at risk from their malign influence is vital to US and Allied national interests."

## BARRISTER MISTAKEN FOR DEFENDANT THREE TIMES

A black barrister who was mistaken for a defendant three times in one day has received an apology from court officials, *the BBC* reports.

Alexandra Wilson (25) lodged a formal complaint after being challenged by security, another lawyer, and a clerk at an Essex magistrates'

court, where wigs and gowns are not usually worn.

On Twitter, Wilson said: "There must be something about my face that says 'not a barrister', because I am literally wearing a black suit like everyone else. I don't get it."

## THE SPY WHO FAILED ME

A former MI5 boss has been appointed visiting professor at Northumbria Law School, *Legal Cheek* reports. Northumbria is an educational partner of the Society's Law School.

Andrew Parker became head of the intelligence agency in 2013. Before that, he had a 37-year career in areas such as international terrorism, counter-

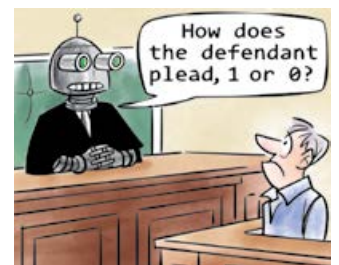
espionage, and organised crime.

The former spymaster said that tackling complex security threats requires both "tried and trusted methods, such as the use of agents as informants, [and] new ways of using technology, for example, surveillance" and that "judicial oversight and understanding the law will play a crucial role."

## JUDGE, JAVASCRIPT, AND EXECUTIONER?

Researchers say that 'robot judges' will be common within 50 years, *Legal Cheek* reports.

Machines will use cameras to detect behaviour "indicative of wrongdoing or probable falsehoods", including changes in speech patterns and body temperature – removing human emotion, bias and error. Artificial intelligence expert Terence Mauri said: "AI has created unprecedented changes in the way that people live



and work by performing complex problems with a level of consistency and speed that is unmatched by human intelligence."

# WORLD RUGBY LEGAL COUNSEL – 2 ROLES



## Keane McDonald has been exclusively retained to source two Legal Counsels for World Rugby

World Rugby is the world governing and law-making body for the sport of Rugby Union based in Dublin. In addition to its governance functions, World Rugby organises several international tournaments and events, including the pinnacle of Rugby World Cups for Men's, Women's and Sevens.

We wish to appoint a **Regulatory Legal Counsel** and a **Commercial Legal Counsel**.

### The Roles:

The regulatory role will involve a broad range of regulatory legal work which supports the operational needs of World Rugby and the various tournaments. The varied work includes regulations, discipline, integrity and anti-doping. Assisting in any contentious matters which World Rugby may face will be a key responsibility.

The commercial role will involve the drafting and negotiation of high value complex commercial agreements with an international element across several areas, including sponsorship, broadcasting, merchandising and licensing and tender arrangements. You will advise on trademarks, copyright and domain name issues and manage the protection and enforcement of IP rights on World Rugby's international trademark portfolio.

### The Requirements:

- Qualified lawyer in a common-law jurisdiction with strong academic credentials.
- Solid training and experience gained in a leading Irish/international law firm.
- Proven ability to deal with legal regulatory issues, ideally with some litigation experience (Regulatory Counsel).
- Drafting skills with proven ability to deal with all aspects of contract law, a working knowledge of IP rights and data protection law (Commercial Counsel).
- Ability to work well in a pressurised and often time sensitive environment.
- Good knowledge of legal technology and in-house exposure would be an advantage.
- Team player with enthusiasm for the sports sector.

*Interested applicants should contact Mared Roberts at Keane McDonald on +353 87 4492241 or please email your CV to [mroberts@keanemcdonald.com](mailto:mroberts@keanemcdonald.com). Absolute discretion is assured.*

ANY CVS SUBMITTED DIRECTLY TO WORLD RUGBY WILL BE FORWARDED TO KEANE MCDONALD

World Rugby is an equal opportunities employer



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