



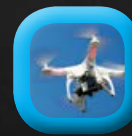
Tie dyed

New and interesting approaches to prosecuting white-collar crime



Machine head

How will technological advances affect the future of the legal profession?



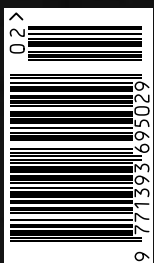
Game of drones

Aerial drones are taking off, and their regulation is vitally important

gazette

LAW SOCIETY

€4.00 JAN/FEB 2016



THE RISEN PEOPLE

Solicitor stories from 1916



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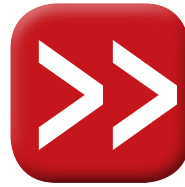
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DIRECTOR OF LEGAL – IN-HOUSE

A large multinational is looking to appoint a Senior Director of Legal to their Dublin operation. This is a client-facing position and the appointed Solicitor will establish strong relationships with both internal and external clients, business partners and foster a client focused approach with respect to the performance of all Legal & Risk Management responsibilities.

BANKING SOLICITOR – ASSOCIATE LEVEL

Top tier Private Practice Firm require a Banking Solicitor to expand their growing team. This role is ideal for an experienced Banking Solicitor looking to grow their career with a firm on an international platform. This position offers excellent remuneration and progression for the right person.

IN-HOUSE COMMERCIAL CONTRACT COUNSEL – ASSOCIATE LEVEL

Excellent In-house position available with Multinational based in Dublin. The successful candidate will ensure all contracting processes and procedures are followed with respect to the negotiation and execution of commercial contracts. Ideal for a Practice Solicitor looking to move in-house or a Professional already working in commercial contracts.

JUNIOR SOLICITOR – FUNDS

International Law Firm in Dublin is offering a unique opportunity for a Junior Solicitor who is interested in growing their career in the funds space. The applicant does not require previous funds experience but must have a keen desire to upskill in this area. The successful appointment will have an opportunity to work both domestically and internationally. This position will offer excellent remuneration and progression for the right person.

AVIATION FINANCE LAWYER – SENIOR ASSOCIATE LEVEL

International Private Practice firm in Dublin seeks an experienced Aviation Finance Lawyer to join their team. The ideal candidate will have gained Aviation Asset Finance experience within a Top Tier Law Firm or as In-house Counsel to an Airline or Aircraft Leasing Company.

GETTING IN ON THE ACT

Although this is my first 'President's message' for the *Gazette*, I've been in office for the past two months. I am the fourth president in 'modern times' from my native Cork, following in the footsteps of James W O'Donovan (1971/72), Frank Daly (1996/97) and Owen Binchy (2004/05) – all exceptionally hard acts to follow, but I will certainly be doing my best in 2016.

The challenges

In the weeks leading up to assuming office, I was asked on a number of occasions about the challenges I saw coming up for my year. It was a question I found easy to answer, as it was almost certain at that stage that the *Legal Services Regulation Bill 2011* would, at last, be passed into law during my term.

On 29 December last, the *Legal Services Regulation Act 2015* was signed into law. While the act has passed, it is not yet commenced. As I understand it, the minister will be bringing it in separate parts by regulation over the coming months, when the new Legal Services Regulatory Authority, to the board of which the Law Society has two nominees, will be set up. The Society has notified the minister that our two nominees to the board are two very

able and experienced former presidents, Geraldine Clarke and James MacGuill.

To meet the challenges that will undoubtedly be posed by the new act, I have revamped the old Legal Services Regulatory Bill Task Force, which was so ably chaired by Michael Quinlan. The broad remit of the new Legal Services Regulation Act Task Force, under the chairmanship of Paul Keane, will be to meet and coordinate the educational, regulatory and representational challenges affecting the Law Society and the profession in the future. The first meeting of the new task force has already taken place. You will be hearing much more on this in the coming months.

Major changes

Before finally leaving the topic, it would be remiss of me not to acknowledge the great work of the outgoing task force and its chairman, Michael Quinlan. The day-to-day work, however, done by John Elliot and SORCHA HAYES of the Regulation Department and by director general Ken Murphy – in bringing what was a completely unsatisfactory 2011 bill to a 2015 act that is workable, pragmatic, but yet will effect major changes to the profession – is just unquantifiable. In my view, the profession owes these three individuals in particular great gratitude for their monumental efforts.

Separately, we have commissioned Red C to develop a survey so that the Law Society can better understand and serve the needs of in-house solicitors working in the private and public sectors. If you are an in-house solicitor and would like to have your voice heard, I would encourage you to complete this brief survey, which will have recently arrived in your email inbox. See page 11 of this issue for more details.

During the course of the year, I look forward to visiting as many bar associations as I can, in the company of the director general. The first meeting I attended was, fittingly enough, my own one: the Southern Law Association AGM.

As everyone knows by now, the presidential chain has been missing since last August/September, which was an upsetting and unfortunate occurrence for my predecessor Kevin O'Higgins. It is now being replaced.

I would like to pay tribute to Kevin for the great year he had as president and for the enormous contribution he has made to the solicitors' profession. I wish him, his wife Gaye, and his family long health and happiness in the future.

In the meantime, I wish all of you a very happy and, of course, prosperous 2016.

Simon Murphy
President



“The minister will be bringing in the new act in separate parts by regulation over the coming months”



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LAW SOCIETY



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Brothers John, later a solicitor, and Tommy O'Connor, who gave up his apprenticeship to volunteer, both fought in the 1916 Rising. Lorcan Roche hears their story from John's grand-daughter, solicitor Maureen Black

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Warnings of a dystopian future of non-existent jobs and radically changed business models greeted those at the inaugural 'Future of Law and Legal Tech' seminar. It'll be survival of the most intelligent, writes Gordon Smith

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How would the story of 'The Bull' McCabe have turned out if he'd worked out a mediated family succession plan? Clare O'Keeffe brings the drama

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Changes in the approach to prosecuting white-collar crime in the US and Britain are of some interest from an Irish perspective. Brian Gageby gets the starch out

law society gazette

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nationwide

News from around the country



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

MEATH

And from the plains of Royal Meath...



Andrew Cody

The Meath Solicitors' Bar Association held a very successful CPD afternoon on 1 December last in Navan, with almost 50 members in attendance.

Andrew Cody updated members on the *Solicitors Advertising Regulations*.

A word of thanks to Eamonn Maguire (advertising regulations executive) for his help in organising this.

Suzanne Mullally BL gave an informative presentation on the *District Court Rules 2014*.

Thereafter, the afternoon focused on family law matters, with director of FLAC Noeline Blackwell, Catherine Ghent Solicitor (Gallagher Shatter Solicitors) and Sinead Dullaghan BL all giving excellent presentations. The association would like to thank the team at Navan-based charity Amen for their tremendous work in organising the wonderful line-up of family law speakers.

LOUTH

Break a leg, dahling...

Two colleagues who, admittedly for non-theatrical reasons, are familiar with the orthopaedic surgeon's waiting room, are once more to take to the boards. Tim Ahern and Fergus Mullen, both former officers of the County Louth Solicitors' Bar Association, have been cast in the Dundalk Theatre Workshop production of *Glengarry Glenn Ross*. Our colleagues there, who, according to outgoing president Conor MacGuill, are never short of theatrical amusement, are expected to attend the opening night en masse following their forthcoming AGM on 10 February 2016.

Their appetites will, no doubt, have been whetted by the Murphy Bros Travelling Circus (that is, the meeting with the president and director general of the Law Society), and will be sated by a generous



pre-theatre reception held nearby. 'Nationwide' will be travelling north to observe these play-actors at close quarters and to partake in the light refreshments on offer.

A full review, together with photographs, may follow in the next edition of the *Gazette*.

On a related note, the Dundalk Theatre Workshop's local rivals, the Dundalk Legal Players' Theatre Group, continues the David Mamet season with their own stage version of his film *The Verdict*. The confirmed cast to date includes Roger MacGinley playing the Paul Newman character, Frank McDonnell in the ruthless James Mason role, with Dermot Lavery playing the role made famous by Charlotte Rampling.

CORK

Morphing Murphys



PICT: TONY O'CONNELL PHOTOGRAPHY

The Law Society president is Simon Murphy, its director general is Ken Murphy – and now the Southern Law Association has decided to get in on the act by electing Don Murphy as its president for 2016. Whatever about the water (and let's not dwell on that right now), there must be something in the Murphys – that'd be the Cork-based brew! Pictured with Don Murphy are SLA council members Catherine O'Callaghan and Emma Neville

CONSULT A COLLEAGUE

The Consult a Colleague helpline is available to assist every member of the profession with any problem, whether personal or professional.

Call the helpline
01 284 8484

consultacolleague.ie

This service is completely confidential and totally independent of the Law Society

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

EU AND INTERNATIONAL AFFAIRS COMMITTEE

The refugee crisis: a challenge for Europe

The EU and International Affairs Committee held its sixth annual international affairs talk on 11 November under the title 'The Refugee Crisis: a Challenge for Europe', writes *Eva Massa*.

The topic was addressed from different and very practical perspectives by four speakers.

Edouard Schmidt (European Commission, DG Migration and Home Affairs) spoke about the ongoing work of the commission in the field of migration, from the *Dublin Regulation* system to the agenda on migration, and the attempt to develop a new policy on illegal migration and to strengthen cooperation in this area.

Commander Pat Burke (brigade legal officer, Irish Naval Service) has been involved in search-and-rescue missions in the Mediterranean. He explained the complexity surrounding these missions, in particular in relation to determining places of safety and deciding on refugee status assessments.

Maria Hennessy (legal officer, Irish Refugee Council) addressed Ireland's response to the current crisis and the obstacles it faces, mainly as a consequence of delays and the fact that Ireland has not opted in to some important legal instruments in the field of migration.

Prof Siobhan Mullally (director of the Centre for Criminal Justice and Human Rights, UCC) analysed the proposals for reform of EU asylum law and the need to safeguard access to international protection, such as mutual recognition of positive asylum decisions.

The event was booked out, and attendees included EU ambassadors and legal professionals from a wide range of law firms and companies.



Prof Siobhan Mullally (UCC), Edouard Schmidt (European Commission), Maria Hennessy (Irish Refugee Council), Eva Massa (event chair) and Commander Pat Burke (Irish Navy)



MENTAL HEALTH AND CAPACITY TASK FORCE

Assisted Decision-Making (Capacity) Act 2015

The *Assisted Decision-Making (Capacity) Act 2015* marks a significant development in recognising the legal rights of all persons, regardless of disability, but specifically to provide adequate supports to be made available to assist people whose decision-making capacity is in question or may shortly be in question, writes *Patricia T Rickard-Clarke (chair)*. It was enacted in December 2015 and is expected to come into operation in 2016.

While welcome, the legislation represents a significant challenge to the profession, as it will affect nearly every area of practice. For example, the requirements relating to capacity are potentially equally relevant to the corporate lawyer when transferring assets or shares in a company as they are to practitioners advising on trust and estate planning.

The wide remit of the act is emphasised by the fact that, under the new regime, it will

not be possible to discriminate on the grounds of a possible lack of decision-making ability. Furthermore, even when an enduring power of attorney (EPA) is registered, the functional approach (that is, issue specific and time specific) will still apply to the ascertainment of the ability of the person participate in a decision at that time. Attorneys acting in such circumstances will also be subject to reporting oversight, requiring those advising to question whether the action is within the scope of the EPA, whether it has been made in good faith, and whether it has been made for the benefit of the person whose decision-making capacity is at issue.

From a practitioner's perspective, it is also important to note that the legislation provides for the provision of legal aid for those making an application under the act. It is also envisaged that a specialist panel of practitioners will be established for the purposes of acting in respect of

matters arising under the act.

The Mental Health and Capacity Task Force made a number of submissions during the course of the legislative process, and those submissions were an important contribution to the ultimate direction of the legislation.

The task force is now leading the design and delivery of the Society's Certificate in Decision-Making Capacity and Support, which is due to start on 27 February and will be available online via webcast for those unable to attend Blackhall on a weekly basis. The purpose of the certificate is to ensure that practitioners are fully conversant with the *Assisted Decision-Making (Capacity) Act*, with particular emphasis on the definition of 'capacity' and how it should be assessed, while giving due respect to the right of each person's autonomy and self-determination. For more information on the certificate, see www.lawsociety.ie/diplomacentre.



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Professionals and business people expect the highest standards. With AIB Private Banking you are assured of an enhanced banking service that saves you time and effort. Our signature new banking experience provides you with the relationship-based service that you appreciate. We understand the value of great advice. Our financial planning service gives you access to expert, impartial guidance to help you make informed financial choices to secure your future. It's details like these that make us different.

If you would like to find out more about AIB Private Banking, contact Patrick Farrell, Head of AIB Private Banking, directly on: (01) 641 7634 or email patrick.a.farrell@aib.ie. Typically our clients have an annual salary or income which exceeds €250,000.

'Scrambling for the bones of the patriot dead'



The Courts Centenary Commemoration Committee continues its lecture series with a talk titled 'Scrambling for the bones of the patriot dead – commemorating the Rising: 1916-2016'.

The lecture will take place on Thursday 25 February 2016 at 5pm in the Round Hall, Four Courts, Inns Quay, Dublin. Diarmaid Ferriter (UCD) will explore how 1916 has been commemorated over the last 100 years. Entry is free with a ticket. Apply by email to courtscentenaryevents@courts.ie.

New GYDPs for 2016

Seven new Garda Youth Diversion Projects will be established in 2016. The Department of Justice is allocating additional funding and resources in addition to the 102 projects already up and running.

The community-based GYDPs have been established in areas where youth crime has been an issue. They aim to help children and young people change their behaviour and divert them away from criminal activity. In addition, the gardaí have announced that they will be introducing a new juveniles mentoring service in 2016.

OPW seeks 1916 items for display at Kilmainham Gaol



The OPW is completing work on the refurbishment of Kilmainham Courthouse to improve the visitor experience at Kilmainham Gaol in time for the 1916 Easter commemoration events.

Display cabinets will display objects and documents relating to the work of the courts during the rebellion. The OPW is asking for the assistance of members of the Law Society, Bar Council and Courts Service who might have items, objects or documents to donate or lend (at least until the

end of 2016) for display purposes.

While the display area is quite limited and does not form part of the museum, the OPW is anxious to provide objects of interest depicting the work of the courts at the time of the rebellion for visitors on their way to the museum.

A black sentencing cap and other items associated with executions have already been donated. Contact Niall Bergin (OPW), Kilmainham Gaol Museum; email: niall.bergin@opw.ie.

European award for Irish partnership

A&L Goodbody and the Irish Refugee Council's Independent Law Centre have been presented with the prestigious European Award for Local *Pro Bono* Impact. The award is in recognition of their innovative *pro bono* programme that provides essential legal services to people claiming refugee status in Ireland. It is the first and only initiative of its kind in the country. The award was announced at the 2015 European *Pro Bono* Forum in Rome.

Since the programme began in 2013, a total of 70 A&L Goodbody lawyers have undertaken comprehensive training and mentoring in refugee law. They have dedicated over 2,600 hours to 26 individual refugee cases. The firm offers legal representation at the beginning of the asylum procedure.



Eamonn Conlon (A&L Goodbody) and Brian Collins (Irish Refugee Council)

LRC seeks views on regulatory enforcement and corporate offences

The Law Reform Commission is seeking the views of regulatory agencies, the legal profession and others who may have a particular interest in, or specialist knowledge of, the law on regulatory enforcement and corporate offences.

The commission has published its *Issues Paper on Regulatory Enforcement and Corporate*

Offences (LRC IP 8-2016), which outlines the commission's work on the project to date.

The issues raised are very broad in scope, and the commission says that it would "warmly welcome views and input, however brief, from you on the questions raised".

All responses will be treated in the strictest confidence,

unless interested parties indicate otherwise. Details of how to engage with the commission are contained within the issues paper. Responses can be made by using the online comment boxes in the issues paper, by email to corporateoffences@lawreform.ie, or by post to 35-39 Shelbourne Rd, Ballsbridge, Dublin 4, D04 A4E0, before 30 March 2016.

FOCUS ON MEMBER SERVICES

Finance scheme

The first few months of a new year is an expensive time in any legal firm. With this in mind, the Law Society has again partnered with Bank of Ireland to offer member firms short-term finance at a reduced preferential rate.

This offer is available from Bank of Ireland for terms up to 11 months for firms who have a proven track record and meet standard lending criteria. The scheme has a highly competitive variable rate of 6.74%.

Bank of Ireland also has a range of long-term finance options to meet your needs. Contact Bank of Ireland's local business team to discuss your

financial needs and to hear about the solutions it offers.

To apply for a loan, complete the application form, which is available at: <http://businessbanking.bankofireland.com/credit/business-loans> or call into your local Bank of Ireland branch. You may also contact the dedicated credit line on 1890 365 222, or email businesslending@boi.com.

Yvonne Burke of the Law Society is happy to help with any queries you may have about this scheme. Yvonne can be contacted at 01 672 4901 or email y.burke@lawsociety.ie.

WHAT IS THE RATE?

Unsecured lending: 6.74%.

Repayments vary, depending on the amount borrowed, for example:

Loan amount	Interest rate	Term in months	Monthly repayments	Total cost of credit
€5,000	6.74%	11	€469.12	€169.00
€10,000	6.74%	11	€939.84	€338.24
€15,000	6.74%	11	€1,409.76	€507.36
€20,000	6.74%	11	€1,879.68	€676.00

Variable rates quoted are correct as at 1 November 2015 and are subject to change.

€1 million in online sales – and growing



PICT:ISTOCK

Online sales on the Law Society website have totalled over €1 million for the first time in a single year, writes *Carmel Kelly* (web and digital media manager). Practising certificate and membership fees, along with course bookings for the Diploma Centre and Law Society Professional Training, accounted for almost 60% of total online orders in 2015.

Other transactions conducted through the Law Society website included orders for publications, such as OUP manuals on various topics, building agreements, conditions of sale and requisitions on title, as well as FE1 exam papers and payments for online legal job

advertisements. The Society recently added the options for exam fees for FE1 March 2016 and firm payments for 2016 practising certificates. Other products and services will be added in the coming months.

In 2015, extensive changes were made to the website to ensure it was completely responsive for mobiles and tablets. The online shopping area is currently being redesigned to ensure it is much easier to make bookings and buy products, especially when using a smaller screen when you're on the move. In response to feedback, the purchasing process is being simplified to make it quicker and more efficient for members and website users to book courses online. These updates will be implemented in the first quarter of 2016.

As security is the top priority, logging in is necessary to make card payments secure online. If you need assistance with your username or password, or have any feedback regarding the website, please contact webmaster@lawsociety.ie or call the Law Society and ask for any member of the web team.

Guidance for providing legal services in garda stations

Since 7 May 2014, solicitors have been permitted to attend garda station interviews. This is a new and evolving area of practice that involves unique challenges for solicitors. The Law Society has, therefore, published *Guidance for Solicitors when Providing Legal Services in Garda Stations*, which is also available at lawsociety.ie.

The guidance provides essential information and best practice. It will be an invaluable resource for criminal law practitioners in particular, as they navigate complex legal issues quickly, while remaining conscious that clients may be especially vulnerable people.

The development of the guidance has been greatly informed by the members of the Society's Criminal Law Committee who have first-hand experience of garda station interviews. No two garda station attendances are ever the same, so the guidance has been designed to assist solicitors by identifying best practice throughout the pre-interview, interview and post-interview phase. Everything from best practice for client consultations to privacy and disclosure are covered in detail.

In addition, an Garda Síochána published a *Code of Practice on Access to a Solicitor by Persons*



in Garda Custody in April 2015. Solicitors can download the code from www.garda.ie.

The 'Find a garda station solicitor' search facility has also been launched on lawsociety.ie. This service helps individuals find a solicitor's contact details when detained in garda custody. The facility also enables gardaí to search by division for a solicitor available to attend their local garda station to provide legal advice and attend interviews. Solicitors can communicate their availability to attend particular garda stations on a divisional basis by [registering their contact details](http://lawsociety.ie) on the website.

The Society will revise the guidance as practice evolves and will endeavour to keep members up-to-date with developments.

LawCare calls jump 8.5%

LawCare – the advisory and support service to help lawyers, their staff and families – saw an 8.5% increase in calls from Irish solicitors compared with 2014 (admittedly on a relatively small base). LawCare took 25 calls from Ireland in 2015 – up two compared with the previous year.

The vast majority of calls related to stress (43%), bullying or harassment (19%), depression (14%) and alcohol (14%). Disciplinary, ethical and financial issues comprised the remaining 10% of calls.

LawCare attended six cluster events across the country in 2015, facilitated by the Law Society Professional Training team. This helped raise awareness about the support that LawCare provides and the importance that attaches to wellbeing within the legal community.

“A legal career can be tough at times and it’s important that anyone who is facing a personal or professional difficulty knows that there is support available and feels able to seek it,” says Elizabeth Rimmer (CEO of LawCare).

“There is significant stigma about being perceived as ‘not coping’, which can prevent people from coming forward for help. The more open we are in the legal community about talking about wellbeing, the more we will be able to break down the barriers that can make it very hard for people to seek support when they need it.”

In 2015, LawCare changed the way it recorded calls to its helpline. Rather than recording the number of callers, it began recording the number of calls. This was done for a number of reasons:

- It gives a much clearer picture of how busy the helpline is,
- Since it’s not always easy to ascertain whether someone has called before, it gives a more accurate figure,
- A person may call back



PIC: iSTOCK

several months later about a different problem. Under the old system, this would still be counted as only one case, and

- It is in line with the way other helplines record calls, as well as the way other related figures are recorded; for example, websites record visits not visitors.

Full picture

Looking at the full picture in 2015 across Ireland and Britain, a total of 907 calls from 496 people (representing all branches of the legal profession) were received by the LawCare helpline. This is an increase of 5% compared with the previous year.

Workplace stress was by far the most common issue reported by callers (30% of calls), followed by depression (20%), disciplinary issues (12%), financial problems (5%) and alcohol (4%). The remaining 29% comprised: ethical issues, bullying or harassment, gambling addiction, career development problems and relationship issues.

The stats show that 65% of callers were female and 35% male, while 39% were trainees or had qualified within the past five years.

LawCare provides a free and confidential support service, including for the staff and families for anyone working within the legal community. The helpline is free and confidential and is open 365 days a year. Tel: 1800 991 801, or visit www.lawcare.ie.

www.lawcare.ie

THERE'S AN APP FOR THAT



Scanning the horizon

APP: **DOCSCAN** PRICE: **FREE**

DocScan (free to download from the App Store) is now, thanks to the *Gazette* editor's recommendation, my new favourite app on my iPad, writes *Dorothy Walsh*. I always felt that *Genius Scan* (again, free to download) was the only app I would ever need for scanning and sharing documents. That was until I admitted that *Genius Scan* lacks a little in terms of functionality. It lacks finesse with regard to the quality of the scans that can be produced – and what you can do with that scanned document once you have created it.

Genius Scan doesn't allow you to create a folder to organise and find the documents you have scanned, and you can only really share the scanned documents by email. What I didn't realise until very recently was that I wanted to be able to create a document in *Pages* or *Word* for example – perhaps a letter on my headed paper – print it up remotely, scan and email it – or sometimes, better still, fax it. None of this can be done with *Genius Scan*, and my favourite scanner app has now been relegated in favour of my new best friend *DocScan*.

DocScan offers a foolproof and extremely user-friendly solution to all of the problems I have just described. Not only is it a very intelligent and intuitive scanning

app, with functions for saving in black and white or colour, creating folders, sending multiple pages in one scan instead of individual pages, and printing remotely, but it also has a brilliant fax function. I tried out other fax options on my iPad before, and all failed because of issues of paying for the fax and transmission problems. With *DocScan*, it is all done very easily and fully paid for through your iTunes account. It actually couldn't be simpler.

The *AirPrint* function is just great and allows you to print via a wi-fi connection to any compatible printer. *AirPrint* is an iPad function and app that allows a user to print wirelessly to any e-print-enabled HP printer that is connected to the same local wireless network, and it is amazing how many you will pick up when your *DocScan* app searches for a printer to use.

It's always great to be able to uninstall a number of apps that are standalone and save some space on the iPad by being able to replace them with a one-size-fits-all solution. I have done just that – replaced my printer finder, scanner, the dysfunctional fax apps and good old *Genius Scan* with *DocScan*. In any new year, it's all about 'out with the old, in with the new' and I guess even one's favourite iPad apps are no exception to the adage.



Grab the membership wave for the full Society experience!

The first core value of the Law Society is to be 'of service' to our members. In the last two years we have worked to improve the way we serve our members, writes Teri Kelly (director of representation and member services).

We've updated the ways in which we communicate with you and have implemented new processes to improve our response times to member queries.

We are now turning our attention to the specific benefits of membership. Over the next few months, we will be undertaking a review of the member services currently on offer. As part of this process, we are seeking your feedback on our current member service offerings, as well as your suggestions for new member services and benefits.

PC versus membership

The practising certificate (PC) renewal period has just come to a close, and each year the Law Society receives queries from



PC: ISTOCK

solicitors about the distinction between membership and the PC. Some are surprised that having a PC does not mean you are a member of the Law Society. Likewise, you can be a member and not hold a current PC – though you must be admitted to the Roll of Solicitors.

You know that having a PC for the current year entitles you to practice as a solicitor; however,

it is entirely distinct from membership of the Law Society. Purchasing membership for the current year entitles you to additional benefits and services above and beyond those provided to PC holders.

Membership costs €85 per year, with free membership for unemployed solicitors and those 50 years or more on the roll. Discounted membership is available for those less than

three years' qualified.

Many Law Society benefits and services are available for members only. These include a *Gazette* subscription, a *Law Directory*, use of the Law Society Library and the right to vote in Council elections and at annual general meetings. The Society also offers members the option of joining certain financial schemes, such as the Retirement Trust Scheme, Group Income Protection Scheme, and the Bank of Ireland Finance Scheme.

Other member benefits include access to career support and practitioner support assistance, financial advice (free of charge) from PenPro, discounts from Elavon for credit and debit-card terminals and packages, and subsidised B&B at Blackhall Place. Also, members setting up in practice for the first time can avail of the guidance offered through the Mentor Scheme for Solicitors Setting Up in Practice.

You can read more about member benefits in the *Member Services Directory*, which comes with your PC or membership form.

The Law Society has become increasingly focused on its representative role, and improving our member benefits and services is an extension of that work. The Law Society has over 10,000 members and we want to ensure we are offering each of you the best possible value and service.

We want to hear your feedback on our existing services and benefits, as well as any suggestions you may have for future additions to these. You can get in touch by contacting the member services executive Sinead Travers at s.travers@lawsociety.ie or tel 01 881 5772.

If you are not a member of the Law Society but would like to be, visit www.lawsociety.ie or contact Sinead Travers at the details above.

Kilkenny cluster's nine lives



Pictured at the ninth CPD regional cluster, held in Kilkenny on 20 November 2015, were (back, l to r): Antoinette Moriarty (Law Society), Pauline Smyth (Law Society Skillnet), Katherine Kane (Law Society Skillnet), Martin Crotty (MJ Crotty & Son Solicitors), Mary Jackson (LawCare), Maeve Meaney (secretary, Kilkenny Bar Association), Yvonne Blanchfield (president, Kilkenny Bar Association) and Bernadette Cahill (BM Cahill & Co). (Front, l to r): Attracta O'Regan (Law Society Skillnet), Brendan Twomey (James P Sweeney & Co Solicitors, Donegal), Kathleen Burke (Patrick J O'Meara & Co) and Annette O'Connell (Courts Service). Details of the 2016 CPD regional clusters series will be released in spring 2016

Society commissions survey of in-house solicitors

The Law Society recognises the unique and positive contribution that the in-house sector brings to the organisations where in-house solicitors work, to the profile and reputation of the entire profession, and to the broader economy, writes Brian Connolly, chair of the In-house and Public Sector Committee.

This is reflected in the Society's internal briefing document, *In-house Solicitors – a Growing Constituency*, written by public affairs executive Cormac Ó Culáin after extensive consultation with the In-house and Public Sector Committee. The document aims to identify key issues and trends relating to the in-house solicitor, so that the Law Society can best meet the sector's specific needs. It sets out valuable data about the sector in Ireland and in comparable jurisdictions worldwide, it identifies and considers many of the unique workplace and professional issues facing the sector, and it makes helpful proposals about the training and professional development needs of the sector.



However, this document is only a start – too little is still known about this rapidly expanding and developing sector. What areas of law do in-house solicitors practise? What are the most important issues faced by the sector? What professional development support would help address those issues? What are the most valuable in-house solicitor functions, skills and traits? What areas of education and training would help provide and develop the skills necessary for an in-house role? What is the view of the sector on taking on

trainees to help develop the level of in-house expertise within the profession?

To help obtain answers to these and other questions specific to the sector, independent market research firm Red C has been commissioned to conduct a short online survey of all in-house solicitors this February. The survey will be run independently of the Law Society, all respondents will remain anonymous, and all answers given will be confidential and aggregated. The In-house and Public Sector Committee

has worked closely with Red C to ensure that the questions cover the most relevant topics for the in-house sector and can be answered quickly and easily. As a result, the survey contains a small number of focused questions covering the above topics, which can all be answered by 'ticking the box' or 'ranking' various possible responses.

If you are an in-house solicitor, look out for an email communication from Red C in early February launching the survey. Please take the short time necessary to consider and answer the questions set out in the survey – this is the first time we have the opportunity to hear directly from you about important aspects of your organisations and your work, the issues facing you, and the types of support you would like to see the Law Society provide.

Your responses will be invaluable in allowing us and the Law Society take action to support the continued development and expansion of this dynamic and exciting sector in the years ahead.

Peter Kelly appointed President of the High Court

Mr Justice Peter Kelly has been appointed as President of the High Court, the third-highest judicial role in the State. Kelly replaces Mr Justice Nicholas Kearns, who retired on 19 December. Before his appointment, Kelly was a serving judge of the Court of Appeal.

He is regarded as being extremely hard-working and intelligent, and fiercely protective of judicial independence. In 2013, Mr Justice Kelly was involved in a disagreement between the Government and the judiciary over judicial pay, pensions and independence.

He was appointed to the Court of Appeal in 2014 and is a former head of the Commercial Court, a position he took up when the court was established in 2004.



Mr Justice Peter Kelly

Commenting on the appointment, director general Ken Murphy said: "He is a fearlessly independent judge with a ferocious work ethic, a first-class legal mind and an



Mr Justice Michael Twomey

utter commitment to the highest of standards from himself and others."

In addition, Dr Michael Twomey (solicitor) and Ms Miriam O'Regan SC have been appointed as judges of the High Court as of 28 January

2016. Mr Brian O'Callaghan (solicitor) is being appointed to the Circuit Court on 2 February, while no date has been set yet for the appointment of Dr Geoffrey Shannon (solicitor and the Society's deputy director of education) to the District Court.

The vacancies in the High Court arose with the appointment of Ms Justice Carmel Stewart as a Law Reform Commissioner from 1 September 2015 and the elevation of Ms Justice Iseult O'Malley to the Supreme Court on 1 October 2015.

The vacancy in the Circuit Court arose with the retirement of Judge Desmond Hogan on 20 November 2015, while the vacancy in the District Court arose with the retirement of Judge William Early on 25 November 2015.

Part commencement of the *Children and Family Relationships Act 2015*

The Minister for Justice commenced part of the *Children and Family Relationships Act 2015* on 18 January 2016. Those parts not commenced relate primarily to donor-assisted human reproduction and parentage in cases of donor-assisted reproduction. None of the proposed amendments to the *Adoption Act 2010* have been commenced.

The full list of provisions commenced is set out in **SI no 12 of 2016 (*Children and Family Relationships Act 2015 (Commencement of Certain Provisions) Order 2016*)**. Since more details will follow in future *Gazette* articles, what follows is intended to simply raise awareness of the sections of the act that have been commenced.

Changes

The *Guardianship of Infants Act 1964* has been radically amended, making the best interests of the child the paramount consideration



Justice Minister Frances Fitzgerald

to be taken into account by the court when determining issues relating to children.

There is welcome guidance on the rights and responsibilities of guardians, as well as the factors that the court must take into account in determining what is in the best interests of the child, one of which is the views of the child, where ascertainable. The law in relation to guardianship, custody and access to children has been

extended, and new categories of persons who may now apply for guardianship, custody and access added. Liability for maintenance has also been extended.

The *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010* has been amended, principally to give the dependent child of civil partners who are co-parents similar legal protections to those enjoyed by a child born to married parents.

Commencement date important

The commenced provisions have legal effect from 18 January 2016. This is a significant date, since one of the key provisions states that a non-marital father will become the guardian of the child where he has cohabited with the mother for not less than 12 consecutive months after 18 January 2016 (the commencement date), which must include a period, occurring at any time after the birth of the child, of not less than three

consecutive months, during which both the mother and father have lived with the child.

New court rules

The rules of the district, circuit and superior courts have been amended to take account of the changes introduced. The *District Court Rules* are substantially amended and new forms are appended to the rules. A document similar to the affidavit of means used in the Circuit Court has been introduced in the District Court and is termed a 'statement of arrangements'.

Useful guidance

The Law Reform Commission has published a revised version of the *Guardianship of Infants Act 1964* on their website, which has been updated post 18 January 2016. This will be of great assistance to practitioners.

See also the November 2015 (p34) and December (p42) *Gazette* articles.

Court of Criminal Appeal – listing procedures

The date for the next list to fix dates (for Easter term 2016) will be published shortly, writes *Geraldine Manners* (registrar of the Court of Appeal). Appeals are entered in the list to fix dates on receipt of the submissions of the moving party. The list of such cases will be published in the *Legal Diary* in due course, and cases will be added to the list as submissions of the moving party are filed. For administrative reasons, the list will close on the preceding Wednesday, and any submissions of the moving party received after 1pm that day will be categorised as a late addition to the list, but is still likely to secure a hearing date.

Replying submissions: as a matter of practice, the court requires that the replying submissions of the respondent to an appeal be filed and served no

later than two weeks before the hearing date allocated.

Book of authorities: three copies of the book of authorities of the moving party should be lodged no later than two weeks before the hearing date, and a copy of the index furnished to the solicitors for the respondent. Three copies of the book of any authorities not included in the moving party's book, and intended to be relied on by the respondent, are to be lodged no later than one week before the hearing date and a copy of the index furnished to the solicitors for the moving party.

Note: arrangements are being put in place by the court for the publication of a list of well-established authorities in sentence appeals and undue leniency applications that are not required to be furnished to the court. A notice



to this effect will be published shortly.

Documentary exhibits: three copies of any relevant documentary exhibits are to be lodged by the solicitors for the moving party no later than one week before the hearing of the appeal. Practitioners will be aware of the contents

of the **Practice Direction CA02** dealing with documentary exhibits in sentence appeals and undue leniency applications.

All applications for legal aid, enlargements of time to appeal, motions, applications for priority hearing dates and other miscellaneous applications that can be dealt with by a judge sitting alone will be listed on an ongoing basis on the Friday of each week during term at 10am before Mr Justice Birmingham.

Unless the court otherwise directs, no application for a hearing date will be entertained at the management list until the submissions of the moving party have been filed.

Any enquiry in relation to the list to fix dates or the management list may be made via email to courtfofappealcriminal@courts.ie.

THE HOME OF MURPHYS!

The Southern Law Association (SLA) held its AGM on 10 November 2015 at the Clarion Hotel, Cork, writes *Joan Byrne*. The AGM was preceded by a drinks reception hosted by outgoing SLA president Peter Groarke. The newly elected

Law Society President Simon Murphy and director general Ken Murphy were special guests. Simon, a Cork native, needed no introduction and was greeted with a standing ovation from his colleagues.

Peter Groarke outlined the

work of the SLA during the past year. Simon Murphy and Ken Murphy updated the gathering on various legal developments during the year, dealing with the *Legal Services Regulation Bill* (subsequently enacted), the Setanta insurance litigation,

e-conveyancing and other matters.

The newly elected SLA council for the forthcoming year was announced at the AGM and is led by president Don Murphy and vice-president Terry O'Sullivan.



ALL PICS: TONY O'CONNELL PHOTOGRAPHY

Catherine O'Callaghan, Joan Byrne (secretary, SLA), Simon Murphy (Law Society president), Peter Groarke (outgoing president, SLA), Ken Murphy and Don Murphy (incoming president, SLA); (back row, l to r): John Fuller, Gerry O'Flynn, Kieran Moran, Juli Rea, Robert Baker, Emma Neville, Kate Ahern and Séan Durcan (treasurer, SLA)



Juli Rea (CPD coordinator, SLA) and Terry O'Sullivan (incoming vice-president, SLA)



Daithi O'Donnabhain and Michael Joyce

DATE AT WATERFORD CASTLE



ALL PICS: GARRETT FITZGERALD PHOTOGRAPHY

At the annual dinner of **Waterford Law Society**, held at Waterford Castle on 20 November 2015, were (*back, l to r*): Frank Hutchinson (state solicitor), Mary Hutchinson, Judge Terence Finn, Judge Tom Teehan, Judge Kevin Staunton, Gabrielle Walsh and Nicholas Walsh (president, Waterford Law Society). (*Front, l to r*): Frances Finn, Helen Teehan and Valerie Staunton



Danny Morrissey and Edel Morrissey, Fiona Gillen and Bryan Douglas attended the Waterford Law Society annual dinner



Jack Purcell (manager, Court Office, Waterford), Maura Purcell, Nicola Walsh and Mark Walsh



Judge Tom Teehan, Helen Teehan, Joan Delaney and Supt Chris Delaney



Morrette Kinsella, Mary Hutchinson, Gillian Kiersey and Liz Dowling

Margaret bows out after 42 years with the Law Society

Librarian Margaret Byrne has retired from the Law Society, having given 42 years of dedicated service to its members. Margaret joined the Society in the summer of 1974 as assistant librarian. She was promoted to librarian in June 1978 following the retirement of Colum Gavan-Duffy.

One of her first major tasks was to manage the first relocation of the library in June 1978 from the Four Courts to its new home in Blackhall Place. A second relocation followed in 2000, when the library moved to its current location.

Margaret was responsible for developing the library services and resources to face challenges as they arose, including the acquisition of major electronic legal databases, electronic delivery of documents, expanding library services for a growing student body, and dealing with the increasingly complex research requirements of the profession.

Members and students knew and respected Margaret for her excellent legal research skills and her in-depth knowledge of



Marking the retirement of librarian Margaret Byrne from the Law Society are (l to r): Ken Murphy (director general), Simon Murphy (president), Eddie Mackay (executive assistant librarian), Mary Gaynor (head of library and information services), Margaret Byrne, Mairead O'Sullivan (deputy librarian), Anthony Lambe (library assistant), Clare Tarpey (assistant librarian) and Ryan Platts (library assistant)

legislation and case law. She was meticulous and thorough in finding the best possible answers to legal research queries.

In tandem with managing the library, she acted as secretary to many committees, including

EC and International Affairs, Publications, Parliamentary, and the *Gazette* Editorial Board. As secretary to the Publications Committee, she managed the publication of many Irish legal textbooks and developed

links with authors, publishers and printers. She liaised with the Law Library and the Law Reporting Council of Ireland in the publication of the pink-page *Index to Judgments*, which became an essential tool for keeping up to date with case law.

She also acted as secretary to the Arthur Cox Foundation Committee for many years. Her extremely keen eye for proofreading and editing, together with her knowledge and experience of the publishing process, were harnessed in 2002 when the Society published *The Law Society of Ireland 1852-2002: Portrait of a Profession*. Edited by Eamonn G Hall and Daire Hogan, this major work commemorated 150 years since the granting of the 1852 charter. Margaret liaised with editors, authors and the publisher, and carried out original research from roll books and law directories covering that period.

Her skills, commitment and professionalism have proved to be invaluable. We wish her a long and happy retirement.

Tansey duo joins forces in Sligo



The official opening ceremony of law firm Damien Tansey Solicitors took place in Sligo last year, but we've only just received the photos! Guest of honour was Minister for Justice Frances Fitzgerald, who marked the occasion by unveiling a plaque. She is pictured with Damien, David and Ciarán Tansey. Over 150 people gathered at Castle Chambers, Castle Street, for the opening ceremony

viewpoint

ATTACK OF THE DRONES

Brand new statutory instruments regulating drones came into force in December. **Matthew Holmes** says that this emerging area of law will soon be vitally important



Matthew Holmes is a practising barrister and a lecturer in DIT. He is the author of *the Nutshell on Administrative Law (Round Hall)*

Whether monitoring sharks in Australia, delivering packages for Amazon, or bombing for the US military, drones are the tools of the future. These unmanned aerial vehicles are revolutionising society and have implications for everything from photography to the delivery of emergency aid.

Drones are popular in Ireland, with many flying off the shelves as Christmas presents. The Irish Aviation Authority has parachuted in regulations to cover their use. These can be found in SI 563/2015 (*Irish Aviation Authority Small Unmanned Aircraft (Drones) and Rockets Order*), which came into force on 21 December, and SI 107/2015 (*Irish Aviation Authority (Nationality and Registration of Aircraft) Order*), which governs the use of larger drones and which came into force on 1 June last.

Don't fear the reaper

The term 'drone' is a catch-all term for unmanned remote-controlled aircraft. It covers anything from a toy that fits in your hand to the two-tonne behemoth that is the General Atomics MQ-9 Reaper Drone. Under these regulations, all drones weighing a kilo or more have to be registered with the IAA. Drones of 25kg or more must be registered in a similar manner to manned aircraft.

The new Irish legislation controls the use of drones. Drones cannot be flown in such a way as to cause a hazard to other aircraft, nor in a negligent or reckless manner so as to endanger life or cause damage to the property of others. Drones also cannot be flown in the vicinity of aircraft manoeuvring in an aerodrome traffic circuit or in prohibited areas, restricted areas, or in civil or military controlled airspace.

The following flight restrictions apply to flying drones generally.

Drones cannot be flown:

- Out of line of sight or farther than 300 metres from the drone operator,
- Over 120 metres above ground level,
- Within 120 metres of any person, assembly of people, vessel or structure not under the control of the drone operator,
- Closer than 5km to an aerodrome during periods of aircraft operations unless the aerodrome operator has given permission,
- Unless the drone operator has permission from the landowner for take-off and landing, and can do so without undue hazard to persons or property.

Finally, drones cannot be used to drop any item (or animal!) regardless of whether they have a parachute. Permission is required from the IAA to fly drones contrary to these requirements. Drone operators must successfully undertake a course of safety training accepted by the IAA. The IAA recommends insurance, but it is not mandatory – at the time of writing, fewer than 100 permits have been issued in Ireland.

Game of drones

These new regulations ensure safe, responsible use of drones. There are a number of restrictions on the way drones can be flown here. Unfortunately, there are no penalties for breaching any of these, so the regulations are toothless.

The IAA has the power to investigate and to prevent aircraft from flying, but there are no criminal sanctions provided for in the regulations, or any way of preventing someone who breaches the regulations from flying again. Arguably, drones are mechanically propelled vehicles within the meaning of the *Road*

Traffic Acts, so driving offences could, theoretically, apply to their use. It would be interesting to defend a drink-flying case and to argue whether or not the sky counts as a public place!

Another area where the legislation is wanting is in the lack of protection of privacy related to the use of drones. There are a number of reports from abroad of the use of drones by peeping toms. In July this year, there was an incident in Kentucky where a father was forced to shoot down a drone taking pictures of

his sunbathing daughter. There are restrictions in the regulations as to how close a drone can fly to someone, but in our area of hi-tech, lightweight cameras, this offers little protection. The case of *Atherton v DPP* ([2005] IEHC 429)

says that CCTV that shows something the public can see is admissible and is not a breach of the constitutional right to privacy. It would be interesting to see how privacy rights would apply to footage gathered by drones.

There have been a number of prosecutions in Britain for breaches of their equivalent legislation. Last April, a man was fined Stg£800 and ordered to pay costs of £3,500 for dangerously flying a drone near the Jubilee Bridge. Last September, Nigel Wilson was fined £1,800 at Westminster Magistrates Court. He pleaded guilty to seven charges, including flying over a number of Champions League matches. It was alleged that he flew his drone over the Houses of Parliament, the Queen

It would be interesting to defend a drink-flying case and to argue whether or not the sky counts as a public place!



PIC: GAZETTE STUDIO

Victoria memorial, Buckingham Palace, Anfield, and other football stadiums.

Shot down in flames

In Japan, the police use drones with large nets to capture other drones flying where they should not. These could be useful in Ireland, particularly in prisons. In June 2014, a drone crashed while delivering drugs to Wheatfield Prison. Measures such as this could result in the capture of drones and possible apprehension of drug smugglers.


In the US, the regulation of drones is a federal matter, controlled

by the Federal Aviation Authority (FAA). The limitations there, as in Britain, are similar to ours. One worrying development there was the presence of multiple drones in the vicinity of wildfires, prompting firefighters in the western US to ground their aircraft on several occasions. This is clearly the type of action that the prohibition on use in restricted areas is designed to catch. The FAA has commented on privacy concerns and the use of drones by voyeurs, pointing out that these are areas where local lawmakers can pass legislation. Anti-peeping drone laws were recently nixed in

California, where laws allowing authorities to shoot down disaster-snooping drones in emergencies are still being debated.

Garda headquarters has expressed an interest in using drones for surveillance. The PSNI has used drones since June 2013 and has three such devices. A poll on the website Journal.ie found that 63% (or 6,041 voters) favoured such a move. The Defence Forces have been using drones for some years to gather information. The gardaí would be able, subject to the restrictions of the *Criminal Justice (Surveillance) Act 2009*, to monitor high-speed car

chases, as well as the activities of criminals and dissidents, particularly in remote locations. They could also be used to aid the search for missing persons at sea or in inaccessible areas.

Drones have huge potential in Ireland. Such a developing area needs proper regulation. In particular, we need penalties for those who breach the regulations – otherwise, they are meaningless. We also need protection from the use of drones by voyeurs. People should not get away with the dangerous use of drones. After all, drones are really taking off... 

news in depth

THE POWER IS IN YOUR HANDS

The *Gazette* contacted every political grouping running in the forthcoming election to ask them about their manifestos for the justice portfolio. Not all responded, but here's what those that did had to say – in no particular order



The upcoming election offers a fundamental choice between a government of broken promises or a Fianna Fáil party committed to building 'an Ireland for all'.

Nowhere is this more evident than in the area of justice. The degradation of An Garda Síochána, the destabilising series of controversies consuming the administration of justice, and protracted reforms of the legal sector are all testament to a government that puts spin above substance.

Tackling crime and protecting communities is one of Fianna Fáil's four core priorities for government. We have a series of key measures to implement if elected to government:

- An increase in garda numbers to 15,000,
- Expansion of the Garda Reserve to 2,500,
- A judicial sentencing council,
- Tougher sentences for assaults on older people,
- CCTV at all motorway junctions to curb mobile gangs,
- A new community court structure to deal with low-level crimes,
- Replenish the garda car fleet and boost IT resources, and
- Implement a 'victim's surcharge' on criminals.

These measures will help to boost frontline gardaí and equip the justice system with the legal framework and resources to tackle crime. For example, the community court structure will help to ensure low-level



Niall Collins TD

crime does not involve a custodial sentence but, rather, offenders repay the community they have injured. A new judicial sentencing council will ensure consistent sentencing without jeopardising judicial discretion.

The election offers a chance to steady the ship of justice following a difficult number of years where this government failed to address fundamental issues in favour of suppressing potentially political damaging news. The fact the Department of Justice still does not have a secretary general underlines their attitude to the problems in the area.

In contrast, Fianna Fáil is committed to taking action in government with clear, decisive measures to ensure our justice system delivers for all citizens.

People Before Profit will seek to end the class bias in the current justice system. Most people who interact with the court system go through the District Courts. They can be sentenced or fined without a full written explanation of a judge's decisions – even when there are conflicts of evidence. By contrast, wealthy individuals can easily access the higher courts and use this access to delay investigations into corruption.

- We shall develop the State's own legal service. We will end the practice whereby the State is paying out €500 million a year to private law firms, some of whom simultaneously work for corporations that oppose State policies. These are among the highest costs in the industrialised world.
- We shall introduce legislation to give the public direct access to barristers,
- We shall cut the cost of house sales by establishing directly employed licensed conveyancers in the public sector,
- We shall abolish the monopoly that the Law Society and the



Cllr John Lyons



King's Inns have on training barristers and solicitors. We shall license third-level institutions to engage

in such training programmes, provided they show a clear effort to broaden the social base of the legal profession,

- We shall end the practice whereby up to a third of our judiciary are political appointees. There should be greater democratic oversight over who is appointed. We shall create greater protection for whistleblowers in the Garda Síochána and legal system, and criminalise all attempts to ostracise them.



During our term in government, Fine Gael prioritised investment in the Garda Síochána, the creation of a more efficient

legal system, implemented an ambitious programme of legislative reforms, and increased supports for victims of crime.

Fine Gael's long-term economic plan to keep the recovery going will build upon this progress, generating the

resources to continue to support these vital services.

Our manifesto, which will be published during the general election campaign, will outline in full our commitments and cement our reputation as the party of law and order.



A dangerous crisis of confidence across all areas of justice is evolving in Irish society. The absence of leadership and of a response to this is epitomised by the fact that the Department of Justice has been attempting to operate without a secretary general for more than a year.

Justice needs a great programme of reform and Renua Ireland will drive this across diverse areas, such as properly implementing a series of reports, such as the Morris Tribunal, to setting up a functional judicial council that has the confidence of the courts and the public. We wish to depoliticise the administration of justice.

Our view is that the court system has a responsibility to prioritise the rights of victims. Too often, citizens now believe the opposite is the case. Citizens understandably believe that Ireland's criminal justice policy for serial offenders is one of 'bail not jail'. To combat this view, Renua Ireland will introduce a 'three-strikes rule' for serious criminal offences, resulting in a mandatory life sentence on a successful prosecution of the third offence. Murder, rape, burglary involving real threats to the person, and child sex abuse are crimes that we believe should be subject to the three strike rule. Judicial discretion on the application of the three-strikes rule would



Lucinda Creighton TD

only be allowed in exceptional circumstances.

Our three-strikes proposal will not see criminals incarcerated for life for minor offences. However, if the criminal justice system is to retain the faith of the citizens, then it must be seen to be responsive to those who pose an ongoing threat to the public peace.

We believe that rigorous reform, involving concepts such as restorative justice, must be applied to our sentencing policies. We are putting too many people into our jails for too little reason. This must stop.

We also intend to prioritise the concepts of parental responsibility in the courts, the proper collaring of white-collar criminals, and the development of a 'smart' rural policing regime.

Within the courts system, Renua will be prioritising legislation and a tax policy that facilitates smaller solicitor firms competing with larger firms. Increasing competition is, of course, good for the consumer, but we don't believe it is good for communities, the consumer, or justice in general that smaller firms get driven out by behemoth competitors.



Communities across this State have felt the serious impact of garda cutbacks delivered by Fine Gael, Labour and Fianna Fáil since 2010. Garda numbers are down and 139 garda stations have been closed.

Morale in An Garda Síochána is at an all-time low due to these cutbacks, and scandals arising from profound management failings, and an abdication of responsibility for oversight by successive governments.

Our penal system needs to be reformed. The latest available figures show it costs €68,959 per annum to imprison one person. Repeat offending is facilitated by a prison system that fails in its vital rehabilitative role to our society.

There is much work to do. Our manifesto commitments:

Gardaí

- Recruit 3,000 gardaí over our government term to restore An Garda Síochána force levels to over 14,000 – or pre-crisis levels,
- Empower the Policing Authority to oversee the implementation of recommendations from Garda Inspectorate reports over recent years, in partnership with the management of An Garda Síochána,
- Strengthen the role of the Policing Authority and the Garda Síochána Ombudsman Commission in the oversight of An Garda Síochána.

Justice system and sentencing

- Establish a criminal justice inspectorate, based on the model in the North of Ireland, that would



Pádraig Mac Lochlainn TD

be primarily responsible for the oversight and the effectiveness and efficiency of the workings of organisations within the criminal justice sector.

- Introduce a sentencing council that issues sentencing guidelines to the judiciary to ensure accountability and consistency in sentencing.
- Ensure the enactment of a judicial council bill and introduce legislation aimed at renewed reform of the judicial appointments procedures to ensure transparency and accountability in judicial appointments.
- Reduce the prison population by one-third over two terms in government, via a decarceration strategy. Options to enable this include commuting all sentences for under six months' imprisonment imposed in respect of non-violent offences and replace with community service order.
- Create a dedicated family courts system aimed at reducing the prolonged stress and cost to families of separation and divorce, backed up by legislation directing families to mediation services prior to entering legal proceedings.



TITLESOLV
TITLE BONDS

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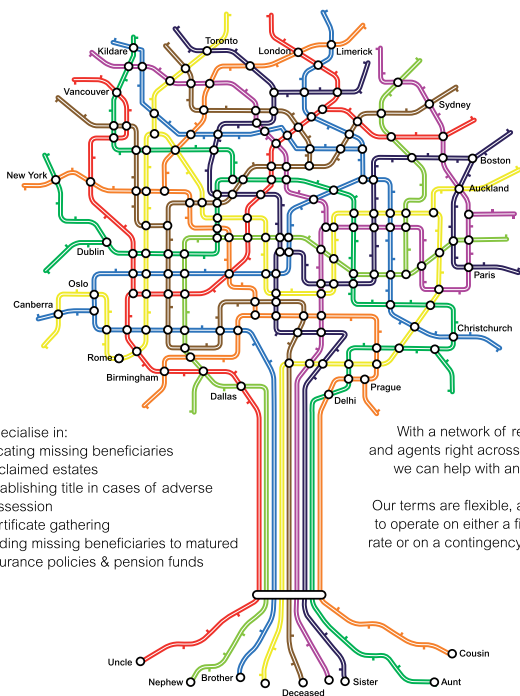
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Cllr Roderic O'Gorman

If we are successful in getting Green TDs elected back to the Dáil, the following are the key issues we will be working to achieve in the justice area.

Justice system

- Create an independent sentencing council that will produce guidelines for judges to follow in implementing sentences. This council will bring together members of the judiciary, legal profession and non-legal member.
- Set up a separate planning, environmental and climate justice law court, managed by specialist judges,
- Introduce legislation to stop corporations devising corporate structures in order to avoid paying debts and statutory obligations (for example, the Clery's case),
- Provide a mechanism to fund necessary public interest litigation,
- Introduce 'spent conviction' legislation for certain offences.

An Garda Síochána

- Support the resourcing of the gardaí, particularly through the provision of new vehicles and safety equipment,
- Increase the use of targeted burglary response units across the country,

- Seek to improve the newly formed Policing Authority by removing any political role in the appointment of the chair and members.

Victims of crime

- Implement and resource the EU *Victims of Crime Directive*, including the full provision of victim liaison officers,
- Establish a system of monitoring and evaluation of the implementation of the *Victims' Charter*,
- Review the work of the *Commission for the Support of Victims of Crime*, and conduct an audit of the victims support services around the country,
- Promote the national *Crime Victims' Helpline*.

Prison reform


- Consider developing an after-prison support system, coordinating integrated supports for accommodation, education, employment,
- Increase the age groups targeted by the *Garda Youth Diversion* from its current focus on 12-18-year-olds to include the 18-22-year-old age group, and increase resources to accommodate this, and
- Ratify and implement the optional protocol to the *Convention Against Torture*.



Anne Ferris TD

- Labour in government will legislate for a judicial council, with lay representation, and will update the judicial appointments system,
- We will legislate for a mediation framework and establish dedicated family courts,
- We will introduce damages by way of periodic payments for serious injuries,
- We will consolidate and update the *Courts Acts* and will introduce greater use of electronic communications and case management,
- We will expedite work on a single, comprehensive, statutory criminal code,
- We will modernise the rules of evidence and procedures, as well as pre-trial processes, to enable the court to clarify issues and to direct how they should be explained to a jury, to deal with third-party disclosure and

admissibility of evidence, and to direct statements setting out the nature of the prosecution and defence cases,

- We will introduce harmonised search warrant, arrest and detention provisions for serious crime,
- A sentencing bill will set out aggravating and mitigating circumstances and bring greater consistency,
- We will simplify and consolidate road traffic law,
- We will build on our existing work in the area of restorative justice, leading towards the establishment of a network of community courts,
- We will create a garda serious and organised crime unit and will create a specialist division within the office of the DPP to make appropriate directions early in the investigation of white-collar crime,
- We will legislate for the grant of immunity to suspects, in accordance with clearly defined criteria,
- We will legislate for the admissibility of computer-generated business records that satisfy general standards of reliability,
- We will reform sentencing law and practice to eliminate very short prison sentences for minor, non-violent crimes, and
- We will reform and consolidate prison law. 

The Gazette would welcome responses from the Anti-Austerity Alliance, Direct Democracy Ireland, the Independent Alliance and the Social Democrats.

news in depth

CHANGING TIDES

In the first of a series of reports, **David Rowe** and **Donal Maher** provide an overview of the initial results received in the first Law Society Managing Partner Survey



David Rowe is founder of *Outsource*, which provides practice management and financial advice to Irish law firms

Attempting to articulate the performance of the legal sector in a short, neat summation is an impossible task that instead forces us to look within the various market segments for a more truthful representation. Recent surveys have either an urban bias or too narrow a pool to be able to draw clear conclusions. The objective of the first Law Society Managing Partner Survey, in conjunction with *Outsource*, is to uncover emerging trends across a range of market segments and to provide useful insights to our members across the market.

The survey was issued to all managing partners in November 2015 and received in excess of 300 responses, representing the existing spread and density of firms.

Fee income

The overall response to the survey shows improvements in fee income over the past 12 months. Of the firms who responded, two-thirds indicated an increase in fee income, 17% indicated no change in the last 12 months, and 16% have shown a decrease.

The strongest growth in fee income in the past 12 months is seen in Connacht and Ulster. This is likely due to the fact

that firms in Leinster (and Dublin in particular) saw growth earlier in the cycle, and this improvement is only starting to be felt in other urban centres in recent times. Regional centres are starting from a lower performance base, and the urban/rural bias exists at this regional level also.

Expectations for the coming 12 months are for further improvement. In the coming 12 months, one-third of practices expect an increase in fee income over 10%, 36% expect a fee increase in the range of 1-10%, and 25% anticipate little change.

The overall response shows improvements in fee income over the past 12 months

Irish law firms are seeing the benefits of an improved economy. A GDP growth rate of 7% in 2015 and similar performance in 2016 translates

into improved consumer sentiment, SME growth, and transactional activity, which all positively affect demand for legal services. While this growth has been seen steadily across the legal sector, there are still very different levels of profitability and different types of challenges in operation within market segments. For example, it is clear we have a two-speed market in operation with Dublin. To a lesser

extent, other regional centres are experiencing stronger growth and rising costs. Nevertheless, it is encouraging to see improvement after a number of years of decline, and to see that the improvement is widely based.

Faster treadmill

Practice costs have begun to rise, and the extent of this increase varies significantly, with Dublin practices and other large urban centres under more pressure. In the past year, 37% of respondent firms have seen their overheads increase by up to 10%, with a quarter reporting an increase of more than 10%. Reasons for this include:

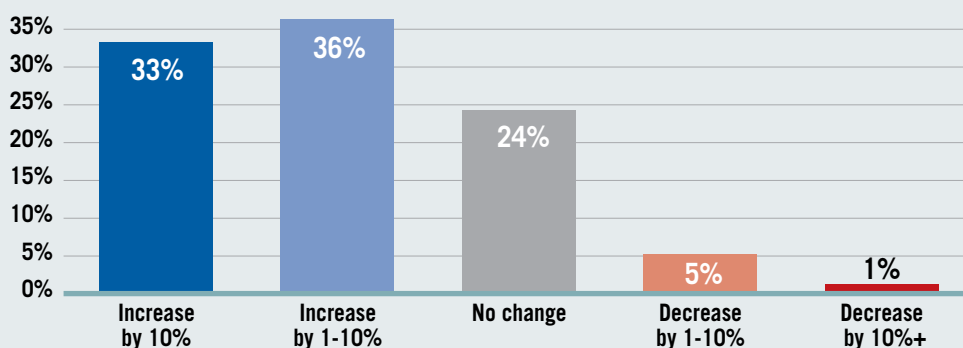
- Firms are beginning to staff up again,
- Salaries have begun to rise, and
- Property costs such as rents have also begun to increase.

Increased activity levels are being matched by a rapidly rising cost base that, in many cases, is eroding the improvement in performance. Consequently, many report that they are running faster to stand still. The challenge has definitely shifted in Dublin from work being hard to source to finding staff to service that work.

The old reliables

The survey probed firms on how much of their fee income was earned from the traditional core areas of personal injury litigation, conveyancing, and probate. Unsurprisingly, the response confirms that, in the smaller firms, the high dependency on these three areas continues, albeit with the modest increase in litigation being offset by a dramatic fall in conveyancing. As emerges from other results of the survey, firms will increasingly have to 'up their game' in either reaching outside their immediate catchment area, expanding their practice areas, or better leveraging their existing client base and competencies.

HOW DO YOU EXPECT YOUR FEE INCOME TO CHANGE OVER THE NEXT 12 MONTHS?



There is significant doubt within the profession whether residential property work is profitable

PICT: ISTOCK

Residential and commercial conveyancing was one of the largest growth areas in the past 12 months, followed by corporate work, niche work, and banking. There is significant doubt within the profession whether residential property work is profitable, with more practitioners believing they are carrying out the service either at break-even or at a loss than believe it to be profitable.

One disappointing aspect of the results is how little work firms have seen from new practice areas in the last 12 months. This reflects two sets of dynamics. Firstly, the new practice areas that have arisen are more specialist and therefore more likely to be the preserve of the medium and larger firms. Secondly, existing practices have not moved their offering of services out beyond the traditional practice areas when faced with decline in those traditional areas. This serves as a reminder that firms should take a strategic look as to how their core capabilities can be optimised

outside their traditional areas, and applied to new sectors and disciplines. New approaches and new technologies can assist in this transition, as well as an improved acumen for business development.

Barriers to growth

For many of the regional firms, the biggest obstacles to growth are lack of profitability in available work, insufficient time for business development, and a lack of work available in either the practice's location and/or area of expertise. This corroborates the feeling within the profession at the moment that there is an element of the 'busy fool' in most practices, with very high activity levels distracting focus from strategy and business development. Improving levels of activity, of itself, does not translate sufficiently into improved profits and cashflow.

Dublin respondents report a talent crunch as one of their key challenges to growth. In the absence of creative responses,

solving that issue is likely to result in further erosion of recent gains and also to have implications for regional centres as staff migrate.

Size and shape

Most practices believe that they will continue to grow organically rather than acquire or merge with another practice. This is surprising, given the fragmented nature of the profession, the increasing regulatory and administrative challenges in running any business, and the competitive advantage presented by synergies with others. Perhaps more 'clear blue water' since the financial crisis is needed but, in our view, it appears inevitable that the profession will consolidate into larger business units in time.

It's a people business

Over half the respondents to the survey provide flexible hours, and 44% provide part-time employment. We expect these HR approaches to develop further, as employers recognise that talent acquisition and retention is likely to become a defining issue in 2016.

The survey also asked respondents to recommend a career path to a newly qualified solicitor. The one interesting aspect of the response was that twice as many respondents saw the role of an in-house solicitor either in the private or public sector preferable to being an employed as a solicitor in private practice. This appears to put pressure on private practice

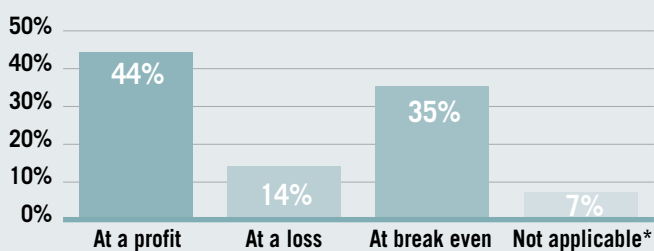
firms to achieve a better work/life balance and will be a particular challenge in the Dublin market, where work available currently outstrips professional resources available to service that work. When we consider the higher volumes but static or declining margins, it is clear that private practices face larger challenges to attract talent in the face of institutional, financial, and public sector organisations absorbing approximately 15% to 20% of the pool available.

Considerable change

The survey confirms that we are going through a period of considerable change within the profession – the extent of that change depends on geography and the practice areas within which any firm operates. Costs are rising and volume is up, and attracting and retaining talent is becoming a real issue. The profession, taken in its entirety, is still heavily reliant on the core practice areas, one pillar of which is seen as only marginally profitable, but is the largest growth area for many smaller firms.

The *Legal Services Regulation Act* offers interesting changes and options to the profession, and it is clear that the profession has grasped the fact that, if we continue to do what we always do, we are sliding backwards. There is a more positive environment out there – the effects are visible, and it is clear that well-managed firms are seeing the rewards for their efforts.

DOES YOUR FIRM DELIVER RESIDENTIAL CONVEYANCING WORK AT A PROFIT OR AT A LOSS?



*Not applicable – our firm does little or no residential conveyancing



'Neath the shroud of the FOGGY DEW



Lorcan Roche is a freelance journalist and award-winning writer

Brothers John, later a solicitor, and Tommy O'Connor, who gave up his apprenticeship to volunteer with the IRB, both fought in the 1916 Rising. Lorcan Roche hears their fascinating story from John's grand-daughter, solicitor Maureen Black


MP Black & Co is a typical solicitors' practice. You'll find it, or a version thereof, on any typical main street in any typical town. But you're not interested in 'typical'. You're looking for remarkable. You're looking for a story of law breakers, not law makers. A story of men who stood against the Establishment, against Empire itself. A story of men who held Lee Enfield rifles and 'Howth' Mausers. Who built and manned barricades. Ideally, under sniper fire. A story of men prepared to kill, and die, for their beliefs.

Hang on, there, though – doesn't that jar with the average punter's preconceptions of stiff-collared solicitors? Well, those average punters should listen to solicitor Maureen P Black talk about her grandfather, solicitor John S O'Connor, and her grand-uncle Tommy O'Connor. And you realise you have found your story. Or rather, it has found you. And that it is truly remarkable.

The rising of the moon

Let's get the solicitor stuff out of the way: both brothers trained as solicitors. Tommy was asked by the leaders of the Irish Republican Brotherhood to abandon his career (see panel, p26), but despite or perhaps because of his involvement, John had a very successful practice on Upper Ormond Quay. He qualified ten years after the Rising, having worked part-time in a coal merchant to fund his studies. He was later vice-president of the Law Society, DSBA president from 1937-39, solicitor to two attorneys general (Conor Maguire and Kevin Haugh), and a confidante of Dev. He acted for many developing national brands, among them Aer Lingus, Erin Foods, and Súicre Éireann. He became a popular Fianna Fáil TD and campaigned vociferously for housing (note – despite the 'austerity' of the post-Civil War period, more than 4,000 local authority houses were built in Dublin in less than six years).

"I was ten when he died," says Maureen Black, "so I have pretty clear memories of him in his house in Howth Road and also in his practice in



“It was as if someone had turned a light on in each window,” John said, referring to the “bright glow” (of the fires in O’Connell Street), which by the third day had illuminated all the windows of the Distillery



John and Tommy in Irish Volunteer uniform

Ormond Quay. I thought he was very old, but I know now that he was just very gentle. I remember he always wore a hat and always had butterscotch sweets in a drawer for us. I remember he seemed very ... ordinary. I understand now that he was just very understated.”

Indeed. As then Chief Justice Brian Walshe wrote in his 1967 *Irish Times* obituary of John S O'Connor: “His modesty and gentle amiability tended to divert attention from his great contribution to our national life.”

Who was this unassuming solicitor; what great part did he play? What role did his brother Tommy assume?

Maureen Black points to two works that can help. Hélène O'Keefe's *To Speak of Easter Week: Family Memories of the Irish Revolution* (Mercier Press, 2015) and *From Subjection to Irish Freedom: the Role of the O'Connor Brothers*, a personal family history by John S O'Connor's daughter, Eileen

The brothers (and their father) joined the Volunteers in November 1913, just at the organisation's inception. Both were involved in the Howth gun-running incident

Butterly. There are also military archives that support not just the key roles played by the O'Connors in the Rising and subsequent events, but also their determination, bravery, and their enviable calm under fire.

Four green fields

The family were from Limerick originally. Tommy and John grew up, however, in Lower Sherrard Street, Dublin. Sean T O'Kelly was a neighbour. Interestingly, the 1911 census for the family is recorded as *Gaeilge*, something that would undoubtedly have drawn the attention of the authorities and that indicates the parents (Thomas Joseph, an upholsterer, and his London-born wife Eileen Maher) were probably active in the Gaelic League. Certainly,

the O'Connors were a hardy Fenian lot – seven children, none of whom died in infancy, an astonishing statistic for the time. The two brothers served as altar boys in nearby Gardiner Street, a role the elder brother, Tommy, would

THE LONELY BANNA STRAND

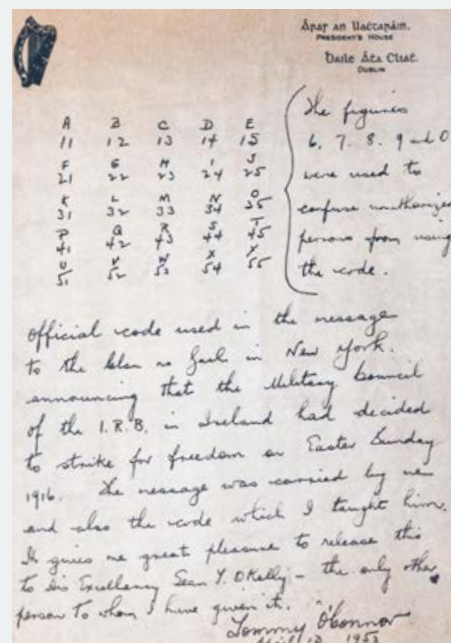
In his teens, Tommy O'Connor took up work with the Cunard Line. In April 1912, he was aboard the *Carpathia*, working as a scullion (kitchen porter), sailing from New York to Liverpool. On the night of 15 April, after receiving messages of distress from the *Titanic*, the *Carpathia* was the first vessel to arrive on the scene. Millionaire survivor Molly Brown later presented selected crew members of the *Carpathia* with medals: Tommy got a bronze for his actions.

By 1915, he had returned home and secured an apprenticeship at Lynch & Deering Solicitors, Lower Ormond Quay. However, with strict cable and wireless censorship in operation by the British War Office (since 1914), and with urgent need to liaise with New York-based IRB and Clan na Gael leaders, Tom Clarke requested that Tommy leave his employment and move to Liverpool. Clarke felt Tommy's *Carpathia* medal would greatly enhance chances of securing work on the transatlantic routes. Tommy was sworn into the IRB. His orders were to keep open lines of communication and to carry funds from America. He was successful, the family's low-key style assisting greatly in endeavours. He was viewed by the leadership on both sides of the Atlantic as solid and reliable.

He met Roger Casement and, in March 1916, Tommy personally carried the coded message containing detailed plans of the landing of arms from Germany, which many regard as the first message to fix the date of the Rising (April 26 1916). He handed this personally to Tom Clarke, who then ordered Tommy to return to New York. Knowing what was to come, however, Tommy refused. Clarke reluctantly allowed his valuable asset rejoin his old unit (F Company). Tommy was immediately caught up in the events, building barricades around North King Street and Church Street and coming under fire, initially from British forces moving in and out of the Royal Barracks and later from forces sweeping in from The Curragh.

At the end of the Rising, Commandant Ned Daly requested that Tommy “take off his uniform, venture out, and establish whether rumours of the capture of the Volunteer HQ in the GPO were true”. While Tommy proceeded along the railway line leading into the city centre, he was captured and brought to Broadstone. He was later sent to Frongoch, where he was reunited with John. After his release, Tommy returned home.

In 1917, Michael Collins – now director of intelligence of the Irish Republican Army – made



contact and requested that Tommy resume his former activities. Tommy once more agreed, and soon began operating under the name ‘Thomas Welsh’. He carried messages and supplies

PIC: GETTY IMAGES



The Four Courts

reprise when Mass was said in [Frongoch](#), the Welsh concentration camp both would later be interned in.

The brothers (and their father) joined the Volunteers in November 1913, just at the organisation's inception. Both were involved in the Howth gun-running incident. On the return journey from Howth, John – who may or may not have given cheek to a British soldier – was duly knocked out with the butt

of a rifle. His Howth rifle was confiscated (though he had hidden several others in a ditch near the Old Shieling Hotel on the Howth Road, which he later retrieved) and, according to family testimony, the young Volunteer had the “nerve” to write to the Dublin Metropolitan Police on 19 August 1914 seeking the return of said rifle. He received a curt acknowledgement of his request (see picture, p29).

between New York and Dublin, often, according to family and other military testimony, handing them directly to Collins at Vaughn's Hotel. In his statement to the Bureau of Military History (1913-'21), wherein he is described as an 'IRB courier', Tommy states: “I took any job that was going at the time on boats plying between Liverpool and America so that I could carry dispatches. I was not too concerned with the position I held, so long as it enabled me to do this particular work.”

But Tommy was under observation. He was arrested in 1918 and sentenced to a year's imprisonment for violation of the *Trading Act* – being in possession of documents that indicated he and others were in contact with Germans attempting to ship arms to Ireland, the so-called ‘German Plot’ of 1918. Tommy spent several long and very difficult months in prison in Atlanta. After his release (on appeal), he spent several months recuperating in California before resuming activities. He settled in New York and was a key player in

Tommy personally carried the coded message containing detailed plans of the landing of arms from Germany, which many regard as the first message to fix the date of the Rising

obtaining funds for the ‘Bonds Drive’ and in sending arms, including Thompson submachine guns, from New York's docks to Dublin in 1920/21. He escorted Countess Markievicz on a fundraising tour of the US in March 1922.

He returned to Dublin in December of that year but was arrested in a Free State raid on his family home. He spent three months in Mountjoy – this seems to have had a profound, almost sickening effect on him (Butterly).

When President John Calvin Coolidge granted him an unconditional pardon in 1927, he went back to America, where he found official employment

as an officer in the NY office of the Chilean Government. He visited Ireland in the 1930s and was united not just with family, but also with members of F Company. He visited again for the 1953 An Tostal ceremonies, but was already in ill health. He passed away in January 1955.



John S O'Connor, then DSBA president, at the association's annual dinner in 1937

The family was openly, proudly, defiantly patriotic. Tom Clarke stayed with them regularly, and, in the days leading up to the Rising, when it was feared the leaders would be rounded up, Clarke was ensconced almost permanently. This, according to Eileen Butterly, is why – despite Eoin MacNeill's countermanding order of Easter Sunday, 22 April (MacNeill panicked and took out an ad in a newspaper cancelling ‘manoeuvres’) – the brothers O'Connor would have known first-hand that the Rising was to go ahead. The young John is said to have been “absolutely disgusted” by MacNeill's countermand and the consternation it generated. In an interview given to RTE in 1966, John explained that many of his company's men, believing the Rising had been cancelled, went off to Fairyhouse! O'Connor, however, is reported to have gathered up and re-briefed at least ten members of his company, cycling furiously around the city.

Wrap the green flag round me

In a separate 1966 radio interview, given to WNAC in America, he said that he and his section of 20 men (he was, at 19 years of age, a sergeant in F Company) paraded at Blackhall Street at noon on Easter Sunday. They then began erecting barricades. The younger O'Connor was posted at a barricade in May Lane, beside the Jameson Distillery. He recalled that, in the early days of the Rising, he and his men were “greatly troubled”, not just by sniper fire, but by crowds returning from Fairyhouse. In later days, O'Connor saw, in reflections in the upper windows of the Distillery, how the tide was steadily turning against the rebel forces: “It was as if someone had turned a light on in each window,” he said, referring to the “bright glow” (of the fires in O'Connell Street), which by the third day had illuminated all the



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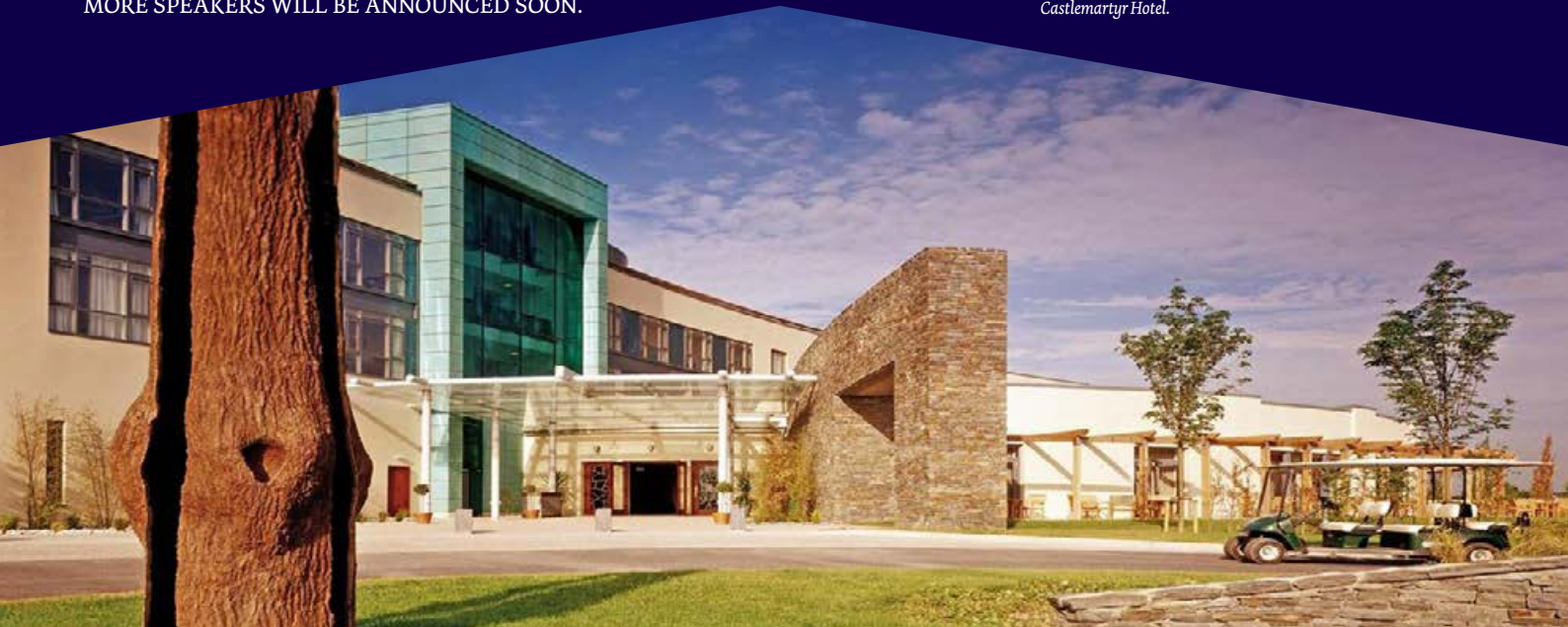
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PICTURE: GETTY IMAGES



windows of the Distillery. It must have been hard for the young soldiers to watch patriotic dreams going up in smoke. But these two were not for giving up. Both brothers, it seems, were involved in one of the most bitter exchanges of Easter week – the fight for ‘Reilly’s Fort’. F Company, according to eyewitness and military history accounts, were under incessant fire for about 36 hours. They lost several men.

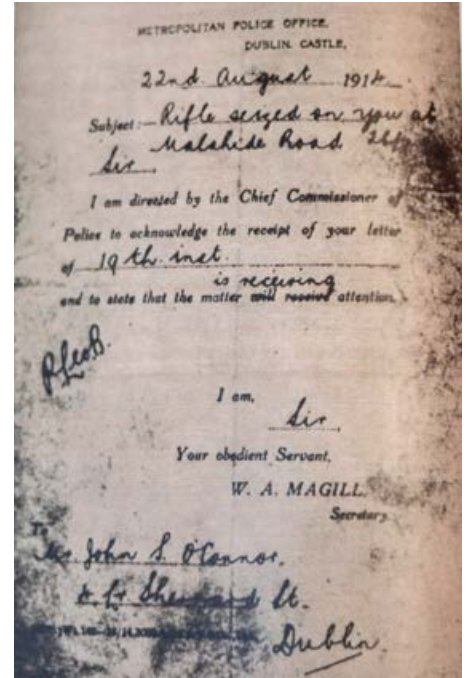
John surrendered (under the advice of Commandant Ned Daly) and, in the 1966 RTÉ interview, told Prionsias Mac Aonghusa that, after doing so, made his way from Richmond Barracks in Inchicore to North Wall along with 288 other prisoners, including Michael Collins: “Dublin was in a shocking state; the whole place seemed to be on fire. There was none of the city left. As soon as we got down close to O’Connell Bridge, we saw the fires were still burning. It was the most horrific fire I have ever known, and we were all fully convinced that we would

never set foot in Ireland again.”


He recalled “hostile crowds” around Inchicore, and being glad of the “continuous line of British soldiers who stood close together with bayonets fixed ... those British soldiers saved us from our own people ... getting on the ol’ cattle boat was quite a relief.”

Come out you Black and Tans

After his release from Frongoch (under the general amnesty of Christmas 1916), John O’Connor was very involved with the resurrection of F Company. During the War of Independence, this company was very active in raids on munitions dumps and also in assassinations of British secret service agents. O’Connor, it seems, was also instrumental in the distribution of arms secured in one of the most successful raids of that year, on Collinstown Aerodrome in March 1921. But while he had spoken publicly, if modestly, of his role in the 1916 Rising, he was very



reluctant to talk of his part in the War of Independence and the subsequent Civil War, perhaps because of his older brother’s arrest by the Free State army and Tommy’s subsequent imprisonment. Maureen (and Eileen Butterly) says the family never pushed him to speak of these painful events.

But Maureen says the family was grateful that both brothers survived. And remained friends and allies. And that the family’s worst nightmare – that these two remarkable individuals would have had to face each other on opposite sides of the struggle – never came to fruition. That, even for a family of the O’Connors’ strength and resilience, would have been too much to bear. 



Maureen P Black, John’s grand-daughter



Inside the GPO after the Rising

PICTURE: GETTY IMAGES

Rise of the MACHINES

Warnings of a dystopian future of non-existent jobs and radically changed business models greeted those at the inaugural 'Future of Law and Legal Tech' seminar. It'll be survival of the most intelligent, writes **Gordon Smith**

at a glance

- What the loom did to the weaving industry in the 18th century is what technology is doing to professionals in the 21st
- The firms that survive will have evolved into efficient legal machines, harnessing technology to terminate unnecessary processes
- The business model of law will also need to evolve. The long-standing legal practice of hourly billing is no longer appropriate for meeting clients' expectations

“You still need an intelligent human being to make a judgement call on what the technology spits out. This technology is far beyond that. It should be used as a racehorse, not as a carthorse”



Gordon Smith is a Dublin-based freelance journalist and copywriter. He regularly contributes to The Irish Times and to magazines such as Business Ireland, The Market, and The Hub

From travel and TV to taxis and telephones, few industries remain untouched by digital disruption, and the legal profession could be next in technology's firing line.

Technological advances could lead to 40% of legal jobs ceasing to exist, including legal secretaries, paralegals, researchers and junior solicitors. “What the loom did to the weaving industry in the 18th century is what technology is doing to professionals in the 21st,” said Larry Fenelon, managing partner at Lemnan Solicitors, organiser of the event held in Dublin's Merrion Hotel last December.

Machines of a different sort were the theme of keynote speaker Chrissie Lightfoot's presentation. The author of *Tomorrow's Naked Lawyer*, and rated as one of the world's top female futurists, she posited a profession some years from now that looks radically different to today – peopled by robots. The firms that survive will have evolved into efficient legal machines, harnessing technology to terminate unnecessary processes and, in turn, deliver faster and more cost-effective service to clients.

The ‘robots’ aren't in physical form, Lightfoot added. That's just a metaphor for intelligent software that analyses data at far faster speeds than a human. “It can run through 10,000 documents and won't miss anything. These systems are more accurate, more intelligent and intuitive. They don't just get an answer, they get all of the evidence,” said Lightfoot.

I, robot

Bogdan Sacaleanu, who leads IBM Ireland's natural language programming research, spoke about how artificial intelligence (AI) capabilities are disrupting the legal sector. Suppliers like IBM, Ravn Systems, Neota Logic and Kira Systems provide AI systems that can handle large or small quantities of structured and unstructured data and can help with advocacy and advisory related legal issues.

Many lawyers think AI should be used purely for low-level research work, but some firms are already starting to push its capabilities and use it as a competitive advantage by completing vital client work far faster. “A deal that could take three months to complete is now down to three weeks. The technology is bringing higher value, so there's a better outcome,” said Lightfoot.

Speaking afterwards, she gave the example of Riverview Law in Britain, which is pioneering the use of AI in the legal sector, and last year acquired a US knowledge automation business in a deal that's been touted as a step towards the creation of ‘virtual assistants’. It's claimed this will improve the quality and speed of lawyer and paralegal work, while freeing them to focus on key



Chrissie Lightfoot



Larry Fenelon



Richard Oliphant



Dominic Conlon

tactical and strategic matters.

The business model of law will also need to evolve, and the long-standing legal practice of hourly billing is no longer appropriate for meeting clients' expectations, said Natalia Faura, LinkedIn's EMEA general counsel, who also spoke at the event. Leman's Larry Fenelon said this development is linked to the evolution of a lawyer's role. "The way we bill will be expertise-valued, not time-dependent," he commented.

Transformers

Anecdotal evidence suggests that law school attendance rates in the US have dropped significantly over the past decade, and this trend is likely to be replicated on this side of the world. Lightfoot foresees technology causing the number of lawyers to drop dramatically, but added that the profession will evolve in response to the change – and that quality of service will increase.

Even the title 'lawyer' itself could ultimately give way to positions like 'legal strategist' – who, instead of drafting contracts, would give clients high-level business advice – or 'big data guru' who would understand how to find pertinent information in unstructured data.

For now, the human element of law – providing knowledge and experience, while maintaining client relationships – remains intact, said Lightfoot. However, she said that forward-thinking lawyers should push the boundaries of what today's technology can accomplish: "You still need an intelligent human being to make a judgement call on what the technology spits out. The real boon is that this technology is far beyond that. It should be used as a racehorse, not as a carthorse, and used in business intelligence."

She urged attendees to see AI and automation technology as an opportunity rather than a threat, "to future-proof your career as an individual and also the future of your firm".

Instead of fighting the same old battles with competitors, a firm can marry automation with its unique knowledge or specialisation to open up new markets and previously untapped clients. "Technology will make legal services more accessible and cheaper in certain areas. A lot of buyers, such as SMEs, wouldn't touch law services in the past, but now they can afford to

do so," Lightfoot said. Appropriately, she framed the debate as a Darwinian struggle with a technological twist: "It's survival of the most intelligent."

Ex machina

Another area of technology that sparked many delegates' interest was electronic signatures. Older e-signature technologies like public key infrastructure were complex and hard to use, but newer products have removed these barriers, said Richard Oliphant, EMEA general counsel with the electronic signing platform DocuSign.

Customers, especially large corporates, are increasingly demanding e-signatures, which is further driving adoption of the technology, he added. "They're already familiar with electronic signing platforms. They see it simplifies transactions and makes everything much more streamlined and efficient. A second reason is, law firms now realise they've been lagging behind the technology curve and want to be seen as innovators."

In Britain, the decision by 'golden circle' firm Linklaters to embrace e-signatures prompted a noticeable shift in attitude towards their use among peers, Oliphant said.

Many corporate law firms assume that e-signatures are only appropriate for cross-border corporate finance or M&A transactions, but Oliphant said this ignores more obvious use cases: "Actually they're ignoring the low-hanging fruit, like HR on-boarding or more basic property transactions. Our view is that electronic signatures can be used to validly execute the vast majority of commercial and corporate transactions. If you're using an electronic signing platform, then you'll have an electronic audit trail and that will carry considerable evidential weight to identify the signatory and authenticate a contract."

He also spoke about the new *eIDAS Regulation* that comes into force this July, which will repeal the current *E-Signature Directive* and will have direct effect in Ireland and all 28 EU member states. It is hoped that this will create more harmonisation and spur greater adoption of e-signatures across the EU.

Evolver

Keeping with the theme of change, Leman partner and head of corporate, Dominic Conlon, outlined what's in store for lawyers from the *Legal Services Regulation Act*.

Even the title 'lawyer' could ultimately give way to positions like 'legal strategist'

As in Britain, the act opens the possibility for new business models, such as partnerships between solicitors and barristers. Conlon said such structures could be available as early as 2017, though he questioned whether barristers would have much appetite for them in practice.

One of the act's more interesting developments, he said, is the possibility of multidisciplinary practices that combine lawyers and non-legal professionals. Conlon said that the big accountancy firms could put pressure on highly rated lawyers to form these partnerships, but in Britain, their development so far has been evolutionary rather than revolutionary.

"The people I've spoken to have told me it's not necessarily a 'slam dunk' that multidisciplinary practices will happen, because of the size of the Irish market. The pressure in Ireland might not be as real as in Britain. I think it's going to be a market-driven decision," he said.



PG: WIKIMEDIA COMMONS

"Firms should harness technology to terminate unnecessary processes." Yeah. Let me know how you get on with that...



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3 IS A MAGIC NUMBER

In order to assist the Property Registration Authority in providing you with a better service, **Áine Ruddy** outlines the everyday difficulties and most common errors encountered in Form 3 applications lodged for first registration



Áine Ruddy is a barrister, currently working in the Property Registration Authority as an examiner of titles

The PRA conducted an examination of a random sample of 120 Form 3 applications across all offices to identify the most common reasons for rejection or queries arising (see panel).

One of the main areas in which issues arise is in the drafting of the Form 3 certificate itself. Some firms are using older versions of the Form 3, which are no longer acceptable for lodgement. Others frequently omit to complete all the requisite sections in the form.

Certificates in Form 3 must be drafted, signed, and dated by the individual solicitor who investigated the title. If the name of the certifying solicitor is omitted or if the Form 3 was signed in the name of the firm, this will result in a query being raised. If the applicants' addresses have been left out of the certificate or if the lease details have not been included in the Form 3, this will also result in queries being raised. Practitioners often forget to set out fully the burdens to be registered in paragraph 8 of Form 3, resulting in numerous queries being raised.

A Form 3 certificate should only be furnished where the practitioner can absolutely vouch for the title of the applicant. It should also be noted that the Form 3 procedure is not appropriate if the solicitor who completes the Form 3 also has a beneficial interest in the property.

Form 3 applications made for registration of a leasehold interest with absolute title will be queried if the superior title is not registered. If the solicitor can confirm that they have examined and satisfied themselves that the title acquired is absolute, the PRA will accept their confirmation that the title to be registered is

absolute title. If solicitors are not in a position to do this, then they should be applying for good leasehold title instead. It should also be noted that a conveyance or assignment must not have any contradictions within the document. If the title is recited, it must be consistent with the interest and property assigned or conveyed.

The certificate in Form 3 should be lodged for registration without delay. Ideally, the certificate and deed of conveyance should be lodged within one month of execution. If there is a delay, it might be necessary for the PRA to call for a fresh certificate or even call on the applicant to furnish the title documents for inspection – for example, if the delay is more than two years. If the certificate and deed are more than five years old, a full application for first registration in Form 1 or Form 2 will be necessary.

Practitioners often forget to set out fully the burdens to be registered in paragraph 8 of Form 3, resulting in numerous queries being raised

Supporting documentation

All Form 3 applications involving the registration of an assignment of a lease must be accompanied by a certified copy of the original lease, or else they will be queried for production of same.

at a glance

- The PRA has identified the most common reasons for rejection or queries arising from a Form 3 application
- One of the main areas in which issues arise is in the drafting of the Form 3 certificate itself
- Moreover, solicitors frequently lodge a Form 3 in instances when a Form 1 or Form 2 application should have been lodged instead



FOCAL POINT

top reasons for rejection/queries

The top recurring reasons for rejection/queries in Form 3 applications:

- Form 3 incomplete/does not follow prescribed format,
- Form 3 not signed by investigating solicitor,
- Details on Form 3 do not agree with documents lodged,
- Form 3 dated over one month prior to lodgement,
- Form 3 not lodged,
- Burdens specified in conveyance not listed in Form 3,
- Fees incorrect/not lodged,
- No map lodged/map lodged not acceptable,
- Address in State for applicant not provided in documents lodged,
- Conveyance/assignment lodged is not a disposition on sale,
- Absolute title query regarding leasehold title applications,
- Copy prior deed of conveyance or fee farm grant not lodged,
- Copy of original lease not lodged for leasehold applications,
- Deed not properly executed by relevant parties,
- Copy of prior documents on title required,
- Property not correctly identified on deed of charge lodged,
- Description of property in conveyance/assignment does not agree with map,
- Property forms part of registered land,
- Revenue certificate with correct details not lodged,
- Joint tenants or tenants-in-common (prior interest),
- Foreign company requirements not met,
- Leasehold or sub-leasehold interest.

If the property is subject to a fee-farm grant, the PRA will look for copies of conveyances containing apportionments or indemnities in relation to the fee farm rent. Where a property is subject to covenants and conditions contained in an earlier deed, the PRA will look for production of that deed. Property descriptions relying on maps attached to an earlier deed will result in requests for lodgement of the earlier deed.

Searches are not required by the PRA for Form 3 cases. The purchaser's solicitor should make searches in the Registry of Deeds, Judgments Office and Companies Office (where appropriate). The practitioner should ensure that he/she has clear title on first registration in accordance with his/her certificate.

Mapping issues

Queries on this area typically arise when the map lodged is not suitable for registration purposes or a non-compliant map has been lodged. If the boundaries are not set out in accordance with PRA mapping guidelines,



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there is a conflict with Ordnance Survey detail, or there is a boundary conflict with existing registered property, then a query will be raised. In multi-storey building cases, the PRA has had situations where the site-location map was not lodged or was not compliant with our guidelines, or where the floor plans were not lodged.

If there is no correlation between the map and description of property in the schedule of the deed, the PRA will raise a query on this issue. Another issue that frequently occurs is that the description of the property in the deed to the applicant is quite vague, resulting in requests for additional documentation in order to verify the extents of the subject property and as to whether it is wholly contained within the boundaries on title.

In some instances, the applicant's solicitor has informed the PRA that the wrong map was attached to the Form 3 application. The majority of these relate to apartments, where solicitors have lodged the wrong floor-plan map. It is not possible for PRA staff to identify these errors, as usually the description of the property in the grounding deed identifies the apartment as "known as apartment no X" and it doesn't actually identify the floor. Therefore, the PRA are reliant on the correct floor-plan map being lodged in these cases.

Particular care should be taken to ensure that the application property is wholly within the boundaries of the maps and property descriptions on title. You can ensure this by conducting a mapping search or by inspecting the relevant digital map online through our website at www.landdirect.ie.

Situations where Form 3 not appropriate

Solicitors frequently lodge a Form 3 in instances when a Form 1 or Form 2 application should have been lodged instead.

FOCAL POINT

form 3 checklist

To be used when preparing an application for lodgement in the PRA:

- Form 17,
- Form 3 containing all paragraphs as prescribed in the *Land Registration Rules 2012 (SI 483/2012)*,
- Form 3 must be dated within one month of lodgement,
- Original deed of conveyance or deed of assignment, the subject of the certificate,
- If the title relates to a lease or a fee farm grant, then lodge an attested copy of the lease or fee farm grant; also, if there is an indemnity regarding the rent, a certified

- copy of the relevant deed,
- If the title is subject to burdens (section 69) created in a prior deed, an attested copy of the said deed,
- Mortgage, if any,
- Original map or plan of the property acceptable for registration purposes (see the mapping guidelines section on www.prai.ie for more detail). If the original conveyance/assignment refers to a map attached to an earlier deed, a certified copy of the said deed, evidencing a colour copy of the said map,
- Fee of €130.

Particular care should be taken to ensure that the application property is wholly within the boundaries of the maps and property descriptions on title

If the title is based on a voluntary conveyance/assignment or assent on death, then a Form 3 cannot be used to register the title. If a step in prior title is impossible or erroneous, or if any part of the prior title is based on possession, or the deed is over five years old, then it constitutes an examiner's case, and a Form 3 application should not be lodged.

If the applicant is a tenant-in-common or, as joint tenant, for value, conveys or assigns his/her share or interest in the property to the other tenant, then this is not evidence of title to the property as a whole. An application in Form 3 is therefore not appropriate in this scenario.


If the title is subject to any unexplained rents or covenants or if superior, intermediate, or lower estates or interest have been acquired, and merger or forfeiture

is claimed, then a full investigation of title by the PRA is warranted and a Form 3 certificate is not acceptable. Where the interest conveyed/assigned is a lessee's interest under a renewable lease, or where a property conveyed or assigned forms, a portion of property comprised in a fee farm grant or lease, in respect of which it is stated that rent has been apportioned, then a Form 3 may not be the appropriate course of action.

Help us help you

These are merely examples of the queries raised by the Land Registry. There is a wealth of information available under the practice directions and legal office notices on www.prai.ie, which is well worth a visit. Queries can be emailed to info@prai.ie.

In all cases, in order for applications to be processed efficiently and in a timely manner, it would assist the PRA greatly if the requirements, as set out above, were taken on board each time you prepare a Form 3 application for lodgement.

In short: help us to help you. 

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Nothing succeeds like SUCCESSION



Clare O'Keeffe is a mediator and farmer and a member of Succession Ireland

How would the story of 'The Bull' McCabe have turned out if he'd taken the time to work out a mediated family succession plan? **Clare O'Keeffe** brings the drama

“If you think I'm going to face my mother in heaven or in hell without that field, you've got something else coming” – ‘The Bull’ McCabe, from *The Field* by John B Keane.

In *The Field*, the raw passion for the land exemplifies underlying interests. These are the unspoken hopes, fears, concerns and beliefs held by the McCabe family members: ‘The Bull’, his wife Maggie, and their one remaining son Tadhg. These underlying interests informed the positions of silence, anger and resolute stubbornness that were seen on the surface of the characters.

What if the McCabe family of today took time and invested in working through a mediated farm family succession plan? This plan typically includes, though not exclusively, a time frame for shared management, expansion, alternative income options, entry/exit options, transfer of management and transfer of ownership. Such a plan would also cover current and future financial security for some or all parties, domestic arrangements, and perhaps a future healthcare plan.

Every one of us will die

Succession Ireland is a business that facilitates the family succession planning conversation through a mediation service. This service is based on the four core principles of mediation: confidentiality, impartiality, self-determination and voluntariness. The role of the mediator is to manage this process, not to give advice. The outcome is determined by consensus among the family members present, and it is this self-determination that can make agreements more successful and long-lasting. All mediations are

held at a neutral venue, typically a hotel conference room. The process is designed to allocate time to include all family members where each voice is of equal importance, embracing all options presented. Getting away from the farm and kitchen table adds to the significance and value of the succession planning process and the family's direct involvement in shaping their own plan.

There are very few certainties in life. However, one certainty is that, as sure as we were born, every one of us will die. The tragic death of the McCabe's eldest son was never spoken of in their home and remained under a shroud of silence. Sometimes such tragedies remain under the radar for years, particularly where an appropriate succession plan had not been communicated within that family.

These unresolved emotions, beliefs and assumptions frequently surface during the mediation process. It is at the client's discretion if they decide to address some

“I once heard an old solicitor explain that it is quite frustrating to try and provide effective advice when your client does not know what they or other relevant parties want”

at a glance

- The role of the mediator is to manage the communication process – not to give advice
- The parties bind themselves contractually to the principles of mediation (confidentiality, voluntariness, self-determination) at the outset of the process
- Consensus among the family members present determines both the agenda and outcome of the mediation process
- The mediation process often provides the best chance of effective communication where important family relationships and inherent conflicts co-exist



Each family farm in Ireland has its own story, its own roots, and traditionally a sense of pride of place, a belonging in the community

"Get yer mitts off my posh imported German pilsner," said the Bull. "I've got me this here stick."

aspect of the past within the safe confidential environment of mediation. Clarification and resolution during the mediation process, addressing the 'elephant in the room', does clear the air for a better, more informed and inclusive succession plan. Each family farm in Ireland has its own story, its own roots,

and traditionally a sense of pride of place, a belonging in the community.

The Field: the director's cut

For the McCabe family, typically the initial contact with Succession Ireland would be as follows.

The family are not sure if they really need the service, as their son will be their natural successor. He has years of experience working side by side with his father. Both of them are good workers, but communication between the pair of them is poor. Unexpectedly, the adjoining land, which 'The Bull' has leased

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9 March	WORKPLACE RELATIONS ACT, 2014 – THE PRACTICAL IMPLICATIONS FOR EMPLOYMENT LITIGATION	€150	€176	3 General (by Group Study)
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and managed for years, has been offered for sale by public auction. The owner, the widow Quinn, wants to sell her field to the highest bidder. ‘The Bull’ would like to buy the land as part of his farm-family succession plan. The McCabes as a couple have not discussed their intentions with their son Tadhg. Communication within the family is not good, since a family tragedy many years ago. The upcoming sale and planned purchase of the field is fraught with emotion. ‘The Bull’ would like to secure ownership, as he has invested years of hard physical work into this field.

The hopes, fears and concerns that many farmers and farm-family members at times find difficult to express are very real to them. While acknowledging difference, there will always be some positive memories, aspirations and shared values. This is generally true of any business. From this place, a meaningful, positive conversation can begin.

So would mediation benefit the McCabes?

Here are examples of when mediation may be advantageous to a family-farm business:

- A family member wants to enter into the business,
- A family member wants to retire from the business (or is writing their will),
- A new member joins the business (for example, through marriage or partnership),
- The unplanned happens (such as a marriage or relationship breakdown, an accident, serious ill health, or sudden death),
- Communication has broken down,
- No one is interested or available to manage the current farming business,
- A major change in the business strategy is needed or has occurred,
- Parents or executors are seeking fairness and harmony between siblings.

Where to begin?

The process begins with individual meetings for all family members, starting with the asset owner(s) or the most senior parties (those who have worked and managed the farm business to date). Then, on a family day where all family members are present, an ‘agreement to mediate’ is discussed and signed by each party. This covers the terms upon which everybody is coming to the table and binds the parties contractually to adhering to the principles of mediation. The history of the farm and family is shared, as this may be an influencing factor in the decision-making process. A lesson

FOCAL POINT

mediation bill

In July 2015, Justice Minister Frances Fitzgerald assured the Mediators Institute of Ireland of the Government’s intention to enact the *Mediation Bill 2012*. Within this is expected to be an extension of the obligation on lawyers to advise clients to consider mediation where appropriate. This would be a positive step for dispute resolution in our society. Lawyers may understandably feel threatened by this, but it need not be so. Lawyers and mediators can peacefully coexist. Indeed, there are many situations where mediation is not the right forum for a dispute, as accepted in the recent

case of *Kilarden Investments Limited v Kirwans (Galway) Limited et al* ([2013] IEHC 602), where the plaintiff’s refusal to mediate was found to have been reasonable. Also, where mediation has been successful, particularly in the area of succession, the lawyer’s job is made easier. For example, who would you rather have sitting in front of you: a client who is wondering which of his children might be interested in taking over the family assets, or a client who is already clear on what the basic succession dynamic would be and is seeking advice on how best to implement their wishes?

from the past might be not to repeat certain patterns. As each family and farm is different and unique, no one plan fits all. Most families use the mediation process to create their farm family succession plan to the best of their ability, given the knowledge and information available at the time. All immediate family members are included, as future security and possibly a care plan for senior/current asset owners may involve non-farming members.

The succession triangle

On reaching an agreement within the family, it is recommended to get independent advice from an accountant or tax advisor, and legal advice prior to implementing any major change. The outcome of an initial family day is rarely a binding contract. Often, a family will leave with a memorandum of understanding containing a provision that all relevant parties should obtain further independent legal advice and collective tax planning advice on the options raised at mediation.

A good succession strategy requires communication and advice. Tax advisers, accountants and lawyers can provide the necessary advice. This advice is best implemented with effective communication. The mediation process often provides the best chance of effective communication where important relationships and inherent conflicts coexist.

I once heard an old solicitor explain that it is quite frustrating to try and provide effective advice when your client does not know what they, or other relevant parties, want. Wouldn’t it be nice to meet a client who says: “Mary wants to go into partnership with me on the farm and Johnny just wants the value of a site as inheritance,” rather than: “I would say Mary is more interested in farming and I suppose, to be fair, I will give a site to Johnny.” The Succession Ireland family business mediation service works to remove blocks in communication within families in order that they may engage with their legal and financial advisers in a meaningful way. As a positive by-product, it provides the best opportunity for family harmony.

‘The Bull’ McCabe, due to his lack of an effective communications strategy, was left with a poignant legacy and self-image: “Curse myself. For cursing my mother to hell. To get the field.” Perhaps if he had employed a good mediator to remove the toxic blocks in communication, we might have seen more of his caring fatherliness, like the following advice he gave to his son Tadhg: “She’s a woman like your mother. If we knew how to keep the women happy, we’d still be in paradise.”

If you or a client might be interested in learning more about the service, just call Succession Ireland or visit www.successionireland.ie.



‘The process begins with individual meetings for all family members, starting with the asset owner(s) or the most senior parties (those who have worked and managed the farm business to date)’



White

COLLARED



Brian Gageby is a Dublin-based barrister specialising in criminal and regulatory law

Changes in the approach to prosecuting white-collar crime in the US and Britain are of some interest from an Irish perspective. **Brian Gageby** gets the starch out

The Volkswagen emissions scandal emerged amidst calls for a change in policy towards the prosecution of individuals for serious corporate fraud. The car company admitted installing software on 11 million of its diesel cars allowing the cars to cheat the stringent American emissions tests. Once the cars were out of the lab, the software then deactivated the emission controls, and fumes far in excess of the permitted levels were released. The fraud was not only a device to deceive the testers, but coincided with a huge marketing campaign by Volkswagen trumpeting their low-emission diesel cars to a market still enamoured with the petrol engine.

Many recent large-scale corporate frauds in the US car industry have been dealt with by the imposition of high fines and deferred prosecution agreements. The

US Department of Justice (DOJ) is now looking towards a change in course, with a much greater focus on the individual perpetrators.

Change in focus

On 9 September 2015, the DOJ announced guidelines marking a significant shift in policy towards individual accountability for corporate wrongdoing. These guidelines are for general application to all future investigations and prosecutions. The reason given for the change is that the prosecution of individuals “deters future illegal activity ... incentivizes changes in corporate behaviour ... ensures that the proper parties are held responsible for their actions, and ... promises the public’s confidence in our justice system.” The last of these reasons acknowledges that the system currently in place is heavily weighted towards large-scale settlements, leaving those personally responsible out of the picture.

According to deputy attorney general Sally Yates following the publishing of the new guidelines: “Crime is crime. And it is our obligation at the Justice Department to ensure that we are holding lawbreakers accountable, regardless of whether they commit their crimes on the street corner or in the boardroom. In the white-collar context, that means pursuing not just corporate entities, but also the individuals through which these corporations act.”

Policy guidelines

The policy guidelines are surprising in their scope. Firstly, to be eligible for any cooperation credit, companies must provide all relevant facts about the individuals involved in the corporate misconduct. This provision effectively provides that, except where all of the individuals involved have been identified by the company, no credit will be given in mitigation.

at a glance

- On 9 September 2015, the US Justice Department announced guidelines marking a significant shift in policy towards individual accountability for corporate wrongdoing
- In Britain, prosecution policy has also shifted towards a greater emphasis on individual liability for corporate crime. Last year, the Serious Fraud Office introduced deferred prosecution agreements, along with new policies placing greater focus on the individuals involved
- The superior courts in Ireland have emphasised the importance of incentivising cooperation in the context of white-collar criminal investigations

PIC: ISTOCK

Both policies envisage a type of ‘snitch’ programme, where the company involved is encouraged to self-report at an early stage and identify those responsible within its organisation for the offending behaviour. The effectiveness of such an incentive is far from clear

Secondly, both criminal and civil corporate investigations will focus on individuals from the inception of the investigation. This is hoped to improve the cooperation of individuals from the outset and also ensure that the focus of the investigation rests with the individuals involved rather than the corporate wrong.

Thirdly, in the absence of extraordinary circumstances, no resolution will provide protection from criminal or civil liability for any individuals. This is designed to avoid the situation where individual offenders are effectively let out as part of the plea deal, and it further seeks to preserve the prosecutor’s ability to continue proceedings against individuals once matters with the company have been resolved.

Fourthly, there is to be a much greater focus on coordination between civil and criminal enforcement agencies, along with a

requirement that corporate cases should not be resolved without a clear plan to resolve related cases against individuals before the expiry of limitation periods.

Finally, any evaluation on whether to bring a case against an individual is to be based on considerations beyond that individual’s ability to pay. This provides an addendum to any current policy that is primarily motivated by capital return and that might inadvertently favour a prosecution solely of the body corporate. The DOJ suggests that, while there will be a short-term cost involved in such a change in scope, there may also be a long-term benefit through deterrence.

British approach

In Britain, prosecution policy has also shifted towards a greater emphasis on individual liability for corporate crime. Last year, the

Serious Fraud Office (SFO) introduced deferred prosecution agreements, along with new policies placing greater focus on the individuals involved. Their policy mirrors that of the Crown Prosecution Service, providing that the prosecution of a company should not be seen as a substitute for the prosecution of criminally culpable individuals such as directors, officers, employees, or shareholders. This is based on a view that such prosecutions provide a strong deterrent against future corporate wrongdoing. Furthermore, like the recent policy change in the US, any consideration being given to implementing deferred prosecution agreements will heavily depend upon the extent of the company’s self-reporting – specifically, that the provision of such material to prosecutors must not withhold material that would jeopardise an effective investigation and prosecution of



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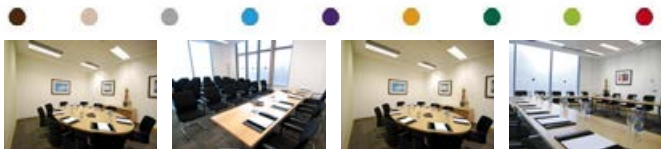
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the individuals involved. The process also envisages the involvement of the prosecutor at an early stage of the investigation in order to provide the prosecutor the opportunity to give direction and, where appropriate, begin an early criminal investigation where it can use statutory powers in particular against individuals.

On 30 November 2015, the SFO's first application for a deferred prosecution agreement was approved by Lord Justice Leveson at Southwark Crown Court. The case involved charges against Standard Bank Plc under the *Bribery Act 2010* and allegations that payments had been made by one of the bank's former sister companies. These payments were intended to induce members of the Tanzanian government to favour certain business proposals. The case was originally reported by the bank's solicitors in April 2013, and the approved agreement included financial orders to the tune of £25 million, \$7 million in compensation to the government of Tanzania, and the SFO's reasonable costs of £330,000 in respect of the investigation and resolution. The indictment has been suspended, and the bank has agreed to continue to cooperate fully with the investigation. The director of the SFO, David Greene, stated that, since the introduction of deferred prosecution agreements, there had been a high degree of self-reporting and whistleblowing, indicating that the new policies were having the desired effect.

Basis for the change

The policies in the US and Britain have two key features in common. Firstly, there is a greater focus on individual offenders. While such change in emphasis may, at least in part, be politically motivated, there would appear to be some basis for the criticism of the current system. In his book *Too Big to Jail*, Brandon L Garrett, who maintains a database on corporate deferred prosecutions, says that "in about two thirds of the cases involving deferred prosecution or non-prosecution agreements and public corporations, the company was punished but no employees were prosecuted". This was exemplified in the recent case of General Motors, who agreed a \$900 million fine in order to avoid

a criminal investigation into allegations that the company had hidden information about a fault in its cars that led to the deaths of at least 124 people. No executives or officers were charged (although some lost their jobs).

Secondly, both policies envisage a type of 'snitch' programme, where the company involved is encouraged to self-report at an early stage and identify those responsible within its organisation for the offending behaviour. The effectiveness of such an incentive is far from clear. Given that corporate bodies necessarily act through their agents, it may well be that the person making the decision in the corporate body is the same person or closely related to the person guilty of the criminal conduct, particularly in cases involving small or medium-size organisations. While a normal immunity/informant type deal is one that directly appeals to self-interest, such an incentive is not nearly so clear-cut in the corporate context. By engaging in early self-reporting and identification, organisations are also opening up exposure where ultimately there may be none.

Finally, by requiring such a high level of cooperation from the outset and effectively raising the stakes, the prosecution is increasing the possibility that the corporate body decides against any level of cooperation at all.

European perspective

The European approach is more disparate. On the continent, regimes favour the imposition of administrative sanctions and fines on organisations engaging in offending behaviour. Indeed, some jurisdictions don't recognise corporate criminal liability at all, representing the division of views as to whether such conduct can properly be described as 'criminal' in nature. Germany is one such example, where companies, in general, cannot be responsible for criminal wrongdoings on the basis that such entities do not have the capacity to engage in a 'criminal' act. German prosecutors in the Volkswagen case are therefore focusing their investigation on a number of individuals for the emissions scandal and a number of other individuals for the purposes of establishing whether the deception will constitute tax

fraud – Volkswagen has indicated that a small group of employees carried out the deception and have themselves initiated various investigations.

Economic reality

From an Irish perspective, the changes in approach in the US and Britain are of some interest, particularly given the greater experience of the US authorities in prosecuting white-collar offences. The economic reality of large white-collar prosecutions in Ireland remains a difficult issue. The first Anglo trial cost the DPP a significant portion of its annual budget, not to mention the committal of substantial resources by the ODCE. Clearly, the introduction of any policy that can deliver lower investigative costs and more effective trials is to be welcomed. The superior courts in Ireland have emphasised the importance of incentivising cooperation in the context of white-collar criminal investigations, notably the comments of McKechnie J in the competition law context (*DPP v Duffy*) and later in the context of customs fraud (*DPP v Begley*). Such cooperation is undoubtedly of significant public importance, given the high cost of investigating and prosecuting such offences. It is easy to see the political attraction of the new policies in the US and Britain, particularly given the degree of public complaint that there is one rule for blue-collar criminals and another for white-collar criminals.

However, whether those new policies have the desired result of incentivising corporate cooperation, with such cooperation leading to the implication of those more directly responsible for the criminal acts, remains to be seen.



The economic reality of large white-collar prosecutions in Ireland remains a difficult issue. The first Anglo trial cost the DPP a significant portion of its annual budget, not to mention the committal of substantial resources by the ODCE

look it up

Cases:

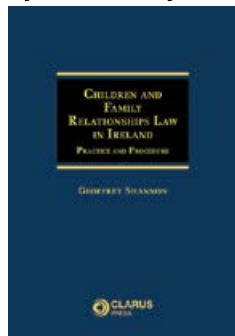
- *DPP v Begley* [2013] IECCA 32
- *DPP v Duffy* [2009] IEHC 208 (Central Criminal Court)

Literature:

- Department of Justice (US), *Individual Accountability for Corporate Wrongdoing* (2015)
- Garrett, Brandon L (2014), *Too Big to Jail* (Harvard University Press)
- Serious Fraud Office (Britain), *Deferred Prosecution Agreements Code of Practice* (2014)

Children and Family Relationships Law in Ireland: Practice and Procedure

by Dr Geoffrey Shannon (Solicitor)



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Publishing 2016

The recently commenced Children and Family Relationships Act 2015 is the most comprehensive amendment to the law on children and family relationships in many decades.

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Biehler on International Law

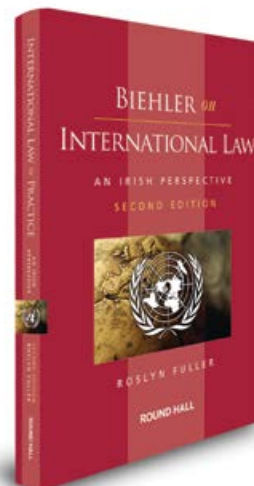
Roslyn Fuller. Round Hall (2013), www.roundhall.ie. ISBN: 978-1-8580-07-144. Price: €95 (incl VAT).

Biehler on International Law: An Irish Perspective was the first work of its kind on this complex subject in Ireland. This second version, updated by Roslyn Fuller, gives a lucid and light introduction to the subject, providing a thoroughly useful foothold in understanding the myriad treaties, principles and key cases in international law.

The first three chapters bring the reader up to speed with the conceptual framework of law in the international arena. Chapter 1 reads more like political science rather than a legal text, with its helpful theoretical discussion of sovereignty and the state. Chapters 2 and 3 outline the framework and sources of international law. Even though the authors are confined by relatively dry source material here, they do an excellent job of making it interesting and accessible to the reader, by tying the law to real-world examples.

This pattern is repeated throughout the book. The authors frequently use international law as a lens through which to view well-known historical and political events. Examples of this are as wide-ranging as the peace process in Northern Ireland, WWI, pirate broadcasting at sea in the 1960s, and the terrorist attacks of September 2001. This makes the book highly informative and an accessible and thoroughly enjoyable read.

Beginning with the *Ó Laighléis* decision, Chapter 4 traces the key domestic case law in establishing the relationship between Irish and international law. Chapter 5 explores Ireland's place in the international legal order, first discussing Ireland's emergence in international law through independence and, second, the Northern Ireland question.



Following this, the book moves on to a more substantive treatment of certain areas of international law and their relation to Ireland. Chapters 6 and 7 account for the use of force and international humanitarian law respectively, including a discussion of Ireland's neutrality. Elsewhere, the authors expertly navigate the reader through the choppy waters of international maritime law in Chapter 8. Chapter 9 gives a useful introduction to the law of state responsibility, while Chapter 10 is very instructive from a practitioner's point of view, providing an outline of procedure before the ICJ, ICCPR and ICC.

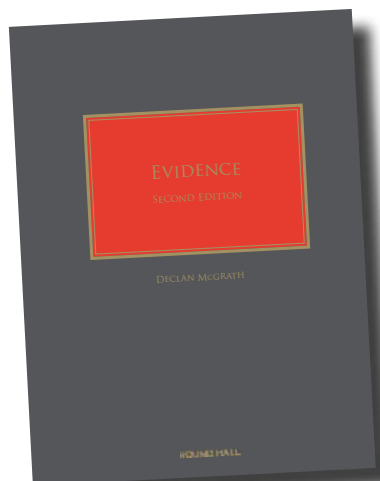
Given its clarity, interesting anecdotes, and 300-page length, *Biehler* is very accessible. It is certainly worth reading casually for those with even a passing interest in international law as it pertains to Ireland.

Richard Houriban is a member of the EU, competition and regulated markets team at Eugene F Collins.

Evidence

Declan McGrath. Round Hall (2014), www.roundhall.ie. ISBN: 978-0-4140-350-58. Price: €395 (incl VAT).

The first edition of this extremely useful book was in 2005. We were all a bit younger, faster and fitter back then, so it was not surprising that the book itself was lean, balanced and extremely engaging. Since then, time has both given and taken away from most of us. I was interested to see what effect it would have on Mr McGrath's academic work. I haven't been left disappointed. The first edition was many practitioners' first point of reference when



difficult evidential questions arose. The second reaffirms McGrath's place as Ireland's premier writer on this topic. It is of huge benefit to have this useful work updated. Many important developments, such as a suspect's right to legal advice during questioning and the drawing of inferences, are discussed in detail.

But this is not just a book limited to criminal practitioners. Examples of interesting updated chapters that straddle both criminal and civil practice include the one on privilege. It takes into account the new case law on public interest privilege that has developed significantly in the past ten years, which has practical implications on the extent of discovery and disclosure available when dealing with public bodies. Another example of an issue that has only arisen since 2005 and the advent of social media is what the courts have to say when a suspect is identified via, for example, Facebook: is such evidence ever admissible? As with all chapters, McGrath takes the reader through complicated principles in a very straightforward manner. He

makes these issues look deceptively easy, but that is, after all, the hallmark of a great writer. Credit must of course be given to Emily Egan McGrath BL, whose contribution must have been considerable.

As is the nature with these things, soon after book went to print, the important judgment in *DPP v JC* ([2015] IESC 31) issued, which significantly alters the landscape in relation to unconstitutionally obtained evidence. It is unfortunate, of course, that we do not have the benefit of Mr McGrath's analysis of this case, which was delivered just a few short months after the book was published. The change to our rule on the automatic exclusion of evidence obtained in breach of a person's constitutional rights is only now, a year later, beginning to be litigated in our courts. However, it's good to have something to look forward to, and I expect McGrath will have much to say on this and other developing areas of evidence in the future. The book is simply a must-have for all litigation practitioners.

Aisling Kelly is a Dublin-based barrister.

Privacy and Data Protection Law in Ireland

Denis Kelleher. Bloomsbury Professional (2015), www.bloomsburyprofessional.com. ISBN: 978-1-7804-320-38. Price: €195 (incl VAT).


This second edition of *Privacy and Data Protection Law in Ireland* is a reminder of the rapid changes that are taking place in European privacy law. Denis Kelleher has expanded this edition to cover issues that are topical and relevant in daily life, including social networking, cloud computing, and relevant criminal legislation.

Kelleher's work is rightly considered the most comprehensive reference book for Irish privacy and data protection practitioners. The new edition covers some of the most important recent decisions of the Court of Justice of the European Union. Case highlights include coverage of the *Google Spain* decision. This decision catapulted to prominence the right of data subjects to have search results delisted against their names by search engines. It has also cemented the status of data privacy as a fundamental right enjoyed by all EU citizens.

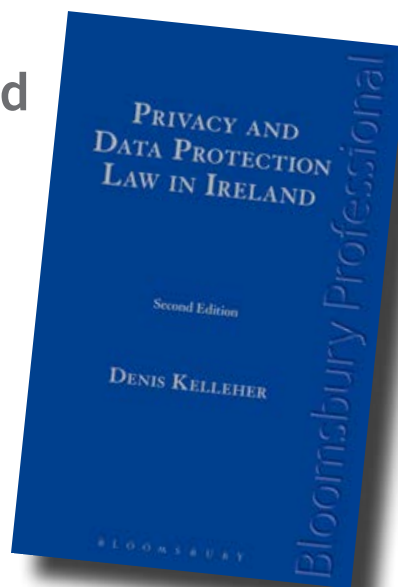
Other important decisions included in this edition include the hugely important *Digital Ireland* and *Ryneš*. In *Digital Ireland*, the CJEU struck down the *Data Retention Directive*, while *Ryneš* saw the CJEU materially expand the scope of European data protection law and the set of activities that fall under the jurisdiction of EU data protection authorities.

As Kelleher points out in the preface, privacy

rights have to be balanced against the needs of the economy and society to process personal data. At a time when individuals are becoming more aware of privacy rights and their ability to personally vindicate them, this update is particularly timely.

Solicitors in Ireland need to be aware of the data protection and privacy rights their clients enjoy, as well as how these rights have developed at national and international level. This second edition builds on the first and is a comprehensive guide to navigating this complex area. 

John O'Brien is an associate solicitor with Mason, Hayes & Curran.



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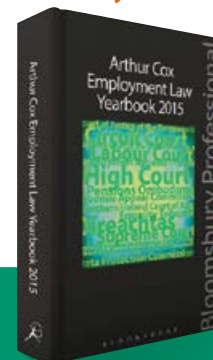
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PROBATE, ADMINISTRATION AND TRUSTS COMMITTEE

Payment of funeral expenses

Members are reminded that practice notes regarding payment for funeral services have been in place for 30 years. Arising from ongoing difficulties receiving payment encountered by its members, the issue has recently been refreshed with the Law Society by the Irish Association of Funeral Directors, and the previous practice notes are replaced herewith. Practitioners should recognise that the funeral expenses are the priority debt payable from the assets of the deceased in each and every estate, irrespective of whether the estate is solvent or insolvent, and can be paid before the grant issues.

The committee has been advised that difficulties in relation to payment of funeral expenses occur far more frequently than might otherwise have been expected and that, regularly, accounts for funeral services are being allowed to run overdue unnecessarily. It is suggested that these issues are exacerbated in certain instances by poor communication.

The committee reminds practitioners that, if the deceased left a bank account with sufficient funds to discharge the funeral account,

then upon production of the funeral director's invoice, it is the practice of most banks to provide a bank draft payable to the funeral director in satisfaction of the funeral account, without requiring a grant of representation. Accordingly, if not already in funds, a request for payment of the funeral account should be promptly made to the bank by practitioners upon receipt of the request for payment from the funeral director. Moreover, if the practitioner with carriage of administration of the estate is already in funds, then, upon receipt of a request for payment of the funeral account, it should be settled without delay.

In the event that there are no liquid assets available to discharge the funeral account until non-liquid assets have been realised following extraction of the grant of representation, or if there is some other difficulty in obtaining the requisite funds from the estate, then this should be communicated to the funeral director, together with an estimate of when payment may be likely. The funeral director should also be provided with the name and address of the legal personal representative(s) in case the funeral

director needs to make personal contact with them in relation to the funeral account. Where such difficulties arise, it may be worth considering whether there are other options available to enable discharge of the funeral account pending administration of the estate.

Furthermore, it will often be the case that the funeral director is referred by the relatives of the deceased to the practitioner with carriage of administration of the estate, rather than directly to the legal personal representative, and is there-

fore dependent on the practitioner for information in relation to the funeral account and discharge thereof.

The committee reminds practitioners that the Law Society has previously agreed with the Irish Association of Funeral Directors that, in cases where a solicitor has neglected to acknowledge an account or give the required information to a funeral director, then the funeral director is entitled to send details to the Law Society for investigation.



FAMILY AND CHILD LAW COMMITTEE

Family law practitioners and case progression

It will not come as any surprise to practitioners, particularly those in the Dublin circuit, that there are ongoing difficulties with the case progression process. The county registrar has a key role in monitoring the progress of a case and ensuring that it is ready for trial. No trial dates will be given unless (s)he is satisfied that there are no outstanding matters.

We would like to remind colleagues that when the case progression summons issues, the return date allows sufficient time to ensure that all appropriate vouching is exchanged between the parties and, if possible, queries can be asked and answered. If this is done, the county registrar has no need for extended adjournments, with the consequential delays in obtaining a hearing date.



CONVEYANCING COMMITTEE

Personal insolvency and bankruptcy searches

The Conveyancing Committee recommends that, when carrying out bankruptcy searches, practitioners also ensure that searches are carried out on the new registers set up pursuant to recent personal insolvency legislation.

Personal insolvency/bankruptcy searches on the following registers are recommended:

- A bankruptcy search on the register of Irish bankruptcies maintained at the Office of the Examiner of the High Court,
- The Register of EU Personal Insolvencies held at the Office of the Official Assignee,

- Register of Debt Relief Notices,
- Register of Protective Certificates,
- Register of Debt Settlement Arrangements,
- Register of Personal Insolvency Arrangements.

The committee checked with various law searching firms to seek confirmation from them that, when requested to do a bankruptcy search, they will include searches against all of the above six registers and that, if they do not currently carry out all six searches when requested to do a bankruptcy search, they will

make this their practice in the future.

The committee also sought confirmation from the law searching firms that, if requested to do those searches, they will advise the requesting solicitors on the cost of the searches or confirm that they are included in the price of any standard package of closing searches being offered to solicitors.

It appears from the responses received to date from law searchers that:

- Some will carry out the searches on the new registers only if specifically requested,

- Some will make an extra charge for them – that is, they are not currently included in the cost of closing searches 'package',
- Some will include them in the cost of the package once this practice note is published.

The committee recommends that solicitors take this matter up directly with their own law searchers to ensure that the full range of personal insolvency/bankruptcy searches will be carried out and to establish the exact terms and conditions, including cost, on which the searches are provided.



FAMILY AND CHILD LAW COMMITTEE

Timely vouching of affidavit of means in Circuit Family Court

Order 59, rule 4(17)(a) of the *Circuit Court Rules 2001*, as inserted by *SI 358 of 2008 (Circuit Court Rules (Case Progression in Family Law Proceedings) 2008)*, states that in all cases where a defence and/or counterclaim has been filed (excluding actions seeking provision for one spouse from the estate of the other following the grant of judicial separa-

ration or divorce), each party shall, unless agreed otherwise in writing, vouch their affidavit of means within 28 days of the date of filing of the respondent's affidavit of means or 21 days before the date fixed for the case progression, whichever is the earlier.

The *Circuit Court Rules* provide sufficient time from the issue of the case progression sum-

mons to ensure that all appropriate vouching documentation is exchanged between the parties. One of the most common reasons for delay in obtaining dates for hearing is the failure of parties to properly vouch their affidavit of means in a timely manner or failure to raise or answer queries.

It should be possible in most

cases for affidavits of means to be fully vouched and for queries to be raised and replied to prior to the first case progression hearing. This will also facilitate early settlement negotiations between the parties.

If this is done, then there is no need for extended adjournments and consequential delays in obtaining a hearing date.



CONVEYANCING COMMITTEE

Entire agreement clauses – residential property sales

The Conveyancing Committee has noticed an increase in the number of queries it is receiving from the profession about the use of 'entire agreement clauses' in contracts for sale of residential property.

The committee would like to remind practitioners of the content of its practice note on this topic published in the *Gazette* (May 2006; see www.lawsociety.ie/PN-entireagreement). That note pointed out that, while these clauses may take different forms, they essentially preclude a purchaser from relying on any advertisement, oral statement or statement in writing, whether or not in the course of any negotiations for the sale by the vendor or the vendor's agent, and that the contract for sale represents the entire terms and conditions of the agreement between the parties.

The committee acknowledged in the 2006 practice note that entire agreement clauses are commonly found in mergers and acquisitions agreements and are not unreasonable in that context, noting that, in such transactions, the prospective purchaser will have carried out comprehensive due diligence, and significant warranties on a number of matters will have been included in the agreement.

The committee had, however, gone on to highlight the fact that an

entire agreement clause in a contract for sale of residential property will not only prevent the purchaser from relying on any advertisement, brochure or representation made or published by or on behalf of the vendor and also any replies given to a purchaser in pre-contract enquiries, but it will also exclude any oral answers given in reply to questions raised at an auction as well as to any statements made by the vendor to the purchaser.

The committee at that time expressed the view that such entire agreement clauses should not be included in agreements for the sale of residential property, whether by auction or private treaty.

If, however, in exceptional cases, such provisions are to be used in contracts for the sale of land/property, it should be on the basis that they cannot exclude liability for representations made by a vendor or its agents that were material in

persuading a purchaser to decide to buy the property and, in particular, that liability for the accuracy of replies to formal pre-contract enquiries must be absolute and cannot be excluded by an entire agreement clause.

The committee would like to clarify at this time that the practice note published in May 2006 was not intended to apply to the sale/purchase of portfolios of residential properties.



LITIGATION COMMITTEE

Solicitors' responsibilities in Court of Appeal directions hearings

The Litigation Committee wishes to draw the attention of practitioners to important measures that apply to civil appeals before the Court of Appeal.

When issuing a notice of appeal in a civil case, the solicitor will receive a return date for a directions hearing before the Court of Appeal (order 86A, rule 13(5) RSC). Solicitors acting for the appellant must, unless otherwise directed, lodge a directions booklet for the use of the court, not later than four days before the date assigned for the directions hearing. This booklet must include:

- The judgment and/or order ap-

pealed from,

- The notice of expedited appeal, or notice of appeal, as the case may be,
- Every respondent's notice delivered, and
- Any other document in the appeal to which any party proposes to refer to at the directions hearing.

Recently, failure by solicitors to lodge an appropriate directions booklet within the time provided for in the rules has led to the making of costs orders against the solicitors personally.

It is also important to be aware that "the solicitor responsible for the conduct of the appeal" and counsel instructed in the appeal must attend the directions hearing (order 86A, rule 16(2) and 16(3) RSC).

Particular attention should also be given to order 86A, rule 16(3), which provides: "Each counsel and solicitor attending the directions hearing shall ensure that he is sufficiently familiar with the proceedings and has authority from the party he represents to deal with any matters that are likely to be dealt with at the directions hearing."

LITIGATION COMMITTEE

Injuries Board applications

The Litigation Committee engages on a regular basis with the Injuries Board through the Injuries Board User Group. The group meets twice yearly to discuss concerns and developments in relation to the Injuries Board's processes. Recently, the Injuries Board highlighted a number of common errors it has observed in applications (Form A) submitted to it by solicitors on behalf of claimants. Some of these errors can impede registration of the application.

In the interests of avoiding unnecessary delays and ensuring a smoother process, practitioners should pay particular attention to the following drafting points. In order to avoid a delay in registration of the application:

- The claimant's name should be identical on the application and the covering letter,
- The respondent must be correctly named (including its status as a limited company where appropriate), and this name should be identical on the application and the covering letter,
- A full and accurate address should be provided in Form A for the claimant and each and every respondent,

- The date of the accident must be accurate and therefore should not differ on Form A, the medical report provided (Form B), and/or the covering letter,
- Form A must be signed and dated.

Inclusion of the following information in Form A will avoid delays in the process after registration:

- The respondent's insurance details,
- The accident location,
- Details of the injuries,
- Confirmation whether or not the medical report submitted adequately describes the injuries sustained,
- Details of previous accidents/injuries.

When seeking to issue court proceedings after the Injuries Board process, it is essential that the names of the parties on the proceedings and the relevant Injuries Board authorisation are identical. The court offices will not issue the proceedings where there are discrepancies. Titles such as 'Dr', 'Reverend' or 'Fr' should not be used in the title to court proceedings. Therefore, such titles should not be used in the Injuries Board application.

Anti-money-laundering and trust and company services

The Law Society and the Department of Justice and Equality have entered into a memorandum of understanding (MOU) about:

- Trust and company legal services, and
- Trust and company service providers (TCSPs).

Solicitors can download the MOU from www.lawsociety.ie/AML. The MOU is reproduced in the panel below.

The purpose of the MOU is to clarify the division of responsibilities regarding which competent authority is responsible for (a) trust and company legal ser-

vices and (b) TCSPs.

The MOU does not introduce any new regulatory obligations for solicitors or new monitoring obligations for the Law Society and does not amend the Law Society's *Guidance Notes for Solicitors on Anti-Money-Laundering Obligations*, which solicitors can download.

Solicitors can learn more about how the Law Society fulfils its obligations as a competent authority in Chapter 13 of the guidance notes.

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

Memorandum of understanding between the Law Society of Ireland and the Department of Justice and Equality

The Law Society of Ireland and the Department of Justice and Equality have reached this understanding in relation to the authorisation and monitoring of persons who are a trust or company services provider (TCSP) in accordance with and for the purposes of the *Criminal Justice (Money Laundering and Terrorist Financing) Act 2010*, as amended.

- 1) The 2010 act sets out extensive provisions regarding the authorisation and regulation of TCSPs by the Minister for Justice and Equality. Under section 87 of the 2010 act, a person commits an offence if the person carries on a business as a TCSP without being the holder of an authorisation issued by the minister. However, section 84 of the 2010 act prohibits solicitors from being a TCSP under the 2010 act and, therefore, no authorisation requirements arise for solicitors.
- 2) While solicitors are prohibited from being a TCSP, they can provide trust and company legal services and, when they do so, they become a 'designated

person' under the 2010 act. The definition of 'relevant independent legal professional' in section 24(1) of the 2010 act includes the provision of the following trust and/or company legal services:

- “(iv) Organising contributions necessary for the creation, operation or management of companies,
- (v) Creating, operating or managing trusts, companies or similar structures or arrangements.”
- 3) The Law Society, as the competent authority for solicitors under sections 60 and 63 of the 2010 act, has responsibility to monitor solicitors when they provide trust and company legal services and to take measures that are reasonably necessary for the purpose of securing compliance by solicitors with part 4 of the 2010 act.
- 4) Responsibility for the authorisation and monitoring of solicitors when they operate TCSPs through limited companies is vested in the department.

CONVEYANCING COMMITTEE

Multi-Unit Developments Act 2011: OMC constitution – Companies Act 2014 version

The Conveyancing Committee published a practice note in the *Gazette* (May 2015, p46) indicating that the precedent form of memorandum and articles of association for an owners' management company (OMC) under the *Multi-Unit Developments Act 2011*, which the committee had issued, would no longer be appropriate for use in incorporating new OMCs following the commencement of the *Companies Act 2014* on 1 June 2015.

The committee has now drafted

a precedent constitution for an OMC under the *Companies Act 2014* that will comply with the *Multi-Unit Developments Act 2011*. Together with a revision of the March 2015 general practice note on the 2011 act, it is available on the [precedents page](#) of the Law Society website.

The input of and assistance received from the Business Law Committee in reviewing this new precedent is acknowledged and appreciated by the committee.



GUIDANCE AND ETHICS COMMITTEE

Do not seek undertakings that should not be given

“A solicitor should not seek an undertaking from another solicitor, which the first solicitor knows, or ought to know, should not be given” (*A Guide to Good Professional Conduct for Solicitors* – 3rd edition, para 6.5).

- No solicitor is obliged to give any undertaking,
- No solicitor is obliged to accept any undertaking,
- Undertakings are a matter for negotiation,
- The solicitor should not seek an undertaking in terms the solicitor would not give themselves,
- A solicitor should not seek an undertaking from another solicitor that is specifically prohibited by law.

Solicitors' independence

Solicitors must maintain their professional independence. Solicitors should not allow themselves to be restricted in their actions on behalf of clients but, equally importantly, must not be restricted by clients in relation to their other professional duties.

The solicitor seeking the undertaking, which they know should not be given, may be under pressure from their client to close a sale or to bring a deal over the line. This pressure must be resisted. The solicitor is the client's agent, but is an independent agent who is bound by professional rules.

Independence is a core value of being a solicitor. It is an important rule of conduct. This is because the solicitor has many obligations, not only the obligations to their own client. They also have obligations to the courts and other bodies before whom they appear, and the public for whom the existence of an independent profession is an essential means of safeguarding individual rights. In addition, they have duties to the legal profession in general and to their individual colleagues.

Short-term gain but long-term difficulties

If the client wants their solicitor to seek an undertaking that should not be given, the solicitor should explain to their client that, if the solicitor seeks and receives that undertaking, there are potential problems:

- There is no point in being given the undertaking so as to enable a transaction to close, or a deal to be concluded, if there is a high risk of non-compliance because the matter is not in the other solicitor's control. There will only be a short-term gain.
- The non-compliance by the other solicitor may result in practical difficulties for their own client. There may be difficulties on title in conveyancing matters, or important aspects of a transaction may not be achievable.
- If compliance is not possible, while it will be the other solicitor – the one who gave the undertaking – who will be sanctioned, the solicitor who sought the undertaking will have failed to achieve a successful outcome to their own client's business.
- There is even an increased risk that the solicitor who sought the undertaking will be sued by their own client.

General examples

All of the examples below are in circumstances where the solicitor seeking the undertaking should know that the solicitor who would be giving the undertaking is not personally in a position to comply with the matter or see that it is complied with:

- Undertakings that rely on the actions of third parties.
- Open-ended undertakings, for example, for costs. Undertakings in respect of costs should relate to specific or quantifiable amounts.

- Undertakings that will follow a chain of other undertakings. Any of them may be unenforceable.
- Undertakings to produce signed documents. These should not be given. Even if drafts of the documents are agreed, a solicitor can never be certain that their client will sign a document.
- Undertakings to produce registered documents within a specified period. This is because registration is not under the solicitor's control.
- Undertakings to discharge any tax liability for a client. It is unwise for a solicitor to take on this responsibility.

Examples in conveyancing

Solicitors should not seek undertakings such as the following:

- An undertaking by a developer's solicitor to transfer the common areas in a development to a management company. Some purchasers' solicitors try to insist on getting such an undertaking, even though it is obviously outside the control of the developer's/vendor's solicitor.
- An undertaking by a developer's/vendor's solicitor to furnish a copy of the transfer/vesting deed to the purchaser after the transfer has taken place. Instead, the contract should provide that the initial sale of the property will be closed on foot of:
 - a) An undertaking by the vendor to the purchaser to furnish the vesting deed to the management company, and
 - b) An undertaking by the management company to the purchaser to furnish a certified copy of the vesting deed to the purchaser on request by, or on behalf of, the purchaser or his successor in title.

(See the Conveyancing Committee practice note, 'Deeds vesting common areas in management companies', *Gazette*, December 2003, p40).

- An undertaking to provide an executed discharge within a specified time. This is not within the solicitor's control.
- An undertaking to discharge Land Registry queries. A solicitor should never give this undertaking. The vendor should give it only in relation to mapping queries on the transfer of part of a folio.
- An undertaking requested by a lender's solicitor from the borrower's solicitor to furnish a certificate of compliance with planning permission when the house is only partly built.

This arises when a borrower is building a house and drawing down the loan in stage payments. The borrower's solicitor should instead furnish a certificate from the certifier that the house has reached the particular stage, and has been built in accordance with planning permission.

Implications

- Seeking undertakings that should not be given devalues the important currency of undertakings,
- Undertakings are a valuable facility and are essential to make the affairs of clients easier to transact and to oil the wheels of business,
- The solicitors involved should merely be facilitators, with no adverse consequences for either the giver of an undertaking or the recipient of that undertaking.

Firms should give clear guidance on these matters  to all staff.

legislation update

10 November 2015 – 11 January 2016

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

ACTS

International Protection Act 2015

Number: 66/2015

Reforms the system for determining applications for international protection in Ireland through the introduction of a single procedure, in compliance with the *United Nations Convention Relating to the Status of Refugees* (done at Geneva on 28/7/1951), the *Protocol Relating to the Status of Refugees* (done at New York on 31/1/1967), and related EU directives on asylum procedures and qualification. Amends the *Immigration Acts 1999-2004*, amends and repeals other acts and SIs, and provides for related matters.

Commencement: Commencement order(s) required as per s1(2) of the act

Legal Services Regulation Act 2015

Number: 65/2015

Provides for the regulation of the provision of legal services, the establishment of the Legal Services Regulatory Authority, the establishment of the Legal Practitioners Disciplinary Tribunal, new structures in which legal practitioners may provide services together or with others, and the establishment of a roll of practising barristers; provides for reform of the law relating to the charging of costs by legal practitioners and the system of the assessment of costs relating to the provision of legal services, the manner of appointment of persons to be senior counsel, and related matters.

Commencement: Other than ss85 and 87, the act shall come into operation by ministerial order; ss85 and 87 shall come into

operation on such day or days, within one year of the completion and submission to the minister of the report referred to in s90(2)(c), as may be fixed by order or orders made by the minister

Assisted Decision-Making (Capacity) Act 2015

Number: 64/2015

Provides for the reform of the law relating to persons who require or may require assistance in exercising their decision-making capacity, whether immediately or in the future; provides for the appointment by such persons of other persons to assist them in decision-making or (subject to the approval of the Circuit Court) to make decisions jointly with such persons; provides for the making of applications to the Circuit Court or High Court in respect of such persons, including seeking the approval by the Circuit Court of co-decision-making agreements or the appointment by the Circuit Court of decision-making representatives for such persons; enables, in specified circumstances, informal decision-making to be done in respect of such persons by other persons who are not decision-making assistants, co-decision-makers, decision-making representatives, or attorneys for such persons; provides for the appointment and functions of the public guardian in respect of persons who require or may shortly require assistance in exercising their decision-making capacity; provides for the amendment of the law relating to enduring powers of attorney; provides for the ratification by the State of the *Convention on the International Protection of Adults*, and provides

for related matters.

Commencement: Commencement order(s) required as per s1(2) of the act

Planning and Development (Amendment) Act 2015

Number: 63/2015

Amends section 28, 34 and part IX of the *Planning and Development Act 2000*, as amended, to strengthen the status of aspects of ministerial guidelines to planning authorities to ensure their consistent application, particularly in relation to the proposed issue of revised apartment standard guidelines, and to streamline the process for the making of modifications to strategic development zone planning schemes.

Commencement: 29/12/2015

Electoral (Amendment) Act 2015

Number: 62/2015

Amends and extends the *Seanad Electoral (University Members) Act 1937*, the *Seanad Electoral (Panel Members) Act 1947* and the *Electoral Act 1992*.

Commencement: 29/12/2015

Harbours Act 2015

Number: 61/2015

Allows for the transfer of shareholdings in certain port companies to local authorities, the transfer of certain port companies to local authority control, and the dissolution of certain port companies. Amends and extends the *Harbours Acts 1996-2015*, repeals the *Harbours Acts 1946 and 1947*, and amends the *Merchant Shipping Act 1992* and the *Fisbery Harbour Centres Act 1968*. Provides for connected matters.

Commencement: 25/12/2015

Bankruptcy (Amendment) Act 2015

Number: 60/2015

Reduces the term of bankruptcy and bankruptcy payment orders in certain circumstances; provides for the automatic re-vesting in the

bankrupt of his or her family home, shared home or principal private residence in certain circumstances; and for those and other purposes to amend the *Bankruptcy Act 1988*.

Commencement: Commencement order(s) required as per s16(3) of the act

Finance (Tax Appeals) Act 2015

Number: 59/2015

Revises the law concerning the making of appeals in matters of taxation (including in respect of stamp duties and of duties relating to customs and excise) and, for that purpose, establishes a body to be known as the Tax Appeals Commission and defines its functions. Amends the *Taxes Consolidation Act 1997* and certain other enactments in respect of appeals of the foregoing kind and provides for related matters.

Commencement: Commencement order(s) required as per s1(2) of the act

Mental Health (Amendment) Act 2015

Number: 58/2015

Amends the *Mental Health Act 2001* in relation to the use of electro-convulsive therapy.

Commencement: 25/12/2015

Prisons Act 2015

Number: 57/2015

Provide for the closing of Saint Patrick's Institution and makes further provision for the closing of prisons and, for those purposes, amends the *Prisons Act 1933* and provides for consequential amendments to certain other enactments. Provide for related matters.

Commencement: Section 3 and parts 2 and 3 shall come into operation on such day or days as the minister may appoint by order

Criminal Justice (Burglary of Dwellings) Act 2015

Number: 56/2015

Provides for certain matters to be taken into consideration by a court in deciding whether to

refuse bail in burglary cases. Provides for the imposition of consecutive sentences for certain offences committed in a dwelling. Amends s2 of the *Bail Act 1997* and adds s54A to the *Criminal Justice (Theft and Fraud Offences) Act 2001*.

Commencement: Commencement order(s) required as per s3(2) of the act

Dublin Docklands Development Authority (Dissolution) Act 2015

Number: 55/2015

Dissolves the Dublin Docklands Development Authority and transfers certain rights and functions to Dublin City Council. Provides for planning and development matters in the Dublin Docklands Area. Establishes the Docklands Consultative Forum to allow for input from interested parties within the Docklands area into the future development of the area by Dublin City Council, and provides for related matters.

Commencement: Part 5 shall come into operation on such day or days as the minister may appoint by order

Health Insurance (Amendment) Act 2015

Number: 54/2015

Amends the *Health Insurance Act 1994* to specify the amount of premium to be paid from the Risk Equalisation Fund in respect of age, gender and level of cover from 1/3/2016. Amends that act to substitute a definition of 'hospital utilisation credit' for the definition of 'hospital bed utilisation credit' and to specify the amount of hospital utilisation credit applicable from 1/3/2016. Makes consequential amendments to the *Stamp Duties Consolidation Act 1999* to revise the community rating stamp duty levy required to fund the risk equalisation credits for 2016, and provides for related matters.

Commencement: Sections 2, 3, 4 and 5 come into operation on 1 March 2016 and section 6 comes into operation on 1 January 2016

Houses of the Oireachtas Commission (Amendment) Act 2015

Number: 53/2015

Amends section 4 of the *Houses of the Oireachtas Commission Act 2003* by providing the commission with the power to manage Oireachtas copyright. Further amends the *Houses of the Oireachtas Commission Act 2003*. Amends section 8 of the *Ethics in Public Office Act 1995* to provide that the functions of the clerk of the Dáil and the clerk of the Seanad can be undertaken by the clerk-assistant of the relevant house if the clerk is unable to perform these functions or when the position is vacant.

Commencement: 1/1/2016 as per s10(3) of the act

Finance Act 2015

Number: 52/2015

Provides for the imposition, repeal, remission, alteration and regulation of taxation, of stamp duties, and of duties relating to excise, and otherwise to make further provision in connection with finance including the regulation of customs.

Commencement: Except where otherwise expressly provided in part 1, that part shall come into operation on 1 January 2016. Except where otherwise expressly provided, where a provision of this act is to come into operation on the making of an order by the Minister for Finance, that provision shall come into operation on such day or days as the minister shall appoint

Courts Act 2015

Number: 51/2015

Amends s9 of the *Courts and Court Officers Act 1995* (inserted by s2 of the *Courts and Court Officers (Amendment) Act 2007*) by increasing the number of High Court judges from 35 to 37.

Commencement: 20/12/2015

Finance (Local Property Tax) (Amendment) Act 2015

Number: 50/2015

Amends the *Finance (Local Property Tax) Act 2012* to postpone the next revaluation date for local property tax from 1/11/2016 to 1/11/2019. Grants relief from local property tax to properties that have been included in the pyrite remediation scheme and to properties occupied by persons with disabilities. Provides for related matters.

Commencement: 20/12/2015

Garda Síochána (Policing Authority and Miscellaneous Provisions) Act 2015

Number: 49/2015

Amends the *Garda Síochána Act 2005* to provide for the establishment and functions of a policing authority for the purpose of overseeing the performance by the Garda Síochána of its functions relating to policing services. Amends the *Garda Síochána Act 2005* in relation to the Garda Síochána Ombudsman Commission and the Garda Síochána Inspectorate and provides for related matters.

Commencement: Commencement order(s) required as per s1(3) of the act

Appropriation Act 2015

Number: 48/2015

Appropriates to the proper supply services and purposes sums granted by the *Central Fund (Permanent Provisions) Act 1965*; makes provision in relation to deferred surrender to the Central Fund of certain undischarged appropriations by reference to the capital supply services and purposes as provided for by section 91 of the *Finance Act 2004* and, for the purpose of maintaining a sufficient amount of moneys in the Paymaster General's supply account so as to enable the discharge of particular liabilities, makes provision for repayable advances from the Central Fund.

Commencement: 16/12/2015

Social Welfare and Pensions Act 2015

Number: 47/2015

Amends and extends the *Social Welfare Acts*. Gives legislative effect to a range of social welfare measures announced in Budget 2015 that are, in the main, due to come into effect in early 2016. Amends and extends the *Pensions Act 1990* to provide for the appointment as Pensions Ombudsman of the person who also holds the office of Financial Services Ombudsman; provides for related matters.

Commencement: Part 3 shall come into operation on such day or days as the minister may appoint by order

Climate Action and Low Carbon Development Act 2015

Number: 46/2015

Provides for the approval of plans by the Government in relation to climate change for the purpose of pursuing the transition to a low-carbon, climate-resilient and environmentally sustainable economy by the year 2050. Establishes the National Expert Advisory Council on Climate Change and provides for connected matters.

Commencement: Establishment day to be appointed as per s8 (1) of the act

Child Care (Amendment) Act 2015

Number: 45/2015

Provides for the preparation by the Child and Family Agency of aftercare plans to provide for the giving of assistance by the agency, subject to the resources available to the agency, to meet the needs of certain persons who have been in the care of that agency. Provides for the inspection of premises in which it is proposed to provide early years service. For those and other purposes, amends the *Child Care Act 1991*, the *Children Act 2001*, the *Health Act 2007*, the *Child and Family Agency Act 2013*, and provides for related matters.

Commencement: Commencement order(s) required as per s16 (3) of the act

legislation update

National Cultural Institutions (National Concert Hall) Act 2015

Number: 44/2015

Provides for the conversion of the National Concert Hall Company from a company limited by guarantee into a statutory body, the National Concert Hall, and provides for related matters.

Commencement: Establishment day to be appointed as per s4 of the act

Equality (Miscellaneous Provisions) Act 2015

Number: 43/2015

Provides for certain changes in the exclusion of discrimination on particular grounds in certain employments. Provides for certain changes relating to discriminatory job advertisements. Prohibits discrimination in the provision of accommodation on the basis of receipt of certain payments. For those and other purposes, amends the *Pensions Act 1990*, the *Employment Equality Act 1998* and the *Equal Status Act 2000*, and provides for related matters.

Commencement: Commencement order(s) required as per s16(5) of the act

Residential Tenancies (Amendment) Act 2015

Number: 42/2015

Amend and extend the *Residential Tenancies Acts 2004 and 2009*; amends the *Housing (Miscellaneous Provisions) Act 2009*; provides for the application of the *Residential Tenancies Act 2004* to certain dwellings that are the subject of a tenancy; provides for the restriction, in respect of the tenants of such dwellings, of certain entitlements of tenants under the *Residential Tenancies Act 2004*; renames the Private Residential Tenancies Board and the private residential tenancies register; provides for the dissolution of the Rent Tribunal established under the *Housing (Private Rented Dwellings) (Amendment) Act 1983* and for the transfer of its functions to the Residential Tenancies Board;

repeals certain provisions of the *Housing (Private Rented Dwellings) (Amendment) Act 1983*; provides for the Private Residential Tenancies Board to hold, and return, deposits paid by tenants to landlords, for any interest received from the holding of such deposits to be retained by it for its use in respect of its performance of its functions under the *Residential Tenancies Acts 2004-2015*; amends the *Housing (Miscellaneous Provisions) Act 1992*; in accordance with the exigencies of the common good, provides, for a certain period, for the regulation of reviews of rent; amends the periods of notice for the setting of new rents and the periods of notice for certain tenancy terminations and provides for related matters.

Commencement: Other than s25, subparagraph (i) of paragraph (a) of subsection (1) of section 26, section 26(2) and section 31, this act shall come into operation on such day or days as the minister may appoint by order

Motor Vehicles (Duties and Licences) Act 2015

Number: 41/2015

Amends the *Finance (Excise Duties) (Vehicles) Act 1952* and the *Finance (Excise Duties) (Vehicles) (Amendment) Act 1960* in respect of certain duties or licences leviable or issuable thereunder, and provides for related matters.

Commencement: 2/12/2015

Criminal Justice (Mutual Assistance) (Amendment) Act 2015

Number: 40/2015

Amends the *Criminal Justice (Mutual Assistance) Act 2008* to give effect to Council Framework Decision 2005/214/JHA on mutual recognition of financial penalties, Council Framework Decision 2006/783/JHA on mutual recognition of confiscation orders, Council Decision 2008/617/JHA on enhancing the operation of special intervention units in crisis situations, Council Decision 2009/426/JHA of 16/12/2008

on the strengthening of Euro-just, Council Framework Decision 2009/299/JHA of 26/2/2009 amending Framework Decisions 2002/584/JHA, 2006/783/JHA, 2008/909/JHA and 2008/947/JHA, and Council Decision 2010/616/EU on the conclusion of an agreement between the EU and Japan on mutual legal assistance in criminal matters. Provides for certain related amendments to the *Criminal Justice Act 1994*, *International War Crimes Tribunal Act 1998*, *Criminal Justice (Joint Investigation Teams) Act 2004*, *Garda Síochána Act 2005*, and *Criminal Justice (Mutual Assistance) Act 2008*, and provides for related matters.

Commencement: commencement order(s) required as per s37(3) of the act

Financial Emergency Measures in the Public Interest Act 2015

Number: 39/2015

Amends the previous *Financial Emergency Measures in the Public Interest Acts* to begin a partial and phased restoration of the reductions made by them, as agreed by the Government and the unions representing public servants in the *Lansdowne Road Agreement*. Makes provision for the partial restoration of pension reductions to public servants. Amends the *Ministers and Secretaries (Amendment) Act 2011* and the *Courts (Supplemental Provisions) Act 1961*, and provides for related matters.

Commencement: Commencement order(s) required as per s1(2) of the act

Choice of Court (Hague Convention) Act 2015

Number: 38/2015

Gives effect to the *Convention on Choice of Court Agreements* (done at The Hague on 30/6/2005) and approved on behalf of the EU pursuant to Council Decision 2014/887/EU, and provides for related matters.

Commencement: Commencement order(s) required as per s10(3) of the act

Finance (Miscellaneous Provisions) Act 2015

Number: 37/2015


Ratifies the *Agreement on the Transfer and Mutualisation of Contributions to the Single Resolution Fund* (done at Brussels on 14/5/2014). Amends the *Financial Services (Deposit Guarantee Scheme) Act 2009* in consequence of the implementation in the State of Directives 2009/138/EC and 2014/49/EU. Puts in place insurance (continuation of regulation) legislation in order to ensure the continuation of insurance regulation for companies outside the scope of *Solvency II Directive* (implemented by the *European Communities (Insurance and Re-insurance) Regulations 2015*), which is due to come into force at the start of 2016. Amends s37 of the *National Treasury Management Agency (Amendment) Act 2014*, and provides for related matters.

Commencement: 20/11/2015 for part 3 (ss6-14) (per s1(4) of the act); commencement order(s) to be made for part 4 (ss5-21) (per s1(5) of the act); 20/11/2015 for all other sections (per s1(3) of the act)

Children First Act 2015

Number: 36/2015

Makes further and better provision for the care and protection of children, including raising awareness of child abuse and neglect, providing for reporting and management of child protection concerns, and improving child protection arrangements in organisations providing services to children. Provides for the establishment of the Children First Inter-Departmental Implementation Group to perform functions assigned to it and provides for related matters.

Commencement: Commencement order(s) to be made (per s1(2) of the act) 

Solicitors Disciplinary Tribunal

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

In the matter of Mark Walsh, a solicitor practising as a partner in the firm of Kenny Stephenson Chapman Solicitors, Park House, Park Road, Waterford, and in the matter of the *Solicitors Acts 1954-2011* [10813/DT18/13]

Law Society of Ireland (applicant)
Mark Walsh (respondent solicitor)

On 19 February 2015, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- 1) Acted in a commercial transaction between approximately September 2010 and November 2010 where there was a clear conflict of interest between the parties in the transaction,
- 2) Failed to protect the interests of the complainant in the transaction,
- 3) Subsequently acted for two other clients in incorporating a new limited liability company that took up the lease and licence to the same premises originally intended for a previous limited liability company for whom he had also acted,
- 4) Failed to reply to correspondence from the complainant's Irish solicitors,
- 5) Failed to reply to correspondence from the Society,
- 6) Failed to attend meetings of the Complaints and Client Relations Committee on 26 June 2012 and 4 September 2012 and did not arrange for legal representation in his absence,
- 7) Failed to prepare a comprehensive report on the original complaint, as directed by the Complaint and Client Relations Committee.

The tribunal ordered that the respondent solicitor:

- 1) Stand censured,
- 2) Pay a sum of €10,000 to the compensation fund,
- 3) Pay the costs of the Society, limited to €10,000.

In the matter of Kevin O'Keeffe, solicitor, formerly practising in Coakley Moloney Solicitors, 49 South Mall, Cork, and in the matter of the *Solicitors Acts 1954-2011* [4536/DT16/13 and High Court record 2014 no 100 SA]

Law Society of Ireland (applicant)
Kevin O'Keeffe (respondent solicitor)

On 2 December 2013, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- 1) Misapplied stamp duty and outlay funds of €83,945, received in respect of a property purchase by a named client, between 6 February 2004 and 8 August 2005, giving rise to a deficit on the client account,
- 2) Failed to stamp the deeds in the property purchase by a named client, despite having received stamp duty moneys in June 2003, and thereby giving rise to a potential liability to interest and penalties,
- 3) Failed to disclose the above unpaid stamp duty liability in a client matter at the time of the investigation by the Law Society in September 2010 or in a timely manner thereafter,
- 4) Misapplied in or about €71,195 from stamp duty moneys of a named client on or about 15 February 2006, by discharging costs in an unrelated client matter using same, giving rise to a deficit on the client account,
- 5) Misapplied a further €20,000 from the stamp duty moneys of a named client on or about

REFERENCE POINT

information on complaints

This information on complaints about solicitors is published in accordance with section 22 of the *Solicitors (Amendment) Act 1994*

NUMBER OF COMPLAINTS RECEIVED BY THE SOCIETY FROM 1 SEPTEMBER 2014 TO 31 AUGUST 2015

Allegations of misconduct

Delay	2
Failure to communicate	30
Failure to hand over	103
Failure to account	65
Undertakings	475
Conflict of interest	10
Dishonesty or deception	4
Witnesses' expenses	6
Counsel's fees	22
Other	65
Total	782

Allegations of inadequate professional services

Delay	103
Failure to communicate	75
Shoddy work	92
Other	32
Total	302

Allegations of overcharging

Conveyancing	6
Probate	12
Litigation	28
Matrimonial	14
Other	18
Total	78
GRAND TOTAL	1,162

NUMBER OF COMPLAINTS REFERRED TO THE SOLICITORS DISCIPLINARY TRIBUNAL

Delay, failure to communicate, failure to respond to Society, failure to carry out instructions	7
Undertakings	51
Failure to communicate, failure to respond to Society, failure to hand over file	1
Failure to account	3
Failure to pay counsel's fees	1
Failure to comply with directions to pay costs	1
Total	64

Outcome of the investigation of above complaints by the disciplinary tribunal:

- One case has been completed and the solicitor was limited to practising as an assistant solicitor, fined €5,000, and directed to pay costs,
- One referral was rescinded prior to hearing,
- All other cases await hearing.

regulation

- 9 May 2006, by making a payment in that amount to an unrelated client, giving rise to a deficit on the client account,
- 6) Failed to disclose the misapplication of the above stamp duty moneys of a named client at the time of the investigation by the Law Society in September 2010 or in a timely manner thereafter,
 - 7) Caused a payment of €25,000 to be made to a named client in or about January 2007, when there were no funds in the client ledger to meet the payment, giving rise to a deficit on the client account of €25,000,
 - 8) Caused or allowed the above payment of €25,000 to be made from funds on a client ledger of which funds were the subject of an undertaking to repay bank borrowings,
 - 9) Caused or allowed payments of €11,000 on 10 March 2009 and €17,000 on 20 July 2009 to be wrongly made from the client account, giving rise to a deficit, in circumstances where there were no funds received in the client account in respect of these payments,
 - 10) Between 12 June 2006 and 11 December 2007, misapplied funds totalling €3,656 from a client ledger, giving rise to a deficit on the client account,
 - 11) Caused or allowed a payment of €50,000 from the client account on or about 8 January 2009 in respect of the estate of a named client when there were no funds in the client account for the estate,
 - 12) Caused or allowed the above payment of €50,000 to be made from funds on the client ledger of a named client, which funds were the subject of an undertaking to a bank to satisfy a loan,
 - 13) Misappropriated and/or failed to apply a sum of €15,000 for CAT paid by a beneficiary of the estate of a named client,
 - 14) Caused or allowed payments of €7,500 on 13 December 2002, €5,000 on 10 July 2003, and

€5,000 on 23 September 2003 to be wrongly paid from the client account, giving rise to deficits totalling €17,500 on the client account,

- 15) By his actions, caused a deficit on the client account of the practice of Coakley Maloney as at 16 January 2012 of in or about €153,440.

The tribunal ordered that the matter go forward to the High Court and, on 9 March 2015, the High Court ordered:

- 1) That the respondent solicitor not be permitted to practise as a sole practitioner; that he be permitted to practise only as an assistant solicitor in the employment and under the direct control and supervision of another solicitor of at least ten years' standing, to be approved in advance by the Society,
- 2) That the respondent solicitor must never have signing rights either solely or jointly over any client account,
- 3) That the respondent solicitor pay the sum of €15,000 to the compensation fund of the Law Society of Ireland,
- 4) That Mr Justin McCarthy, solicitor, and Mr David Keane, solicitor, provide a bond in the sum of €100,000 to the High Court by way of a personal guarantee as to the respondent solicitor's future conduct, as appended to the High Court order and executed on 9 March 2015,
- 5) That the respondent solicitor pay the whole of the applicant's costs, to include witness expenses of the Solicitors Disciplinary Tribunal proceedings, with taxation in default of agreement,
- 6) That the respondent pay the applicant the costs of the within proceedings, with taxation in default of agreement.

In the matter of Thomas O'Donoghue, solicitor, formerly practising as O'Donoghue & Co, Solicitors, 2 Egans Lane,

Tuam, Co Galway, and in the matter of the *Solicitors Acts 1954-2011* [8824/DT163/13 and High Court record 2015 no 50 SA]

Law Society of Ireland (applicant) Thomas O'Donoghue (respondent solicitor)

On 3 March 2015, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- 1) Failed to comply with an undertaking dated 3 February 2009 within a reasonable time or at all,
- 2) Failed to respond adequately or at all to the complainant's correspondence, in particular, letters dated 3 April 2012, 23 April 2012, 22 May 2012 and 18 June 2012 respectively,
- 3) Failed to respond adequately or at all to the Society's correspondence and, in particular, letters dated 24 September 2012, 21 November 2012, 20 December 2012, 25 January 2013 and 26 February 2013 respectively,
- 4) Failed to attend a meeting of the Complaints and Client Relations Committee on 19 February 2013, despite being required to do so by the committee's previous direction on 6 February 2013.

The tribunal ordered that the matter go forward to the High Court and, on 15 June 2015, the High Court ordered that:

- 1) The respondent solicitor be permitted only to practise as an assistant solicitor in the employment of and under the direct control and supervision of another solicitor of at least ten years' standing, to be approved in advance by the Society,
- 2) The respondent solicitor pay the Society the costs of the Solicitors Disciplinary Tribunal proceedings when taxed or ascertained,
- 3) The respondent solicitor pay the Society the costs of the High Court proceedings when taxed or ascertained.

In the matter of Cormac M Lohan, solicitor, practising under the style and title of Lohan & Co, Solicitors, 7 Garden Vale, Athlone, Co Westmeath, and in the matter of the *Solicitors Acts 1954-2008* [8247/DT50/10] *Law Society of Ireland (applicant) Cormac Lohan (respondent solicitor)*

On 25 June 2015, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- 1) Caused or allowed a representation to be made to Ulster Bank that there was an unconditional third-party contract in respect of a property at Co Westmeath,
- 2) Settled proceedings on behalf of the second named defendant in a District Court matter on or about 29 July 2008, without the authority of his clients,
- 3) Failed, up to in or about 4 May 2010 or at all, to pay the total net sale proceeds of a property at Co Westmeath to Ulster Bank in accordance with his undertaking to the bank of 7 May 2008,
- 4) Failed to furnish the complainants in a timely manner with a VAT receipt and/or invoice in respect of paid fees of, in or about, €1,694, despite requests for him to account for these moneys,
- 5) Failed to comply in a timely manner with the complainants' requests for a statement of account in respect of the purchase of a site at Co Westmeath,
- 6) Breached section 68(1) of the *Solicitors (Amendment) Act 1994* by failing to furnish the complainants, on the taking of instructions or as soon as practicable thereafter, with particulars in writing of the actual charges or an estimate of the charges or the basis on which the charges would be made for the provision of legal services in respect of a development.

The tribunal ordered that:

- 1) The respondent solicitor stand

censured,

- 2) The respondent solicitor pay €15,000 to the compensation fund,
- 3) The respondent solicitor pay the whole of the Society's costs and witness expenses, with taxation in default of agreement.

In the matter of Paul Lambert, a solicitor practising as Merrion Legal Solicitors & Community Trademark Agents, Suite 12, Butlers Court, Sir John Rogerson's Quay, Dublin 2, and in the matter of the *Solicitors Acts 1954-2011* [8776/DT62/11 and High Court record no 5SA/2015]

Law Society of Ireland (applicant) Paul Lambert (respondent solicitor)

On 22 July 2014, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- 1) Failed to ensure compliance with Merrion Legal Services' undertaking dated 17 November 2006 to the complainant bank to register a first legal charge in favour of the complainant over a named property,
- 2) Failed to reply adequately to the complainant's letters dated 30 September 2009, 8 March 2010, and 16 February 2010,
- 3) Failed to reply adequately to the Society's correspondence dated 7 May 2010, 26 May 2010, 28 June 2010, 15 October 2010, 9 December 2010, 17 December 2010, and 5 January 2011,
- 4) Breached section 3(d) of the *Solicitors (Amendment) Act 1960*, as substituted by section 7(d) of the *Solicitors (Amendment) Act 2002*, when he allowed a solicitor to practise as a solicitor in Merrion Legal Services when he knew or ought to have known upon reasonable enquiry that a practising certificate was not in force in respect of that solicitor, in breach of section 56 of the *Solicitors (Amendment) Act 1994*.

The tribunal ordered that the matter should go forward to the High Court and, on 2 July 2015, the High Court ordered that:

- 1) The name of the respondent solicitor be struck from the Roll of Solicitors,
- 2) The respondent solicitor do pay to the Society its costs of the within proceedings and of the proceedings before the Solicitors Disciplinary Tribunal when taxed and ascertained in default of agreement.

In the matter of Raymond St John O'Neill, a solicitor practising under the style and title of Raymond St J O'Neill & Co, 27/29 Washington Street, Cork, and in the matter of the *Solicitors Acts 1954-2011* [3138/DT143/11; 3138/DT58/14; High Court record 2015 no 61 SA]

Law Society of Ireland (applicant) Raymond St John O'Neill (respondent solicitor)

On 4 November 2014, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- 1) Caused or allowed fees to be transferred to the office account in respect of named client matters other than as authorised by the regulations and, in particular, regulations 11 and 7(1)(a)(iii),
- 2) Caused or allowed the misapplication of stamp duty funds in the client matter of a named client in the amount of €11,800, including the transfer of in or about €2,965 to the office ledger,
- 3) Caused or allowed the transfer of €5,917 from the client ledger of a named client to clear a debit balance on the ledger account of a named client, in breach of regulation 9,
- 4) Caused or allowed the transfer of €3,400 from the client ledger of a named client to partially clear a debit balance on the ledger account of another named client, in breach of regulation 9,

- 5) In the course of acting for a named client in the purchase of a property, caused or allowed an underpayment to the Revenue Commissioners of stamp duty of in or about €11,800 and possible interest and penalty,
- 6) Caused or allowed the misapplication of stamp duty funds in the client matter of named clients in the amount of €24,750,
- 7) Caused or allowed the transfer of €8,247 from the client ledger of named clients to partially clear a debit balance on the ledger account of a named client, in breach of regulation 9,
- 8) In the course of acting for named clients in the purchase of property, caused or allowed an underpayment to the Revenue Commissioners of stamp duty of in or about €24,750 and possible interest and penalty,
- 9) Caused or allowed funds for wages to be transferred from the client ledger account of a named client to the office account, in breach of regulation 7, over a continued period of time from January 2010 to November 2010,
- 10) Caused or allowed debit balances to arise on the client's ledger account of a named client, in breach of regulation 7(2) (a),
- 11) Caused or allowed the transfer of €6,001 from the client ledger of a named client to clear a debit balance on the ledger account of a named client, in breach of regulation 9,
- 12) Caused or allowed wages totalling in or about €2,712 to be discharged from the client account on 12 November 2010 and on 6 December 2010, in breach of regulation 7(2)(b),
- 13) Caused or allowed credit balances totalling €30,946 to arise on the office ledger as at 30 November 2010, in breach of regulation 10(5),
- 14) Caused or allowed a debit balance to arise on the ledger account of named clients, in breach of regulation 7(2)(a),

which debit balance was cleared by a transfer of funds from other clients' ledger accounts, in breach of regulation 9,

- 15) Caused or allowed a debit balance to arise on the ledger account of a named client, in breach of regulation 7(2)(a), which debit balance was cleared by a transfer of funds from other clients' ledger accounts, in breach of regulation 9,
- 16) In the course of acting for a named client in the purchase of property, caused or allowed an updated deed to be submitted to the Revenue Commissioners for stamping,
- 17) On or about 25 October 2013, updated a deed and underpaid the stamp duty that would have been due correctly on the deed by €147,000.

The tribunal ordered that the matter go forward to the High Court and, on 20 July 2015, the High Court ordered that:

- 1) The respondent solicitor not be permitted to practise as a sole practitioner or in partnership; that he be permitted only to practise as an assistant solicitor in the employment of and under the direct control and supervision of a solicitor of at least ten years' standing, to be approved in advance by the Society,
- 2) The respondent solicitor pay the Society the costs of the Solicitors Disciplinary Tribunal proceedings when taxed or ascertained,
- 3) The respondent solicitor pay the Society the costs of the High Court proceedings when taxed or ascertained.

In the matter of Paul B Lambert, a solicitor practising as Merrion Legal, Butler's Court, 77 Sir John Rogerson's Quay, Dublin 2, and in the matter of the *Solicitors Acts 1954-2011* [8776/DT75/14]
Law Society of Ireland (applicant) Paul B Lambert (respondent solicitor)

regulation

The Solicitors Disciplinary Tribunal considered a complaint against the respondent solicitor on 29 October 2015 and found him guilty of professional misconduct in that he:

- 1) Failed to ensure there was furnished to the Society an accountant's report for the year ended 30 September 2013 within six months of that date, in breach of regulation 21(1) of the *Solicitors Accounts Regulations 2001* (SI 421/2001),
- 2) Through his conduct, showed disregard for his statutory obligation to comply with the *Solicitors Accounts Regulations* and showed disregard for the Society's statutory obligation to monitor compliance with the *Solicitors Accounts Regulations* for the protection of clients and the public.

The tribunal ordered that the respondent solicitor:

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

This former solicitor was struck off the Roll of Solicitors in proceedings entitled 2015 no 5 SA on 29 July 2015.

In the matter of Brendan J Looney, solicitor, formerly practising as Brendan J Looney, Solicitor, Mespil House, Sussex Road, Dublin 4, and in the matter of the *Solicitors Acts 1954-2011* [10542/DT60/14]

Law Society of Ireland (applicant) Brendan J Looney (respondent solicitor)

On 8 October 2015, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- 1) Failed expeditiously, within a reasonable time, or at all to honour an agreement to pay 50% of the professional fees

and counsel's outlay to the complainant, arising out of the transfer of a file belonging to a named client from a named solicitor's practice to the complainant in around 2010,

- 2) Failed to respond to the complainant's correspondence adequately or at all and, in particular, letters dated 14 March 2012 and 2 May 2013,
- 3) Failed to respond to the Society's correspondence adequately or at all and, in particular, letters dated 12 June 2013, 1 July 2013, 22 July 2013 and 11 September 2013 respectively,
- 4) Failed to comply with a direction of the Complaints and Client Relations Committee of 24 September 2013, whereby he was directed to pay a contribution of €500 towards the costs of the Society's investigation,
- 5) Failed to attend a meeting of the Complaints and Client Relations Committee on 22 October 2013, despite being required to do so by direction of the Complaints and Client Relations Committee meeting of 24 September 2013,
- 6) Failed to comply with a direction of the Complaints and Client Relations Committee made on 22 October 2013, whereby he was directed to discharge 50% of the professional fee paid on a named client file to the complainant within 21 days, together with documents to vouch the level of costs recovered.

The tribunal ordered that the respondent solicitor:

- 1) Do stand censured,
- 2) Pay a sum of €2,000 to the compensation fund,
- 3) Pay the costs of the Society, limited to €1,000.

In the matter of Alexander Gibbons, a solicitor formerly practising as Gibbons & Co, 2 Everside Kent Street, Clonakilty, Co Cork, and in the matter of the

***Solicitors Acts 1954-2011* [5839/DT111/11 and High Court record 2015 89 SA]**

Named applicant Alexander Gibbons (respondent solicitor)

On 10 January 2013, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- 1) Misled the applicant from the beginning,
- 2) Lied about the terms of the contract,
- 3) Dealt with the applicant's moneys in a completely dishonest manner,
- 4) Failed to provide proper title to the properties, having being given more than sufficient moneys to complete the transaction.

The tribunal recommended that the matters be sent forward to the High Court and, on 19 October 2015, the High Court ordered that:

- 1) The name of the respondent solicitor be struck off the Roll of Solicitors,
- 2) The respondent solicitor pay the Society the costs of and incidental to the proceedings and the costs of the Society before the tribunal, including witness expenses, to be taxed in default of agreement.

In the matter of Alexander Gibbons, a solicitor formerly practising as Gibbons & Co, 2 Everside Kent Street, Clonakilty, Co Cork, and in the matter of the *Solicitors Acts 1954-2011* [5839/DT112/11 and High Court record 2015 89 SA]

Named applicant Alexander Gibbons (respondent solicitor)

On 10 January 2013, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he failed to disclose the true terms of the contract so as to conceal his own dishonest dealings.

The tribunal recommended that the matters be sent forward to the High Court and, on 19 October 2015, the High Court ordered that:

- 1) The name of the respondent solicitor be struck off the Roll of Solicitors,
- 2) The respondent solicitor pay the Society the costs of and incidental to the proceedings and the costs of the Society before the tribunal, including witness expenses, to be taxed in default of agreement.

In the matter of Alexander Gibbons, a solicitor formerly practising as Gibbons & Co, 2 Everside Kent Street, Clonakilty, Co Cork, and in the matter of the *Solicitors Acts 1954-2011* [5839/DT119/12; 5839/DT147/12; 5839/DT172/12; 5839/DT108/13; 5839/DT09/13; 5839/DT10/13; 5839/DT 52/14; High Court record 2015 89 SA]

Law Society of Ireland (applicant) Alexander Gibbons (respondent solicitor)

On 11 November 2014, the Solicitors Disciplinary Tribunal heard seven complaints against the respondent solicitor and found him guilty of misconduct in his practice as a solicitor, in that he:

5839/DT119/12

Failed to comply, within 21 days of the meeting of the Complaints and Client Relations Committee on 2 June 2011 or at all, up to the date of swearing of the affidavit, with the direction of the committee on 4 February 2011 that he make a contribution of €500 towards the Law Society's costs.

5839/DT147/12

- 1) Allowed a deficit on his client account of €430,958 as at 31 January 2011, which deficit increased to €557,184 as of 22 July 2011,
- 2) Engaged in a process of teaming and lading to conceal the misappropriation of funds from the client account,
- 3) Wrongfully withdrew €57,163 from the client bank account

- between 1 February 2011 and 31 May 2011 and used such funds for his own purposes,
- 4) Wrongfully withdrew from the client ledger an amount of €87,063 for his benefit between November 2009 and April 2010,
 - 5) Lodged €15,372 from the sale of shares belonging to an estate to the office account, thereby creating a credit balance of €15,372 in the office account,
 - 6) Wrongfully lodged a client cheque for €257,007 to the office account on 5 July 2010 and did not rectify this until 29 October 2010,
 - 7) Allowed deeds to remain unstamped with a liability of €63,000 and €7,800, which liabilities were on the client ledger,
 - 8) Concealed the deficiency of €123,434 as of 31 January 2010 from his reporting accountant by transferring funds from two probate ledgers,
 - 9) Made 11 different withdrawals from the client account between 22 March 2010 and 23 December 2010, mainly in round sum figures, leading to a deficit on the client account in relation to these withdrawals of €102,935,
 - 10) Made three of these withdrawals to pay an employee and two other third-party creditors,
 - 11) Since 31 January 2011, made further payments totalling €57,163 out of the client account, which included payments to four third-party creditors,
 - 12) Took money from the client ledger account of a named client to make further payments to three further third-party creditors,
 - 13) Since the first inspection, created a further debit balance on his own ledger account of €64,000 in the period from 1 December 2011 to 22 July 2012,
 - 14) Since the first inspection, allowed the creation of a further

ten debit balances totalling €10,664 as of 22 July 2011.

5839/DT172/12

- 1) Failed to comply with an undertaking dated 26 August 2008 furnished to KBC on behalf of named borrowers and the premises in Co Cork in a timely manner or at all,
- 2) Failed to attend a meeting of the Complaints and Client Relations Committee on 25 October 2011, despite being required to do so.

5839/DT08/13

- 1) Failed to comply with an undertaking dated 29 May 2003 furnished to Bank of Ireland in respect of named borrowers and the premises in Co Cork in a timely manner or at all,
- 2) Failed to respond to the Society's correspondence and, in particular, the Society's letters of 18 February 2011 and 14 March 2011 within the time specified, within a timely manner, or at all,
- 3) Failed to attend the meeting of the Complaints and Client Relations Committee on 25 October 2011, despite being required to do so by letters dated 10 October 2011 and 18 October 2011.

5839/DT09/13

- 1) Failed to comply with an undertaking dated 23 November 2006 furnished to Bank of Ireland in respect of a named client and property at Co Cork in a timely manner or at all,
- 2) Failed to reply to the Society's correspondence and, in particular, the Society's correspondence of 21 September 2010 and 27 June 2011 within the time specified, in a timely manner, or at all,
- 3) Failed to attend the meeting of the Complaints and Client Relations Committee on 25 October 2011, despite being required to do so by letters dated 10 October 2011 and 18 October 2011.

5839/DT10/13

- 1) Failed to comply with an undertaking furnished to Bank of Ireland Mortgages on 18 April 2008 in respect of a named borrower at Co Cork in a timely manner or at all,
- 2) Failed to attend the meeting of the Complaints and Client Relations Committee on 25 October 2011, despite being required to do so by letters dated 10 October 2011 and 18 October 2011.


5839/DT52/13

- 1) Failed to comply with undertakings listed at paragraph 3 of the Society's affidavit, sworn 28 March 2013, given to the complainants on behalf of named borrowers,
- 2) Failed to respond satisfactorily to the Society's correspondence and, in particular, letters of 12 October 2010, 30 November 2010, 5 December

2010, 15 February 2011 and 1 March 2011 within the time specified, in a timely manner, or at all,

- 3) Failed to attend the meeting of the Complaints and Client Relations Committee on 25 October 2011, despite being required to do so by letters dated 10 October 2011 and 18 October 2011.


The tribunal recommended that the matters be sent forward to the High Court and, on 19 October 2015, the High Court ordered that:


- 1) The name of the respondent solicitor be struck off the Roll of Solicitors,
- 2) The respondent solicitor pay the Society the costs of and incidental to the proceedings and the costs of the Society before the tribunal, including witness expenses, to be taxed  in default of agreement.

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WHEN THE CJEU SAYS SO (part 2)

As discussed in the last issue (December 2015, p54), the CJEU's landmark judgment in Case C-362/14, *Maximillian Schrems v Data Protection Commissioner*, invalidated the 15-year-old *Safe Harbour Agreement* between the EU and US that facilitated large data transfers between the two.

The ruling has important consequences for businesses in the EU. It now seems that if a business has even a minimal presence in an EU member state, then it is likely that the data protection laws of that state will apply to that business

CJEU analysis

The CJEU's analysis of the questions referred by the Irish High Court can be divided into distinct parts. The first relates to the powers of a national data protection authority (NDPA) in the context of Commission Decision 2000/520/EC (the *Safe Harbour Agreement*). The second relates to the validity of the agreement.

The CJEU examined the situation of a person whose personal data had been or could be transferred to a third country, such as the USA, which was covered by the *Safe Harbour Agreement*. Where such an individual lodges a claim with an NDPA concerning the protection of his rights and freedoms with regard to the processing of that data and contests the compatibility of the *Safe Harbour Agreement* with the protection of the privacy and the fundamental rights and freedoms of individuals, then the CJEU pronounced that "it is incumbent upon the NDPA to examine the claim with all due diligence".

The CJEU went on to rule that, if the NDPA decides that the person's claim is unfounded and therefore rejects it, the person who lodged the claim must still have access to judicial remedies at national court level that enable him to challenge the decision that adversely affects him. But the

national court is also obliged to stay legal proceedings and make a reference to the CJEU for a preliminary ruling on validity where it considers that one or more grounds for invalidity put forward by the parties are well founded. Conversely, where the NDPA considers that the claims (objections) advanced by the person are well founded, then that NDPA must be able to engage in legal proceedings. The CJEU went on to state that it is "incumbent upon the national legislature to provide for legal remedies enabling the NDPA concerned to put forward the objections which it considers well founded before the national courts". In that way, it is then possible for the national court, should it share the doubts expressed by the NDPA on the validity of the commission decision, to make a reference

to the CJEU for a preliminary ruling. The purpose of said ruling would be to examine the validity of the commission's decision.

Having regard to the foregoing considerations, the CJEU held that the *Safe Harbour Agreement* did not prevent an NDPA from examining the claim of a person concerning the protection of his rights and freedoms where his data is processed and transferred from an EU member state to a third country (in this case, the USA) when that person contends that the law and practices in force in the third country do not ensure an adequate level of protection.

Validity of Decision 2000/520

The CJEU's analysis of the validity of Commission Decision 2000/520 focused on two distinct provisions: namely articles 1 and 3.

Article 25 of Directive 95/46/EC, on the protection of indi-

viduals' personal data and the free movement of such data, facilitates the transfer of personal data from the EU to a third country, where the latter "ensures an adequate level of protection". More specifically, article 25(6) allows the European Commission to make a finding that a third country ensures an adequate level of protection by reason of its domestic law or its international commitments.

Referring to paragraphs 71, 73 and 74 of its own ruling in *Schrems*, the CJEU stated that, in order for the commission to adopt a decision pursuant to article 25(6), it must find, duly stating reasons, that the third country concerned in fact ensures, by reason of its domestic law or its international commitments, a level of protection of fundamental rights essentially equivalent to that guaranteed in the EU legal order.

That level of protection would ensure, for example, that persons "have sufficient guarantees enabling their data to be effectively protected against the risk of abuse and against any unlawful access and use of that data" (paragraph 91 of the judgment). The court noted that the commission did not state, in Decision 2000/520, that the United States in fact "ensures" an adequate level of protection by reason of its domestic law or its international commitments.

As a consequence, the CJEU concluded that article 1 of Decision 2000/520 failed to comply with the requirements laid down in article 25(6) of Directive 95/46/EC, read in the light of the *Charter of Fundamental Rights of the EU*, and that it was accordingly invalid.

Article 3 of Decision 2000/520

Under article 3(1) of Decision 2000/520, the NDPAs "may exercise their existing powers to suspend data flows to an organisation that has self-certified its adherence to the Safe Harbour Privacy Principles implemented in accordance with the FAQs". The CJEU held that the first subparagraph of article 3(1) of Decision 2000/520 must be understood as denying the NDPAs the powers that they derive from article 28 of Directive 95/46/EC, where a person who brings a claim under that provision puts forward matters that may call into question a commission decision on the adequate level of protection by a third country. The CJEU went on to observe that the implementing power granted by the EU legislature to the commission in article 25(6) of Directive 95/46/EC did not confer upon it competence to restrict the NDPAs powers derived from article 28 of Directive 95/46/EC. The court then ruled that, in adopting article 3 of Decision 2000/520, the commission exceeded the power conferred upon it in article 25(6) of Directive 95/46/EC, read in the light of the *Charter of Fundamental Rights of the EU*. As a consequence, article 3 was invalid. The court further ruled that, as articles 1 and 3 of Decision 2000/520 are inseparable from articles 2 and 4 of that decision and the annexes thereto, their invalidity affected Decision 2000/520 generally. Extending that logic, the CJEU concluded that Decision 2000/520 was invalid in its entirety (paragraph 106 of the judgment).

Developments since *Schrems*

On 16 October, the *Article 29 Working Party*, the independent, advisory body set up under Directive 95/46/EC, issued a statement containing its initial conclusions on *Schrems*. The working party believes that standard contractual clauses (SCCs) and binding

As a response to the CJEU ruling, Microsoft has decided to set up its own data storage facilities in Germany under the trusteeship of a third party

PIC: ISTOCK



corporate rules (BCRs) could in the meantime be used as a basis for transatlantic data transfers, though it also stated that it would continue to analyse the impact of the judgment on those alternative data transfer tools. It also urgently called upon the EU member states and the European institutions to open discussions with US authorities to find “political, legal and technical solutions enabling data transfers to the territory of the US that respect fundamental rights”. In terms of a possible solution, the working party proposed an intergovernmental agreement providing stronger guarantees to EU data subjects, or the creation of a new ‘safe harbour’.

On 20 October, Mr Justice Hogan quashed, on consent, the original decision of the Irish Data Protection Commissioner not to investigate Mr Schrems’s complaint. Following Mr Justice Hogan’s decision, the current Data Protection Commissioner issued a statement welcoming the ruling and stating that her office would proceed to investigate the substance of Mr Schrems’s complaint “with all due diligence”.

On 6 November, the European Commission issued its communication (COM (2015) 566 final) on the transfer of personal data from the EU to the USA following the *Schrems* judgment. The aim of that communication is to provide an overview of the alternative tools for transatlantic data transfers under Directive 95/46/EC in the absence of an adequacy decision. It also briefly describes the consequences of the judgment for other commission adequacy decisions.

As regards alternative bases for the transfer of personal data to the USA under article 26 of Directive 95/46/EC, the communication stated that such transfers may be carried out where the data controller:

- Adduces appropriate safeguards within the meaning of article 26(2) of Directive 95/46/EC regarding the protection of privacy of individuals. Such safeguards could be provided by means of contractual clauses binding both the exporter and importer of the data. These include SCCs (sometimes called model

clauses/contracts) issued by the commission, and BCRs (authorised by NDPA), which relate to transfers between the different entities of a multinational corporate group.

- Relies on one of the derogations expressly listed in paragraphs (a) to (f) of article 26 (1) of Directive 95/46/EC

Contractual solutions

With the aim of facilitating the use of contractual clauses in international data transfers, the commission has approved four sets of SCCs that are considered to fulfil the requirements of article 26(2) of Directive 95/46/EC. Two sets of model clauses relate to transfers between data controllers, while the other two sets concern transfers between a data controller and a data processor acting under its instructions. The adoption of SCCs does not prevent companies from relying on other instruments, such as *ad hoc* contractual arrangements. However, pursuant to article 26(2) of Directive 95/46/EC, these need to be approved on a case-by-case basis by NDPA.

Intra-group transfers

If a multinational company wishes to transfer personal data from the EU to an affiliate located outside the EU in compliance with article 26(2) of Directive 95/46/EC, then it may adopt BCRs. This type of code of practice only provides a basis for transfers made within a corporate group. With a view to helping companies in the drafting of BCRs, the Article 29 Working Party produced ‘working documents’ in June 2008 that spell out the substantive and procedural requirements for BCRs, based on EU data protection standards. Generally speaking, data transfers on the basis of BCRs have to be authorised by the NDPA in each member state from which the multinational company intends to transfer data.

Derogations

Even where there is no adequacy decision under article 25(6) of Directive 95/46/EC, personal data may still be transferred to entities established in a third country to the extent that one of the alternative derogations

FOCAL POINT

postscript

Another important EU ruling in the field of data protection law was handed down by the CJEU on 1 October, just five days before the same court's judgment in *Schrems*. The judgment in Case C-230/14, *Weltimmo v Nemzeti*, focused on a number of issues:

- Where a data controller can be deemed to be established,
- Which NDPA could take jurisdiction of a case, and
- Which data protection law should apply. There is a common link between *Weltimmo* and *Schrems*, as both rulings discussed the issue of NDPA powers.

In *Weltimmo*, the CJEU, referring to its own ruling in Case C-131/12, *Google Spain*, interpreted the concept of 'establishment' very flexibly. It stated that the notion of establishment extends to any real and effective activity – even a minimal one – exercised through stable arrangements. The effect of this interpretation is that it brought business activities (both online and offline in nature) of a Slovakian property

company (*Weltimmo*) within the ambit of Hungary. *Weltimmo* was both registered and headquartered in Slovakia but, as part of commercial activities, it advertised Hungarian properties on its website.

In holding that *Weltimmo* was established in Hungary, the CJEU took a number of factors into account. They were:

- *Weltimmo's* website concerned properties that were physically located in Hungary. In addition, the company ran two Hungarian language websites.
- *Weltimmo* had a representative in Hungary, who instructed local Hungarian debt collectors to act on his behalf.
- The debt collectors used a postal address in Hungary and a Hungarian bank account to do business on *Weltimmo's* behalf.
- Finally, *Weltimmo* had a letterbox in Hungary, which it used for everyday business affairs

As *Weltimmo* was deemed to have an establishment in Hungary, Hungarian data protection law was also deemed by the CJEU to apply.


contained in article 26(1) of the directive applies. Examples of the derogations include:

- Where unambiguous consent has been obtained from the data subject regarding the proposed data transfer,
- The transfer is necessary for the performance of a contract between the data subject and the data controller,
- The transfer is necessary or legally required on important public interest grounds or for the establishment, exercise or defence of legal claims. As regards the element 'important public interest grounds', this might cover, for example, data transfers between tax or customs authorities or between social security services/departments.

Conclusions

On 16 November, the EU's Commissioner for Justice, Consumers and Gender Equality, Vra Jourová, spoke at the Brookings Institution, Washington DC, and expressed her optimism that a new EU/US agreement on data transfer could be reached by January 2016. Two of the key reasons for the commissioner's confidence are the strong political

commitment by decision-makers on both sides of the Atlantic to make progress, and the fact that agreement is in the best interests of EU and US citizens.

Following *Schrems*, many US technology firms are in a legal limbo. In addition, they face a new reality, bereft of the EU/US *Safe Harbour Agreement*. Despite best efforts to come up with a 'Safe Harbour 2.0', that particular project may take longer than expected. Interestingly, as a response to the CJEU ruling, Microsoft has decided to set up its own data storage facilities in Germany under the trusteeship of a third party, Deutsche Telekom. In this way, it can ensure that its European data (consumer, business and government) remains beyond the reach of the USA and the intelligence community generally. But does this move by Microsoft signal a movement away from transatlantic data flows? And, how truly seamless is the internet in the wake of *Schrems*? 

Dr Mark Hyland (solicitor, Bangor University Law School, Wales) has strong research interests in the related fields of intellectual property law and information technology law.



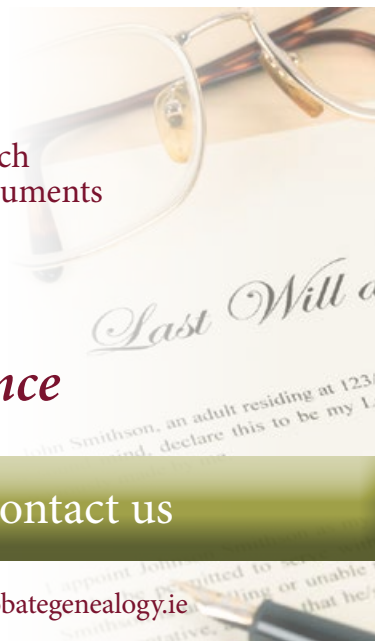
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WILLS

Brown, Daniel (deceased), late of 10 Dana Lodge, Central Avenue, Telescombe Cliffs, BN10 7LX, England, who died on 7 June 2015 and who resided at Flat 9, Meridian Court, 38 Cavell Avenue, Peacehaven, Sussex, England, at the date of his death. Would any person holding or having any knowledge of a will made by the above-named deceased please contact Paula McHugh, solicitor, 14A Farrenboley Cottages, Milltown, Dublin 14; tel: 01 216 4488, email: paulamchugh@oceanfree.net

Butler, Eileen (deceased), late of 17 Woodbank Avenue, Valley Park, Finglas South, Dublin 11, and formerly of 20 Cappagh Drive, Finglas, Dublin 11. Would any person having knowledge of the whereabouts of any will executed by the above-named deceased please contact Townley Kingston, Solicitors, Unit 205, Q House, Furze Road, Sandyford, Dublin 18; DX 211015, Beacon Court; tel: 01 293 9955, email: info@townleykingston.ie

Cleary, Bridget (deceased), late of Therant House, Glenview Avenue, Farranshane, Limerick, who died on 9 October 1983. Would

any person having knowledge of a will made by the above-named deceased, or any firm holding same, please contact Sandra McCarthy, Leahy & Partners, Solicitors, Park Manor, Upper Mallow Street, Limerick; tel: 061 315 700, email: smcc@leahysol.ie

Darcy, Eileen (deceased), late of 155 Rathmines Town Centre, Rathmines Road, Dublin 6 (formerly of Flat 7, 7 Elm Park Gardens, Fulham Road, London,

SW10, and Main Street, Clonmellon, Co Westmeath), who died on 25 November 2015. Would any person having knowledge of the whereabouts of any will executed by the above-named deceased please contact Paul Smyth, Smyth & Son, Solicitors, Rope Walk, Drogheda, Co Louth; tel: 041 983 8616, email: psmyth@smythandson.ie

Davin, Johanna (otherwise Joan) (deceased), late of 3 Wood-

stock Court, Ranelagh, Dublin 6, also of 94A Upper Drumcondra Road, Drumcondra, Dublin 9, also of Ballinakill Road, Abbeyleix, Co Laois, and also of Tentore, Ballacolla, Co Laois. Would any person holding or having any knowledge of a will made by the above-named deceased, who died on 27 May 2015, please contact Messrs James E Cahill & Company, Solicitors, Market Square, Abbeyleix, Co Laois; tel: 057 873 1246, email: donalwdunne@securemail.ie

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

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Durmin, Catherine (deceased), late of 11 Hale Street, Ardee, Co Louth. Would any person having knowledge of the whereabouts of any will made by the above-named deceased, who died on 6 October 2012, please contact Richard H McDonnell, Solicitors, Market Square, Ardee, Co Louth; tel: 041 685 3275, email: info@rhmcconnell.ie

Forde, Michael (deceased), late of Ballnahurra, Kilchreest, Loughrea, Co Galway. Would any person having knowledge of a will made by the above-named deceased, who died on 27 March 1973, please contact FG MacCarthy, Solicitors, Loughrea, Co Galway; DX 86002; tel: 091 841 841, fax: 091 842 180, email: law@fgmacCarthy.com

Irvine, Angela (deceased), late of Ballyshannon, Co Donegal, and formerly of 36 Cedar Drive, Sligo, who died on 7 December 2015. Would any person having knowledge of the whereabouts of any will executed by the above-named deceased please contact Plunkett Hayes & Co, Solicitors, Croom Mills, Croom, Co Limerick; tel: 061 600 851, email: info@phsolicitors.ie

Johnson, John (deceased), late of Golf Links Road, Newpark, Kilkenny (and St Joseph's Supported Care Unit, Kilmolgally, Co Kilkenny), who died on 4 October 2015 at St Luke's Hospital, Kilkenny. Would any solicitor holding or

having knowledge of a will made by the above-named deceased please contact McAlister O'Connor, Solicitors, Abbey Road, Navan, Co Meath; tel: 046 902 2223, email: declanpoconnor@gmail.com

McGlynn, John (deceased), late of Meenagolin, Clochan, Lifford, Co Donegal, who died on 6 December 1987. Would any person having knowledge of the whereabouts of any will executed by the above-named deceased please contact MacGeehin Toale, Solicitors, 10 Prospect Road, Glasnevin, Dublin 9; tel: 01 830 7799, email: legal@macgtn.ie

McKeown, Henry Christopher (deceased), late of 50 Mount Drummond Square, Harold's Cross, Dublin 6, who died on 11 December 2015. Would any person having knowledge of a will made by the above-named deceased or of its whereabouts please contact C Keane, Maurice E Veale & Co, Solicitors, 6 Lower Baggot Street, Dublin 2; tel: 01 676 4067, email: ckeane@vealesolicitors.com

Meagher, Michael A (deceased), late of Annamoe Drive, Cabra, and Kinvara Road, Dublin 7, who was born on 23 July 1939 and who died on 2 November 2012 and who was a lifelong Guinness employee. Would any person having knowledge of a will made by the above-named deceased please contact dos@scanlaw.ie or meagherjoan9@hotmail.com

Muldoon, Rev Leo (deceased), late of Drumcliff, Donegal Town, Co Donegal. Would any solicitor holding or having knowledge of a will made by the above-named deceased, who died on 27 January 2014, please contact O'Donnell McKenna, Solicitors, Waterloo Place, Donegal Town, Co Donegal, tel: 074 9740 444, email: uod@odmk.ie

Noonan, Pamela (deceased), late of 85 Attracta Road, Cabra, Dublin 7. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Barry Healy & Company, Solicitors, 363 North Circular Road, Phibsborough, Dublin 7; tel: 01 646 8700, email: info@healylaw.ie

O'Sullivan, Jeremiah (deceased), late of Kilmastulla, Birdhill, Co Tipperary, who died a widower on 28 November 1965. Would any person having knowledge of the last will of the above-named deceased please contact Martin J O'Brien, solicitor, Hanly's Place, Nenagh, Co Tipperary; tel: 067 42485, email: martinjobriensol@ircrom.net

Peters, Ann (otherwise Annie) (deceased), late of Patrick Street, Mountrath, Co Laois. Would any person holding or having any knowledge of a will made by the above-named deceased, who died on 9 March 2014, please contact Messrs James E Cahill & Company, Solicitors, Market Square, Abbeyleix, Co Laois; tel: 057 873 1246, email: donalwdunne@securemail.ie

Polke, Fr John Desmond (deceased), late of Parochial House, Castlefin, Co Donegal. Would any person having knowledge of any will made by the above-named deceased, who died on 21 May 2014, please contact McKelone McGilloway, Solicitors, 1 Carlisle Terrace, Derry; tel: 048 712 65566, email: cormac@mckelonemcgilloway.com

Walshe, Raymond (otherwise Raymond Walsh) (deceased), late of 33 Lissadel Avenue, Crumlin, Dublin 12, who died on 25 May 2005. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Doody Solicitors, 21 South Mall, Cork; tel: 021 427 0053, email: donna@doody.ie

TITLE DEEDS

Condron, John, formerly of 7 Cormac Street, Tullamore, Co Offaly. Would any person having any information with regard to the whereabouts of the title deeds of 7 Cormac Street, Tullamore, Co Offaly, please contact O'Donovan Mahon Cowen, Solicitors, William Street, Tullamore, Co Offaly; tel: 057 934 1866, fax: 057 934 1492, email: info@odmcsolicitors.ie

In the matter of the *Landlord and Tenant (Ground Rents) Acts 1967-2005* and in the matter of an application by John Meehan and Anna Marie Meehan of 72 Wainsfort Road, Templeogue, Dublin 6W, and in the matter of properties known respectively as 43 Rathgar Road, Dublin 6, and 15 Spire View Lane, Rathgar, Dublin 6

Take notice that any person having an interest in the freehold estate of the following properties, namely, 43 Rathgar Road, Dublin 6, and 15 Spire View Lane, Rathgar, Dublin 6, both lately held under an indenture of lease dated 18 November 1947 and made between Gladys Bell of the one part and Madeline Dwyer of the other part for the term of 50 years from 1 February 1953, subject to the annual rent of £75 (former currency), that the applicants, John Meehan and Anna Marie Meehan, intend to submit an application to the county registrar for the county of Dublin for the acquisition of the freehold interest in the aforementioned properties, and that any party asserting a superior interest in the aforementioned properties (or either of them) is called upon to furnish evidence of such title to the aforementioned properties to the undermentioned solicitors within 21 days from the date of this notice and take notice that, in default of such notice being received, the applicants intend to proceed with the application before the county registrar at the end of 21 days from the date of this notice for such directions as may be appropriate on

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the basis that the person or persons beneficially entitled to the superior interest or interests, including the freehold reversion, to each of the aforementioned properties is unknown or unascertained.

Date: 5 February 2015

Signed: Rutherfords (solicitors for John and Anna Marie Meehan), 41 Fitzwilliam Square, Dublin 2

In the matter of the Landlord and Tenant Acts 1967-2005 and in the matter of an application by Gorey Credit Union Limited

Take notice that any person having an interest in the freehold estate or any intermediate interest in the property comprising the Credit Union, Main Street, Avoca, in the county of Wicklow, being the property more particularly described and comprised in an indenture of lease dated 11 May 1909 and made between the Right Honourable Ralph Francis Howard, Earl of Wicklow, of the one part and Alice Golden of the other part, whereby the said premises were demised unto the said Alice Golden for the term of 99 years from 1 April 1909, subject to the yearly rent of £3.

Take notice that Gorey Credit Union Limited, as successor in title to the lessee under the said lease of 11 May 1909, intends to submit an application to the county registrar for the county of Wicklow for the acquisition of the freehold interest and any intermediate interest in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid property is called upon to furnish evidence of title to the aforesaid property to the below named within 21 days of this notice.

In default of any such notice being received, Gorey Credit Union Limited intends to proceed with the application before the county registrar for the county of Wicklow at the end of the 21 days from the date of this notice and will apply to the county registrar for such orders or 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: 5 February 2016

Signed: Emma J Murphy (solicitor for the applicant), Legal Department, Gorey Credit Union Ltd, Mc Dermott Street, Gorey, Co Wexford

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 Ecologic Design and Build Limited

Take notice that any person having any interest in the freehold estate of or any superior or intermediate interest in the hereditaments and premises situate at all that and those part of the demesne lands of Rochestown and part of the lands of Mount Mapas containing two acre roods, 22 perches or thereabouts statute measure and now commonly known as 'Clonlost' in the parish of Kill, barony of Rathdown and county of Dublin, which said premises are held under an indenture of sublease dated 28 June 1928 and made between Dorothy May Gordon and Alan Samuel Gordon of the one part and Bertram C Riall of the other part (the 1928 lease) for the term of 216 years and six months from 1 May 1928, subject to the yearly rent of £25.16s.6 and to the covenants and conditions on the part of the lessee therein contained and to the covenants and conditions contained in a lease for lives renewable forever, dated 30 April 1827, as recited in the 1928 lease, should give notice to the undersigned solicitors.

Take notice that the applicant, Ecologic Design and Build Limited, intends to apply to the county registrar for the city of Dublin for the acquisition of the freehold interest and all intermediate interests in the above-mentioned property, and any party asserting that they hold an interest superior to the applicants in the aforesaid property are called upon to furnish evidence of title to same to the below-

named solicitors within 21 days from the date hereof.

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

Date: 5 February 2016

Signed: Sheehan & Company (solicitors for the applicant), 1 Clare Street, Dublin 2

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

Any person having an interest in the freehold of the following property: all that and those the premises more particularly described in and demised by an indenture of lease dated 27 April 1904 between Patrick Francis Brett and Joseph Boyers (the 1904 lease) as the dwellinghouse, hereditaments and premises known as 86 Marlborough Street in the city of Dublin for a term of 500 years from 25 March 1904, subject to the payment of the yearly rent of £60 thereby reserved and to the covenants and conditions on the part of the lessee therein contained.

Take notice that Fitzwilliam Real Estate Development Limited, being the party entitled to the interest under the 1904 lease in respect of the property, intends to apply to the county registrar of the county of Dublin for the acquisition of the freehold interest and all intermediate interests in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid property is called upon to furnish evidence

of their title to same to the below named within 21 days from the date of this notice.

In default of any notice being received, the said Fitzwilliam Real Estate Developments Limited intends to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply 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 and unascertained.

Date: 5 February 2016

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

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

Notice to any person having an interest in the freehold of the following property: all that and those the premises more particularly described in and demised by an indenture of lease dated 6 October 1905 between Patrick Francis Brett and Joseph Boyers (the 1905 lease) as the dwellinghouse, hereditaments and premises known as 87 Marlborough Street in the city of Dublin for a term of 500 years from 25 September 1905, subject to the payment of the yearly rent of £120 thereby reserved and to the covenants and conditions on the part of the lessee therein contained.

Take notice that Fitzwilliam Real Estate Development Limited, being the party entitled to the interest under the 1905 lease in respect of the property, intends to apply to the county registrar of the county of Dublin for the acquisition of the freehold interest and all intermediate interests in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid property

professional notices

is called upon to furnish evidence of their title to same to the below named within 21 days from the date of this notice.

In default of any notice being received, the said Fitzwilliam Real Estate Developments Limited intends to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply 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 and unascertained.

Date: 5 February 2016

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

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978*: notice of intention

to acquire fee simple (section 4) – an application by Fitzwilliam Real Estate Developments Limited

Notice to any person having an interest in the freehold of the following property: all that and those the premises more particularly described in and demised by an indenture of fee farm grant dated 12 January 1901 between (1) Catherine Lynch, (2) John Denny Cronin and Edmund William Eyre (the 1901 fee farm grant) as the dwellinghouse, hereditaments and premises known as 4 Cathedral Street in the city of Dublin, subject to the payment of the yearly rent thereby reserved and to the covenants and conditions on the part of the lessee therein contained.

Take notice that Fitzwilliam Real Estate Development Limited, being the party entitled to the interest under the 1901 fee farm grant in respect of the property, intends to apply to the county

registrar of the county of Dublin for the acquisition of the freehold interest and all intermediate interests in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid property is called upon to furnish evidence of their title to same to the below named within 21 days from the date of this notice.

In default of any notice being received, the said Fitzwilliam Real Estate Developments Limited intends to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply 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 and unascertained.

Date: 5 February 2016

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

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

Notice to any person having an interest in the freehold of the following property: all that and those the premises more particularly described in and demised by an indenture of lease dated 1 February 1901 between (1) John Denny Cronin and Edmund William Eyre and (2) Joseph Boyers (the 1901 lease) as the dwellinghouse, hereditaments and premises known as 4 Cathedral Street in the city of Dublin for a term of 200 years from 7 January 1901, subject to the payment of the yearly rent of £30 thereby reserved and to the covenants and conditions on the part of the lessee therein contained.

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Take notice that Fitzwilliam Real Estate Development Limited, being the party entitled to the interest under the 1901 lease in respect of the property, intends to apply to the county registrar of the county of Dublin for the acquisition of the freehold interest and all intermediate interests in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid property is called upon to furnish evidence of their title to same to the below named within 21 days from the date of this notice.

In default of any notice being received, the said Fitzwilliam Real Estate Developments Limited intends to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply 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 and unascertained.

Date: 5 February 2016

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

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

Notice to any person having any interest in the freehold interest of the following property: all that and those the premises at the rear of the house and premises known as no 23 Kildare Street in city of Dublin, held under a lease dated 12 May 1934 between Mary Agnes Macaura and Thomas Robert McCullough for a term of 99 years from 1 November 1933 (the 1933 lease), subject to the payment of the yearly rent of £70 thereby reserved and to the covenants and conditions on the part of the lessee therein contained.

Take notice that KW Real Es-

tate PLC, being the person currently entitled to the lessee's interest in the 1934 lease, intends to apply to the county registrar of the county of Dublin for the acquisition of the freehold interest and all intermediate interest in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid property is called upon to furnish evidence of their title to same to the below named within 21 days from the date of this notice.

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

Date: 5 February 2016

Signed: Arthur Cox (solicitors for the applicant), Earlsfort Centre, Earlsfort Terrace, Dublin 2

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

Notice to any person having any interest in the freehold interest of the following property: all that and singular that piece or parcel of ground at the rear of the house and premises no 19 Kildare Street in the parish of St Anne and city of Dublin, measuring 21 feet in breadth and 41 feet in depth from front to rear, held under a lease dated 19 June 1945 between (1) George M Meares and Alice M Rae and (2) the Shelbourne Motor Company Limited (the 1945 lease) for a term of 100 years from 25 March 1945, subject to the payment of the yearly rent of £35 thereby reserved and to the covenants and conditions on the part

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of the lessee therein contained.

Take notice that KW Real Estate PLC, being the person currently entitled to the lessee's interest in the 1945 lease, intends to apply to the county registrar of the county of Dublin for the acquisition of the freehold interest and all intermediate interest in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid property is called upon to furnish evidence of their title to same to the below named within 21 days from the date of this notice.

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

Date: 5 February 2016

Signed: Arthur Cox (solicitors for the applicant), Earlsfort Centre, Earlsfort Terrace, Dublin 2

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

Notice to any person having any interest in the freehold interest of the following property: all that and those the premises more particularly described in and demised by

an indenture of assignment dated 18 December 1951 between Clifford Dermot O'Farrell and the Shelbourne Motor Company Limited (the 1951 assignment) as the cottage at the rear of 17 Kildare Street in the city of Dublin and now known as 17A Kildare Street, with a portion of the yard at the rear of the said premises 17 Kildare Street aforesaid, and being a portion of the premises comprised in and demised by a lease dated 18 June 1752 between John Seymour and the Honourable Bysshe Molesworth for a term of 999 years from 24 June 1752 (the 1752 lease), subject to the payment of the yearly rent of £32 thereby reserved and to the covenants and conditions on the part of the lessee therein contained.

Take notice that KW Real Estate PLC, being the person entitled to the interest of the lessee under the 1752 lease in respect of the property, intends to apply to the county registrar of the county of Dublin for the acquisition of the freehold interest and all intermediate interests in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid property is called upon to furnish evidence of their title to same to the below named within 21 days from the date of this notice.

In default of any such notice being received, the said KW Real Estate PLC intends to proceed with the application before the Dublin county registrar at the end of 21 days from the date of this notice and will apply for such directions as may be appropriate on the basis that the persons beneficially



professional notices

entitled to the superior interest (including the freehold reversion) in the aforesaid premises are unknown and unascertained.

Date: 5 February 2016

Signed: Arthur Cox (solicitors for the applicant), Earlsfort Centre, Earlsfort Terrace, Dublin 2

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of 21 Castle Street, Dalkey, Co Dublin: an application by Everyman's (1969) Limited

Take notice any person having an interest in the freehold estate or any superior interest of the following property: the premises known as 21 Castle Street, Dalkey, Co Dublin, held under an indenture of lease dated 14 April 1966 and made between Anne Maria Ivimey of the one part and Kathleen Kelly of the other part for a term of 94 years from 1 May 1966.

Take notice that Everyman's (1969) Limited intends to apply to the county registrar for the county/city of Dublin for the acquisition of the freehold interest in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid property are called upon to furnish evidence of title to the aforesaid properties to the below named within 21 days from the date of this notice.

In default of any such notice being received, Everyman's (1969) Limited intends to proceed with the application before the county registrar at the end of the 21 days from the date of this notice and will apply to the county registrar for the county/city of Dublin for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest including the freehold reversion in the aforesaid properties are unknown or ascertained.

Date: 5 February 2016

Signed: John O'Connor (solicitors for the applicant), 168 Pembroke Road, Ballsbridge, Dublin 4

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 Annette Glascott of The Grove, Parkview, Carrick-on-Suir, Co Tipperary, and in the matter of property situate at (1) Ash Park, Carrick-on-Suir, Co Tipperary and (2) The Grove, Park View, Carrick-on-Suir, Co Tipperary

Take notice that any person having any interest in the freehold estate of the following property: all that and those the premises comprising: (1) the dwellinghouse, shop, office, yard, and garage situate at Ash Park, Carrick-on-Suir in the county of Tipperary, and (2) the dwellinghouse, premises and garden situate to the rear of premises no 1 specified above and now known as The Grove, Parkview, Carrick-on-Suir in the county of Tipperary.

Both premises held under indenture of assignment dated 5 March 1958 and made between Hannah Mooney of the one part and Thomas Glascott of the other part, said premises held under a yearly tenancy from the Marquis of Ormonde at a yearly adjusted rent of £3.18s, payable yearly out of the said premises to the Marquis of Ormonde.

Take notice that the applicant, Annette Glascott, intends to submit an application to the county registrar for the county of Tipperary for the acquisition of the freehold interest in the aforesaid properties, and any party asserting that they hold a superior interest in the aforesaid premises (or any of them) are called upon to furnish evidence of title to the aforesaid premises to the below named within 21 days from the date of this notice.

In default of any such notice being received, the applicant intends to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the county of

Tipperary 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: 5 February, 2016

Signed: Derivan Sexton & Company (solicitors for the applicant), New Street, Carrick-on-Suir, Co Tipperary

In the matter of the *Landlord and Tenant (Ground Rents) Acts 1967-2005: notice of intention to acquire fee simple (section 4) – an application by John Harrington ('the applicant')*

Notice to any person having any interest in the freehold interest of the following property: all that and those the lands more particularly described in and demised by an indenture of lease made 5 December 1906 between (1) Sir William Goff, Davis Goff and George Nolan of the one part and (2) William Murphy of the other part and therein described as: "all that and those a plot of ground at Ballygillane Big, bounded on the north by lands in the possession of the Fishguard & Rosslare Railways & Harbours Company, on the south by Martin Road, on the west by lands in the possession of the said lessors, and on the east by Pier Road, which said premises contain in length from north to south 302 feet and in breadth from east to west 60 feet and are situate and lying and being in the parish of Kilrane, barony of Forth, and county of Wexford", all that part of which said premises are the shop premises at Martins Road, Rosslare Harbour, Co Wexford, shown edged red on the map hereto attached.

Take notice that the applicant, being the party entitled to the lessee's interest under the lease, intends to submit an application to the county registrar for the county of Wexford for the acquisition of the freehold interest and all intermediate interests in the aforesaid property, and any parties asserting that they hold a superior interest in the aforesaid property are called

upon to furnish evidence of title to the aforesaid property to the solicitors for the applicant, details of which are provided below, within 21 days from the date of this notice.

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

Date: 5 February 2016

Signed: Hanley & Lynch (solicitors for the applicant), 24 Clonskeagh Road, Dublin 6

RECRUITMENT

Galway solicitor's practice is seeking an experienced, energetic and ambitious solicitor to join its Galway practice with a view to speedy, if not immediate partnership. Business development skills and client relationship skills essential. Please send details and CVs in strictest confidence to O'Reilly Business Services, Parkmore Building, Creagh Road, Ballinasloe, Co Galway or email: info@orbs.ie, marked 'SSP'.

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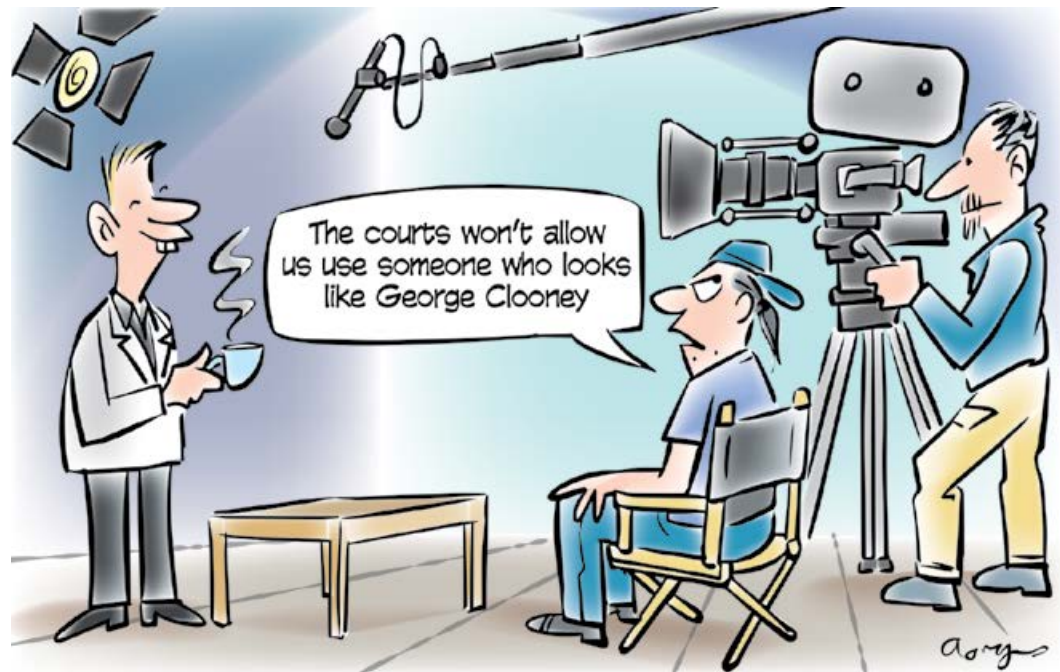
It's very 'moreish', apparently

More than 30 restaurants across China have been found illegally using opium poppies as a seasoning, the [China Daily](#) reports. Five are being prosecuted, while 30 are under investigation, according to the China Food and Drug Administration.

One of the businesses affected by the latest crackdown is reported to be the popular Huda Restaurant chain in Beijing. General manager Hu Ling confirmed the company was under investigation and said it may have unwittingly bought seasoning contaminated with opiates. She declined to comment further.

Local authorities are being urged to help investigators find the sources of the poppies. Poppy powder contains low amounts of opiates and is banned as a food additive in China.

In 2012, seven restaurants in Ningxia province were closed for using opium poppies, while in 2004, in Guizhou province, 215 establishments were shut down for similar offences.



George Clooney – what else?

Nestlé is suing an Israeli coffee company for using an actor who bears a striking resemblance to George Clooney – ‘the face of Nespresso’ – in an advert, writes [The Independent](#).

A disclaimer during the Israeli Espresso club ad warns that the silver-haired actor “is not George Clooney”, but Nespresso Israel said the step was being taken to “prevent customers being misled”.

“This is a flagship case for Nestlé and so they will fight us to the end,” Oren Tal (Espresso Club CEO) told local media. “I think the discussion on using doubles will reach all the way to the High Court, but their claims don’t make sense, so that’s why I think we’ll win. There is a whole genre in advertising of ads that relate to and make fun of their competitors.”

SAA it ain't so

South African Airways (SAA) has blacklisted an unnamed passenger from its flights amid reports that gangs of thieves are stealing items from passenger luggage during flights from South Africa to Hong Kong.

SAA passenger Warren Becker told local media that jewellery and \$1,800 (€1,600) in cash was stolen from his bag while he slept on a flight from Johannesburg to Hong Kong in December. A fellow passenger alerted Mr Becker after seeing alleged thieves remove his luggage from the overhead bin and rifle through it, [Traveller24](#) website reports.

The airline responded by saying that it suspected that a crime syndicate was targeting the route. It added that three similar thefts had occurred in as many weeks the same month.

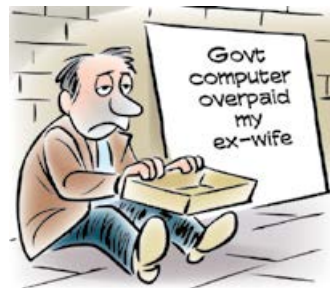
While the airline announced that it had blacklisted a passenger, the name and nationality of that passenger was not revealed and the individual has not been charged. Police boarded the plane and carried out searches on several suspects on landing in Hong Kong, but none of the money was recovered, leading to suspicions that an accomplice had been involved.

MoJ gets its online mojo working

The financial assets of more than 3,600 British couples were miscalculated in divorce and separation proceedings due to a faulty Ministry of Justice website, [The Guardian](#) reports.

The extent of the errors caused by the online self-assessment form was acknowledged in a [written parliamentary statement](#) by justice minister Shailesh Vara, who has apologised. The upshot is that some litigants may have to reopen and renegotiate completed divorce settlements.

The faulty software – miscalculating assets since at least



April 2014 – was spotted by family law specialist Nicola Matheson-Durrant ([Family Law Clinic](#) in Berkshire). Form E on the MoJ website had failed to record liabilities or debts as minus figures,

thereby falsely inflating the wealth of parties who recorded their possessions.

HM Courts and Tribunals Service (HMCTS) staff have now reviewed all cases and found that 3,638 files – or 10% – contained the faulty calculator version of Form E.

Of those cases, 1,403 divorces and separations were still being negotiated, Vara added, “allowing HMCTS to intervene immediately to clearly flag these cases to the courts in order to avoid the error affecting the final orders in these cases”.



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Dillon Eustace is one of Ireland's leading law firms focussing on financial services, banking and capital markets, corporate, M&A, litigation, real estate and tax. With offices in Dublin, the Cayman Islands, New York and Tokyo we are continuing to grow our business both domestically and internationally.

To support significant expansion across our key practice areas we are looking for highly motivated ambitious people, with relevant experience, to fill the following roles:

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- **Banking & Structured Finance Solicitors**
- **Professional Support Lawyer (PSL) for Financial Services/Funds**
- **Company Secretaries with funds/insurers experience**

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Our client, a leading provider of Financial Services is currently seeking a Pensions Lawyer to cover a maternity leave (possible view to permanent), to support the development of its legal department as a result of the continued expansion of their business. Our client provides corporate services to major financial institutions around the world. This role is open to Solicitors with a background in Financial Services and Insurance as well as Pensions.

PROPERTY LAWYER

Our client is seeking to hire into their Tier One property department. Work will include the acquisition and disposal of all types of interests in real estate; commercial leases; secured lending and property investment; advising liquidators, receivers, examiners; NAMA work; planning disputes; property litigation.

FUNDS LAWYERS

Our client, a Leading Commercial Firm in Dublin is currently looking to add experienced Funds Solicitors to join their firm up to associate level. These additional hires are due to growth within the firm. Excellent terms and career progression for suitable candidates.

COMMERCIAL LITIGATION LAWYER (JUNIOR)

One of Ireland's leading Commercial Law Firms, is currently looking to recruit a Commercial Litigation Lawyer to join their market leading team. The role will include advising Irish and international corporate groups on a wide range of commercial matters, concentrating in the subjects of financial services litigation, shareholder disputes, professional negligence claims, competition and regulatory disputes.

CORPORATE PARTNER

If you are currently at equity, fixed equity or salaried partnership level but want to explore lateral options with improved remuneration potential or, if you are a dynamic, impressive senior associate looking for a more swift progression to partnership then we have an exceptional opportunity to discuss. Will be expected to advise on all aspects of commercial law including: M&A's, private equity, joint ventures, venture capital, corporate restructuring, and corporate finance transactions.

COMMERCIAL BANKING LAWYERS

We are currently looking for Commercial Banking Solicitors with the ability to perfect securities over unencumbered assets and a quick thinking know-how in bank lending and security. Exposure to loan documentation, drafting transactions, reviewing documentation, workout agreements, litigation, and strong transactional work desired.

CORPORATE NQ LAWYERS

A Top-Tier Firm are currently looking for NQ Solicitors to join their leading corporate department. Must have trained in a commercial firm and have gained experience within M&A, corporate restructuring and joint ventures. Strong corporate transactional experience and business acumen essential.

COMPANY SECRETARY (JUNIOR – MANAGER LEVEL)

We have a number of Company Secretarial positions available in both In-House and Private Practice firms looking for experience in either General Corporate Governance and Funds. These roles vary from Part Qualified Comp-Sec's with experience, up to managerial level. Excellent terms and benefits available.

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IN-HOUSE

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Pharmaceutical / Dublin
Ref: 905099

Senior Legal Counsel
€90,000 - €100,000
Funds / Dublin
Ref: 904739

Commercial Contracts Lawyer
€65,000 - €85,000
Pharmaceutical / Dublin
Ref: 905054

Pensions Solicitor
€60,000 - €70,000
Insurance / Dublin
Ref: 904910

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SENIOR LEGAL DIRECTOR

€100,000 - €150,000 / Pharmaceutical / Dublin

Our client, a pharmaceutical company is seeking to recruit a Senior Legal Director. Reporting directly to the Head of Legal, this appointment will be a key business partner to the Senior Commercial and Operations Management team, drafting and negotiating commercial contracts for corporate clients. They will support strategic growth initiatives for the EMEA and US team. This is a client-facing position which demands the Senior Counsel, Legal Director to establish effective relationships with internal and external clients and business partners. Successful applicants must have 6-8 years' proven record in such a role within practice and /or pharmaceutical, telco or technology.

Ref: 905099

SENIOR LEGAL COUNSEL

€90,000 - €100,000 / Alternative Investment Fund / Dublin

Our client, an alternative investment firm is seeking to recruit a Senior Funds Legal Counsel to join its team. The investor base of the firm's funds include pension funds, foundations, endowments, major private banks, multi-family offices and charities, across Europe, the U.S. and Asia with \$2.8 billion in cash assets. The position will have one direct report and will support and report directly to the General Counsel. The ideal candidate will have financial services sector experience with a good mix of funds, regulatory and compliance and general company/commercial experience.

Ref: 904739

COMMERCIAL CONTRACTS LAWYER

€65,000 - €85,000 / Pharmaceutical / Dublin

Our client, a pharmaceutical research company is seeking to recruit a Commercial Contracts Lawyer for its expanding Irish operation. The role will sit within the Legal and Risk team. This position is primarily responsible and accountable for the drafting and negotiation of commercial contracts with clients and business partners and ensuring that all contracting processes are followed. This is a client-facing position and the ideal candidate will be expected to establish productive relationships with internal and external clients and business partners.

Ref: 905054

PRACTICE

Funds Solicitor
€70,000 - €110,000
Top Tier and Top 10 / Dublin
Ref: 902372

Corporate Solicitor
€60,000 - €110,000
Top Tier and Top 10 / Dublin
Ref: 904517

Projects / Property Solicitor
€50,000 - €70,000
Top 10 / Dublin
Ref: 904050

Commercial Litigation Senior Associate
€80,000 - €100,000
Top Tier and Top 10 / Dublin
Ref: 905313

Commercial Property Solicitor
€70,000 - €100,000
Top Tier / Dublin
Ref: 903283

Private Client Solicitor
€60,000 - €80,000
Top Tier / Dublin
Ref: 902506

Personal Injuries Senior Associate
€80,000 - €90,000
Top 10 / Munster
Ref: 904526

Litigation Professional Support Lawyer
€65,000 - €80,000
Top Tier / Dublin
Ref: 904268

Structured Finance Solicitor
€70,000 - €80,000
Top Tier and Top 10 / Dublin
Ref: 901737

EU & Competition Solicitor
€70,000 - €90,000
Top Tier / Dublin
Ref: 903886

Commercial Litigation Solicitor
€60,000 - €90,000
Top Tier and Top 10 / Dublin
Ref: 905074

Corporate Professional Support Lawyer
€80,000 - €100,000
Top Tier / Dublin
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Our clients, leading tier one funds groups are seeking to recruit experienced Asset Management & Investment Funds Solicitors to their teams. The roles will involve working on a number of Irish domiciled funds. The ideal candidates will have exposure to UCITS, ETFs, Alternative UCITS and AIFs. The roles will involve working closely with other departments including taxation, capital markets, banking and regulatory and compliance.

Ref: 902372

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€80,000 - €90,000 / Top 10 / Munster

Our client, a top commercial law firm is seeking to recruit a Senior Personal Injuries Solicitor to join its Litigation and Dispute Resolution group. The role will involve managing a large volume of personal Injury litigation matters, acting on behalf of both insured and self-insured bodies in Circuit Court and High Court disputes and managing claims for injuries made against employers. The ideal candidate will have experience in leading or being part of a team in complex personal injury disputes, hands on experience of Circuit Court and High Court litigation processes

Ref: 904526

COMMERCIAL LITIGATION SOLICITOR

Dublin / Top Tier / €70,000 - €90,000

Our client, a Top Tier firm is seeking to recruit a Solicitor to join its market leading Commercial Litigation group with a focus on complex insurance defence disputes. The successful individual will work alongside highly rated legal professionals within a collaborative and dynamic commercial litigation group, providing sophisticated legal advice to financial institutions and corporate clients. They will be acting on behalf of large insurers and financial institutions in front of the Commercial Court and through ADR.

Ref: 905313

Should you require further information about any of these roles, please contact Michael Minogue, Senior Consultant, in strictest confidence on 01 6621000 or email m.minogue@brightwater.ie

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CORPORATE M&A LAWYERS

At the beginning of 2016 the Irish M&A landscape is in a very healthy position. Ireland's reputation for a cost competitive, stable and business friendly environment with a highly skilled workforce continues to drive significant overseas investment into Ireland. Irish M&A deal value for 2015 climbed to €312 billion, which accounted for over 20% of the total value of European M&A for last year.

Unsurprisingly, over 90% of the deal value in 2015 came from the pharmaceutical and medtech sectors in addition to which there were also a number of high profile loan portfolio sales and onward sales of former distressed assets. The scale of this activity in the market is fuelling intense competition amongst corporate law firms in Ireland for the top M&A talent, from newly qualified solicitor level up to equity partner level.

In tandem with the increased competition amongst Ireland's commercial law firms for the top M&A talent, candidate confidence in moving laterally has also increased. As a corporate lawyer however, considering a lateral move can be a daunting experience. The need for absolute confidentiality, an incomplete insight into the pros and cons of competitor firms and uncertainty as to how to take the first step can hamper lawyers in embarking on a career move.

As one of Ireland's leading legal recruitment firms for more than 20 years, our wide ranging experience ensures that we provide candidates with pragmatic, discreet and informed advice. In 2015, we acted successfully for 6 of the 7 largest law firms in Ireland. We also work with the leading mid-tier, international and boutique law firms in Dublin and Cork. We are currently recruiting corporate lawyers at Newly Qualified, Associate, Salaried and Equity Partner level for law firms in Dublin and Cork in the Big 6, Top 20 and international arena.

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