



All down the line

The Protected Disclosures Act protects all those 'pesky' whistleblowers



Moving in-house

Top ten tips for those considering a career as in-house counsel



Private investigations

ECHR finds inspection of lawyer's bank account breached professional confidentiality

gazette

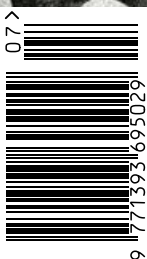
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TITLE FIGHT

Common areas in multi-unit developments



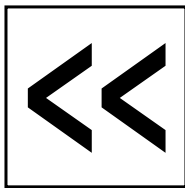
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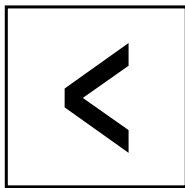
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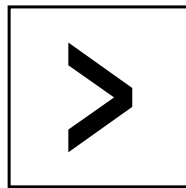
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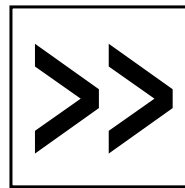
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Does your client have a claim eligible for ASR Hip ADR?

The ADR Process gives claimants a neutral non-binding evaluation of eligible claims

How it works

To apply, submit a completed Form B to McCann FitzGerald solicitors. Form Bs are available from McCann FitzGerald and from www.hipadr.ie. On receipt of Form B McCann FitzGerald may ask for additional information or documents, such as necessary medical records or details of any special damages claimed. If the claimant's case is eligible, Form B will be endorsed and returned to the claimant's solicitor. Both parties prepare written submissions which are submitted to an independent Evaluator who issues a written evaluation stating the amount of any damages assessed. The parties have 45 days to accept or reject the evaluation.

- Claimants in the ADR Process do not have to prove liability; only causation and quantum are relevant
- There is no fee to submit a claim to the ADR Process
- If necessary, McCann FitzGerald will collect the claimant's medical records where written authorisation has been provided
- Evaluators are senior counsel or retired Superior Court judges
- A €25,000 payment in respect of the claimant's legal costs, outlay and VAT will be paid within 28 days of settlement of claims within the ADR Process. This is without prejudice to a claimant's right in the circumstances of a case to seek higher costs and outlay through negotiation or taxation

Eligible claims

Claimants may avail of the ADR Process if:

- Proceedings have issued
- The index surgery of the ASR product took place in Ireland
- Revision surgery took place in Ireland not earlier than 180 days and not later than 10 years after the index surgery
- Injuries Board authorisation has been obtained
- The claim is not statute barred
- Revision surgery was not exclusively due to dislocation; trauma; infection; fracture of the femoral head; or any issue related to the femoral stem

For further information, or to discuss settlement of any eligible claim, please contact McCann FitzGerald (DFH/RJB) on 01 829 0000 or email hipadr@mccannfitzgerald.com



FIGHTING THE GOOD FIGHT

When I was first elected to the Law Society Council in the last century (how old does that make me feel!), I was regularly asked why I wanted to do it. The trite answer I always gave was that I wanted to make a difference. I haven't always achieved that, but there have been occasions when I think we can look back with pride on fighting for what was just. Two such occasions occurred over the last two years, and culminated in separate Supreme Court decisions in the last six weeks.

The Setanta saga was the most high profile, and we certainly could not say the issues weren't fully aired. Although both the High Court and the Court of Appeal, with a combined margin of 4-0, found in favour of the Law Society's case that the Motor Insurers' Bureau of Ireland (MIBI) – and not the Insurance Compensation Fund (ICF) – be responsible for the Setanta claims, this was overturned by a 5-2 margin in the Supreme Court. The upshot was a finding that the ICF would pay 65% of all such claims, as opposed to the 100% that would have resulted from an MIBI liability.

No voice

The details and rationale behind the decision have been well ventilated elsewhere, but it's important to take stock of the reasons behind the case. We were asked by the then President of the High Court to represent the interests of the claimants. Having been advised that we had a strong case, we felt it was the right thing to do. Victims of injury have no voice in this country unless the legal profession is providing it. The insurance industry scandalously used the entire debacle to excuse their egregious increase in premiums. Now that they no longer have this excuse, they will have to dip into their lucky bag for the next one. It won't be long in coming.

The injustice was well set out by the judgment of Mr Justice O'Donnell, who pointed

out the inequity and constitutional wrong that has been caused by the inexplicable 65% cap on the ICF. The Setanta claimants will be the only road-traffic victims in history to receive less than 100% of their compensation, as the Government is committed to changing this limitation for future cases. I have written in the strongest terms to the Minister for Finance to ask him to correct this fundamental injustice.


Watershed costs decision

Better news followed our decision to join as *amicus curiae* in the *Sheehan* case. After a Court of Appeal decision that completely altered the way in which costs were to be taxed, the Law Society Council took the decision that it needed to be a party to the most important decision on legal costs in the history of the State.



“THE INSURANCE INDUSTRY SCANDALOUSLY USED THE ENTIRE DEBACLE TO EXCUSE THEIR EGREGIOUS INCREASE IN PREMIUMS

The result was an affirmation of our submission that time should only be one factor in the determination of the instruction fee, and the other factors in Order 99 should be considered just as important, depending on the nature of the case. If you have any interest in the subject, please read the decision of Laffoy J, her last before her retirement on 16 June.

When I collected my parchment in 1995, then Law Society President Andy Smyth urged us to “fight the good fight”. I was sceptical of that advice then. I've never been surer of its wisdom now. 


STUART GILHOOLY,
PRESIDENT



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Having worked as an in-house lawyer for nearly half of his career, Richard O'Sullivan shares his hard-won experience with those considering moving in-house

gazette

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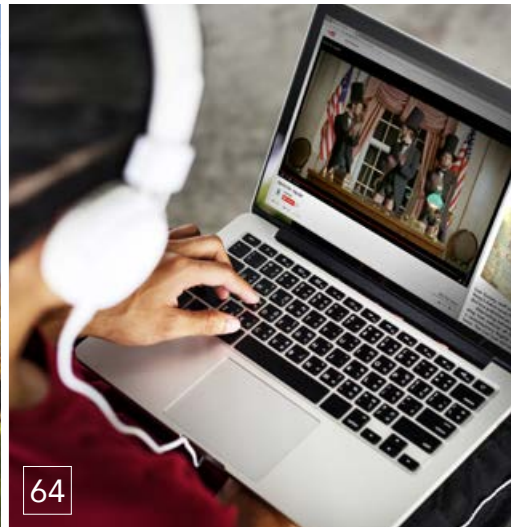


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 - Employment opportunities
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 - ... as well as lots of other useful information

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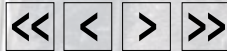
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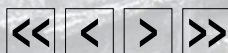


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THE BIG PICTURE





AN AVOIDABLE ATROCITY?

Lawyers are offering free assistance to survivors of the Grenfell Tower catastrophe. Fire tore through the 27-storey London apartment building on 14 June. At the time of publication, at least 80 people were confirmed dead. It is alleged that residents tried to obtain legal advice over safety concerns, but were prevented from doing so due to cuts to legal aid. In 2013, the British government introduced a series of changes to civil legal aid, meaning that certain types of cases were no longer eligible. The cuts were strongly opposed by lawyers and their representative associations.



COMPILED BY KEITH WALSH, PRINCIPAL OF KEITH WALSH SOLICITORS

LOUTH

DROGHEDA CELEBRATES INDEPENDENCE DAY

Colm Berkery (president of the Drogheda Solicitors' Bar Association) informs 'Nationwide' that the long-awaited courthouse in Drogheda has opened. Cases were listed from 7 July 2017, with the official opening taking place on 10 July. The last sitting of Drogheda's court at its temporary venue took place on 4 July, marking Independence Day for all Louth solicitors who have been waiting for over 30 years for a new permanent courthouse.

The building comprises two courtrooms, custody facilities,



three consultation rooms, a legal practitioners' suite, a high-security interview room, and accommodation for judges and staff.

The courthouse will be access-controlled – certain parts will be restricted to judges, legal practitioners and staff. Access to the legal practitioners' suite will be restricted to solicitors and barristers by means of a swipe card (the Four Courts' swipe card will not grant entry in Drogheda). Application forms can be obtained from Dundalk Court office or by emailing dundalkcourtoffice@courts.ie.

The new swipe card will, however, provide access to the legal practitioners' suites at the new courthouses currently under construction in Cork, Limerick, Waterford, Wexford, Mullingar and Letterkenny. In due course, access cards issued for any of the new courthouses will provide entry to the Four Courts and the CCJ.

CLARE

THE NEVER-ENDING TRIAL

For two days last August, Ennis Courthouse was transformed into the Courts of Justice in London in 1916 – the venue for the trial of Sir Roger Casement – as part of the centenary commemoration of the people and events of the Easter Rising at Fleadh Cheoil na hÉireann, writes Rory Casey (John Casey & Company, Ennis).

The dramatisation of *Rex v Casement*, featuring the award-winning Ennis Players and members drawn from Cloughleigh Comhaltas Branch, the Corofin Players, and Ennis Musical Society – in the historic surroundings of Ennis Courthouse – proved extremely popular with audiences at the fleadh.

Judge Tom O'Donnell, Eamon Galligan SC, and local practitioners Niall Casey and Niall McDonagh took to their acting roles with considerable aplomb. Special thanks are due to Anne Walsh, whose courtroom and acting experience proved invaluable resources for the event.



The cast of *Rex v Casement*, including Niall Casey as Mr Justice Avory (front left), Eamon Galligan SC as Mr Justice Horridge (front right) and Niall McDonagh as the court clerk (back left)

The support lent by Darragh Hassett (then president of County Clare Law Association) and association members, as well as the local bar, reflected well on the legal profession and was much appreciated by the Fleadh Executive Committee.

The dramatisation could not have taken place but for the co-operation of the Courts Service, and a particular debt of gratitude is owed to Brendan McDonald (Western regional manager),

Josephine Tone (head of office), and the entire courthouse staff. Indeed, during the fleadh, the historic building played host to a series of exhibitions and talks on history, traditional music, and the Irish language.

The fleadh returns to Ennis from 13-21 August 2017 and it is hoped that Ennis Courthouse will, again, host a similar programme of events.

Deirtear gur fearr cara sa chúirt ná punt sa spárán.

CORK

CORK SOLICITORS GO DUTCH

John Fuller (chair of the social committee of the Southern Law Association) has announced Amsterdam as the proposed location for the SLA's 'away conference' this year. The annual trip is always well supported. The flight departs Cork Airport on Friday morning 22 September, returning on the afternoon of Sunday 24 September. All are welcome, but younger members in particular are being encouraged to travel. For further details, contact John at jfuller@jwod.ie.



IMMIGRATION SEMINAR A MAJOR DRAW

The recent worldwide trend towards more restrictive boarder and immigration policies has resulted in both domestic and international clients starting to plan for these eventualities, *writes Ross McMahon*. Clients are concerned about the potential implications of the upcoming Brexit negotiations.

The issues they will face in the event of any restrictions on the free movement of their workers within the EU and Britain are now starting to be teased out. The need for professional assistance to equip themselves in dealing with these potential issues is becoming clear.

Lawyers attending the ‘Practitioner’s guide to immigration and investor visa schemes’ seminar at Blackhall Place on 9 June learned that this is a



growing practice area, where those with the required skills can add substantial value to their client’s applications, by avoiding unnecessary and costly delays and rejections.

Attending the seminar were Rachael Hession (Law Society Professional Training), Ross McMahon (David F McMahon & Co, solicitors), Lindsay Tester (PwC), Morgan McKnight (Department of Justice), Peter Lennox (Enterprise Ireland), Conor Stokes (Department of Jobs, Enterprise and Innovation), Gerard O’Regan (INIS), David Conlan Smyth SC and Eva Massa (Law Society). The event was organised by the EU and International Affairs Committee in partnership with Law Society Professional Training

growing practice area, where those with the required skills can add substantial value to their client’s applications, by avoiding unnecessary and costly delays and rejections.

CREAM OF THE CROP



The Lawyer European 100 has named William Fry as the ‘Most diverse law firm in Ireland’ – and fifth most diverse in Europe.

The 2017 edition of the awards analyses financial data and headcount to compile the findings.

Meanwhile, Carol Plunkett, a litigation and dispute resolution partner at William Fry, has been named ‘Best in litigation’ for the second year running at the Euro-money Women in Business Law Awards in London on 15 June.

Nora Lillis was announced as ‘Irish private client lawyer of the year’ at the Client Choice Awards.

IT’S SHAVE OR DYE FOR ‘LEMEATH’ CHARITY CHALLENGE

The annual Leman challenge takes place this year through Co Meath on Saturday 8 July 2017. Two teams from Leman Solicitors will race their way through Meath in aid of three charities: [Pieta House](#) (primary charity), [Irish Autism Action](#) and [Irish Guide Dogs for the Blind](#).

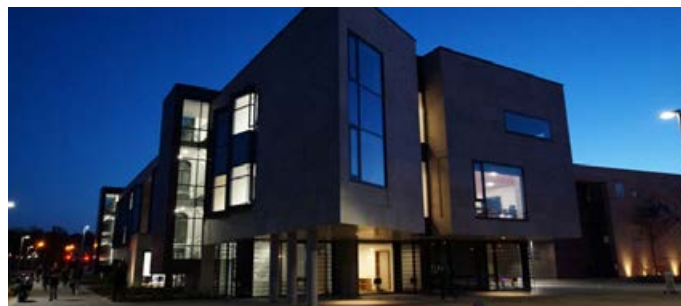
The ‘LeMeath Challenge’ will involve ten different team challenges, including a swim, paddle board, cycle and run. The 100k event will start in Bettystown and finish in Trim. Video evidence of completion of all stages will be required.

The donation target is €35,000. In order to ensure that donors get their money’s worth, the forfeit for the losing cap-

tains (Sarah Keenan and Maria Edgeworth) will be to shave or dye their hair.

You can make a donation by visiting www.justgiving.com (search for ‘LeMeath’).

IRISH/BRITISH LAW IN THE SPOTLIGHT



The special relationship between Irish law and British law will be in the spotlight at a conference at UCD Sutherland School of

Law this September.

The Irish Society of Comparative Law is hosting a joint seminar with the British Asso-

ciation of Comparative Law on 5 September.

Topics range from land-law ideologies and the British/Irish question, to legislation on languages and reform of consumer-rights in both jurisdictions.

Leading British and Irish academics will deliver talks throughout the day.

The event is free, and all interested parties are welcome. Secure your place by emailing c.richards@uea.ac.uk.



ENHANCING THE ONLINE EXPERIENCE

The Law Society's Diploma Centre was invited to showcase its online Certificate in Data Protection course at the Edtech 2017 conference at Sligo IT on 1-2 June.

Steve Collender and Claire O'Mahony presented 'Going online – the challenges of enhancing the online learner experience in professional legal education'.

Representatives from third-level and professional learning institutions were brought through the technologically innovative aspects of this blended-learning course. It has been proving popular, due largely to the forthcoming *General Data Protection Regulation*, which



Steve Collender and Claire O'Mahony (Diploma Centre) presenting at the Edtech 2017 conference

will affect most businesses in Europe. Among the innovative, distance-learning features of the course are:

- An upgraded version of Moodle called 'The Diploma HUB',
- Mobile-optimised materials that make navigation easier

- on mobile devices,
- Interactive online learning activities,
- Interactive online workshops with tutors,
- Online assessments,
- Online knowledge sharing between participants, and
- Enhanced visual presentations.

The Diploma Centre has been using an online learning platform since 2004. All lectures are web-cast so students can watch online or view later on playback.

The next Certificate in Data Protection course takes place in October 2017. To find out more, visit www.lawsociety.ie/diplomacentre.

GEARING UP FOR THE GDPR

PIC: CIAN REDMOND



Over 200 solicitors attended the data protection seminar 'GDPR – An Introduction', at Blackhall Place on 9 June. The organisers and speakers included Seamus Carroll (Department of Justice), Katherine Kane (Law Society Professional Training), Elaine Morrissey (McDowell Purcell), Peter Bolger (LK Shields), Ann Henry (Philip Lee Solicitors) and Paul Lavery (McCann FitzGerald). The event was organised by the Law Society's IP and Data Protection Committee in partnership with Law Society Professional Training and was followed by a networking reception

ASSIGN ME UP!



Ireland's newest specialist legal recruitment company, Assign Legal Recruitment Ltd, has launched in Dublin to meet the growing recruitment needs of the legal profession in Ireland and Britain. It aims to serve expanding Irish legal firms and Irish businesses that require in-house counsel and will assist British legal firms looking to open new offices in Dublin. For further details, visit www.assign.ie, or email info@assign.ie, consultants@assign.ie, or tel: 01 910 6921 or 910 6927.



FULL CIRCLE TOWARDS A BRAVE NEW WORLD

The revolution has begun – but the Dear Respected Comrade and Supreme Leader of the Glorious Democratic People's Republic of Korea (or Donald Trump for that matter) needn't worry.

The first phase of 'System 360' – the Law Society's new information technology system – went live in June. The new system is the technological backbone that handles membership, education management, engagement with solicitors, trainees and all who use our services.

Casting their minds back to the 2015 AGM, practitioners will remember that capital investment approval was given for the new IT system in order to replace a 20-year-old, outdated, and creaking network (see 'Children of the revolution', *Gazette*, October 2015, p24).

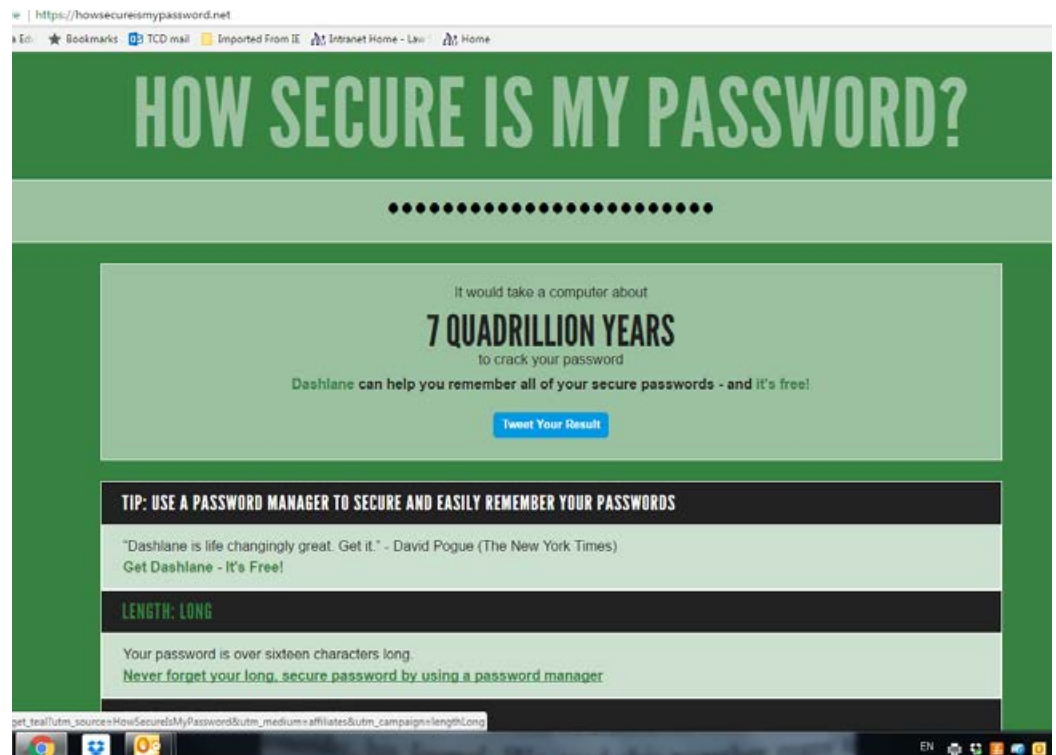
Work began immediately on the project in December 2015. A significant amount of work went into the first phase. And while there was no Ryanair-type fanfare for successfully landing phase 1 on time, this project milestone now provides the building blocks for subsequent phases.

Protection from cyberattack

The most visible change for Law Society members and staff has been the requirement to reset passwords in order to gain access to secure areas of lawsociety.ie, including the solicitors' area and online purchases.

This password reset was essential, given the new software's requirement for (at minimum) ten-character passwords. It also helps to ensure that the system is protected from potential cyberattacks.

Independent security experts confirm that, the longer



the password, the less susceptible it is to brute-force attacks. The password is at significantly less risk of being compromised for ransomware threats – recently highlighted by the 'WannaCry' attacks in mid May.

Members can check the strength of their passwords at <https://howsecureismypassword.net>. It's interesting to note how strong a password becomes if a full stop is placed at the start, in the middle, or at the end of it.

Word of warning

A word of warning – before you reset your password and log in with your new password, you will need to clear your cookies and cache. You can do this by linking to www.wikihow.com/Clear-Cache-and-Cookies. If you need help, contact webmaster@lawsociety.ie or call 01 672 4800 and ask for any member of the web team.

A significant advantage of

System 360 is its 'one-and-done' feature, which applies to all firm and solicitor records held by the Law Society. Practitioners will be able to make or request changes to contact details, work and home addresses, and educational records – and will only need to do this once.

Solicitors can now find their extended profile in the 'My dashboard' area of lawsociety.ie. Once logged in, you can access more information than ever before, such as practising and membership status, qualifications, employment/branch history, and jurisdictions. You can view and add email and postal addresses, and set preferences for which email or postal address to use for different communications.

Some changes made online will be reflected immediately across all records held by the Law Society, such as email addresses. Others, such as change-of-firm or position details, can be

submitted online and their status monitored in the 'dashboard' area.

Other features

Other System 360 member-service developments coming down the tracks include:

- Practising certificate (PC) processing,
- Submission of accountants' reports,
- Access to CPD records,
- The ability of firms to deal with PC renewals in bulk and track trainee and CPD compliance, and
- Members' ability to upload profile photographs to display on their dashboard. In due course, these will feature in the online 'find a solicitor' section.

Updates will be provided as soon as these and other services become available in the coming months.



DATA PROTECTION OPENS DOORS FOR LAWYERS

The advent of the *General Data Protection Regulation* (GDPR) in May 2018 will bring huge changes in its wake, writes *Mary Hallissey*.

A staggering 66% of firms are unaware of their commitments under GDPR, but experts at the Data Summit in Dublin on 15 and 16 June warned against the perception that it's "too early to worry", given the implications of this far-reaching legislation.

Enactment of the GDPR will immediately trigger compliance issues for every organisation holding data – essentially every



Kelleher: discouraged the outsourcing of the role of data protection officer

business operating in the country.

The most straightforward method of compliance is to immediately appoint a data protection officer (DPO). It's estimated that the legislation will create roles for 28,000 DPOs in Europe by 2018.

Those appointed as DPOs will need a very broad skillset with a significant legal component. Their tasks are exacting and extend to data privacy, data security, risk assessment, data processing and a deep awareness of technology, the Data Summit was told.

Denis Kelleher (senior legal counsel at the Central Bank of Ireland) told the Data Summit that this broad skillset is difficult to find in any one individual. Being a good relationship-builder is a key requirement for the role, as it requires getting things done internally and externally. He advised businesses to think long and hard about outsourcing this strategic function.

"It's like giving the keys of your car to an outsider," he commented, given the DPO's core activity of regular systemic monitoring of special categories of data. An outsourced DPO has access to information about exactly how a business works.

Outsourcing also throws up the question of how to manage external liabilities. And from a financial perspective, Alan Curley (privacy compliance manager at Janssen Pharmaceutical) pointed out that a third party was likely to cost more than recruiting an in-house DPO.

There will be a significant obligation on the public sector, which handles vast amounts of sensitive data, to employ DPOs – though the role may well be a centralised function across various departments.

While DPO professionals are regarded as independent, who will resolve disputes if they fail to do their jobs properly? If an organisation inadvertently appoints an incompetent DPO, where do they go for redress, especially given the calamitous effects on business reputation of data breaches?

The new legislation will also place a significant onus on the 19,500 registered charities in Ireland to protect sensitive personal data on vulnerable clients, but it is unclear where the funding will come from to pay for these new requirements.

WRC OPENS FIRST REGIONAL OFFICE

The Workplace Relations Commission (WRC) has opened its first new regional office, in Sligo, and plans to roll out more across the country. The Sligo Regional Services Office of the WRC was opened by Joe McHugh (Minister for Gaeltacht Affairs and the Islands) on 19 June.

"It represents the first step in the WRC extending its full range of services across all of its regional offices to ensure that the same services provided in Dublin are available across the country," the minister said.

Similar WRC regional offices are set to open in Shannon, Cork



and Carlow. The WRC is also expanding the number of its hearing venues at various locations in Donegal, Mayo, Kerry, Monaghan and Kilkenny.

"From a rural Ireland perspective, it is important that complainants and respondents do not have to travel punishing distances to have cases heard,

and this development is good news for everyone concerned," Minister McHugh said.

Oonagh Buckley (director general of the WRC) added that the development was important, as "the WRC is anxious to ensure that its full range of services – conciliation, adjudication, mediation, and inspection – are available to clients in all our offices. This has not been the case to date, as the regional offices were essentially internal offices of the inspectorate staff of the National Employment Rights Authority, which is now part of the WRC."

'MICRO COMPANIES' GAIN LEGAL STATUS IN NEW ACT

The brand new *Companies (Accounting) Act 2017*, which came into effect on 9 June, is set to significantly modernise Irish law on corporate transparency.

The act increases reporting requirements for those in extractive industries (for example, oil,

gas, zinc and lead) and also obliges some unlimited companies, funds and investment companies to file public financial statements.

The act introduces a new category of company – the 'micro company' – and greatly reduces the financial reporting obligations

on these very small companies.

It also increases the thresholds for the 'small company' category – more companies will qualify as 'small' in future and become eligible for cost-saving provisions, such as the audit exemption.



HEARD ABOUT THE SOLE GUARDIAN AFFIDAVIT?

The Passport Service has contacted the *Gazette*, asking us to inform solicitors about its requirement for a ‘sole guardian affidavit’ from a parent of a minor who claims to be the child’s sole guardian and who is applying for a passport on their behalf.

Due to the introduction of the *Children and Family Relationship’s Act 2015*, the Passport Service has updated the previous affidavit to take account of legislative changes.

Although the revised form has been available on the Passport Service website for a number of weeks, the service says that

parents and solicitors are continuing to use the older version.

Teresa McHugh (Corporate Support Unit at the Passport Office) says: “Given that solicitors may have printed down older versions and are unaware of the new one, we would be very grateful to the Law Society for any assistance in bringing this revised affidavit to the attention of its members.”

The affidavit must be completed in the presence of a person authorised by law to administer oaths, for example, a solicitor, notary public, or commissioner for oaths, and must be accompanied by:



- A passport application form (APS1) (where the applicant is resident in the State) or APS2 (where the applicant is resident abroad),

- The child’s original birth certification or adoption certificate (as appropriate), and
- His/her previous passport, or
- In the case of a first-time applicant, information on the documents required is available on the [Passport Service website](#) (search for ‘documentary requirements for passport applications’).

Parents and guardians should ensure that the back of their child’s birth certificate is signed and notarised as set out in the affidavit. For further information, visit www.dfa.ie/passport.

BEWARE FREE ONLINE SERVICES, SAYS DATA PROTECTION COMMISSIONER

Maintaining control of our digital identity is a fundamental issue for us as human beings, the data protection commissioner told the Data Summit at Dublin’s Convention Centre on 15 June, *writes Mary Hallissey*.

Helen Dixon noted a surprising difficulty among all types of public and private bodies in terms of the parameters they set in the collection and processing of private data. However, she said, the principles of data protection are based on simplicity and common sense, including:

- Obtain data fairly,



Dixon: ‘everyone needs to identify their sweet spot in the trade-off between data exchange for free online services’

- Use it only for stated purposes,
- Keep data safe, secure, and up to date,
- Maintain it for only as long as necessary, and
- Supply data kept on file to the relevant individual if requested to do so.

A panel discussion heard that, because tech-firm customers increasingly desire privacy, the companies will respond by giving them privacy. However, if you are availing of free online services, then bear in mind that you and your data are the product.

VETTING ASSISTANCE FOR YOUR DRAFT ADVERTS

Do you wish to advertise, but are unsure what’s permissible under the law? The Law Society can help.

It operates a vetting service for solicitors to submit their draft advertisements for review and comment prior to publication, to ensure that advertisements don’t contravene the [Solicitors Advertising Regulations](#).

To avail of this timely and efficient service, send your draft advertisement to advertising-regulations@lawsociety.ie.

Alternatively, you can call 01 879 8700 with any questions relating to solicitor advertising.

Further information, including practice notes and links to the regulations – are available at www.lawsociety.ie/solicitor-advertising.

12 STEPS TO PROTECT YOUR DIGITAL PRIVACY

- Pay in cash,
- Alter your driving route to confuse traffic cameras,
- Leave your phone at home,
- Use ‘DuckDuckGo’ when conducting internet searches (<https://duckduckgo.com>),
- Keep transactions below a certain threshold to avoid triggering notifications,
- Turn off location services,
- Put a sticker over your laptop/tablet camera,
- Refrain from posting identifying details online,
- Swap your shopping loyalty cards with your neighbours,
- Search for complete strangers on Facebook to confuse it,
- Enter random information on web forums,
- Avoid online surveys.



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The redrafting of the Companies Acts 1963–2012 ushered in significant changes to Irish company law and all company law practitioners and company law students in Ireland will need to be up to speed with the new Act's provisions. This new edition is updated to account for all changes, up to and including the **Companies (Accounting) Act 2017**.

The Companies Act 2014 has also been updated by a large number of statutory instruments and these changes have been incorporated into this new edition.

The **Companies Act 2014: 2017 Edition** is the *only* fully consolidated, single-volume, hard-copy edition of this Act.

Pub: **July 2017**
ISBN: **9781784514044**
Price: **€99**

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Paul A McDermott

A comprehensive account of Irish contract law and containing all of the developments since the first edition was published in 2001.

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Written by a practitioner who is also an academic, this book sets out the principles and case law in a clear and structured manner with easy to use headings.

Pub: **August 2017**
ISBN: **9781780432250**
Price: **€275**

CONTRACT LAW

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NEWS



ASYLUM WORKING BAN DEEMED UNCONSTITUTIONAL



The Supreme Court recently ruled in *NVH v Minister for Justice & Equality and ors* ([2017] IESC 35) on the right of asylum seekers to work in Ireland (see the *June Gazette*, p34, ‘Direct provision: home away from home?’)

In the recent landmark ruling, the court unanimously agreed that the absolute ban on asylum seekers working was “in principle” unconstitutional. However, it adjourned making any formal orders for six months to allow the legislature to consider how to address the situation.

The appellant was a Burmese man who had spent eight years in the Irish asylum system before being granted refugee status. In 2013, he had been offered work in his direct provision centre and had applied to the minister for permission to accept the offer. This was refused on the grounds that, in 2013, section 9(4) of the *Refugee Act 1996* (now section 16(3)(b) of the *International*

Protection Act 2015) precluded this.

Although at the time of the hearing, the appellant had attained his refugee status, the Supreme Court proceeded to hear and determine the appeal, as it involved a constitutional challenge and a point of law of general public importance. O’Donnell J’s analysis included consideration of the constitutional obligation to hold persons equal before the law, differentiating where that referred to “human persons” as opposed to non-citizens.

He observed that a point had been reached where it could not be said that “the legitimate differences between an asylum seeker and citizen can continue to justify the exclusion of an asylum seeker from the possibility of employment”.

It remains to be seen how the legislature will respond to the ruling, yet it nevertheless marks a significant moment in Irish legal history.

LEGAL AID EXTENDED TO MATERNAL DEATHS

The justice minister is to extend legal aid to a next-of-kin for inquests into maternal death. The changes will provide clarity and transparency for bereaved families. The *Coroners (Amendment) Bill 2017* ensures mandatory reporting and a post-mortem

examination, as well as an inquest in cases of maternal death. It extends the legal aid provisions in the *Courts and Civil Law (Miscellaneous Provisions) Act 2013*, to a family member of the deceased at maternal death inquests.

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CRACKDOWN ON MILEAGE TAMPERING

A Dublin car trader has been convicted of providing false information on a car's mileage. The trader was sentenced to six months (suspended) by Judge John Brennan in the Dublin District Court on 12 June following an investigation by the **Competition and Consumer Protection Commission (CCPC)**.

The trader was found guilty of providing false information in relation to a vehicle's previous history, which is an offence under the **Consumer Protection Act 2007**. The offence related to a false odometer reading. The sentence is in addition to the €5,000 compensation for the affected consumer following an application by the CCPC on behalf of the consumer.

Welcoming the sentence, Isolde Goggin (CCPC) said: "Misleading a consumer in the sale of a car is not only costly but, critically, it could be dangerous. If a consumer doesn't know what the true mileage of a car is, then they can't accurately judge the true condition or value of the car. Parts which should be in good working order might actually be at the point where they are about to fail."

She reiterated that giving false or misleading information about a car, or selling a defective vehicle, was breaking the law.

The CCPC has said it is targeting car traders who break the law with enforcement action. Unannounced garage inspections are underway countrywide as part of the crackdown.

JUDICIAL COUNCIL WILL ENFORCE ETHICAL STANDARDS

Upskilling for judges is to become mandatory under new legislation. A disciplinary process for complaints against judges is also in train.

Announcing the establishment of a Judicial Council on 1 June, Tánaiste Frances Fitzgerald said that the new body would promote and maintain excellence and high standards of conduct.

Publishing the *Judicial Council Bill 2017* and the *Judicial Appointments Commission Bill 2017*, she praised the judiciary as one of the "great successes of the Irish State".

The new Judicial Appointments Commission will have a "more substantial role and broader functions", according to the minister.

A Judicial Conduct Committee will consider complaints against judges and refer them either for informal resolution or for formal investigation. The committee will also prepare draft guidelines concerning judicial conduct and ethics.

Short of impeachment, which removes a judge from office, there is no mechanism available currently that allows for the investigation of complaints of a less serious nature. "This bill will provide that mechanism," the tánaiste said.

It will also provide for the establishment of a Judicial Studies Committee to facilitate the continuing education and training of judges.

THOMSON REUTERS
ROUND HALL



MORTGAGES: LAW AND PRACTICE
2nd Edition
Neil Maddox

The new edition of *Mortgages: Law and Practice* relevant to banking, family, company and financial services law specialists, provides an up-to-date reference guide for the law and practice of mortgage suits in Ireland, including all relevant case law and statutory and regulatory changes.

ISBN: 9780414061736 | Price: €245
Publication: September 2017



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David Browne and Patrick McGovern

Procurement Law in Ireland provides an overview of the principles of public procurement, thresholds and exclusions for public contracts, notification and procurement procedures, framework agreements and dynamic purchasing, and remedies and redress. It is an extensive evaluation of the substantive and procedural provisions applying to public procurement in this jurisdiction.

ISBN: 9780414050976 | Price: €350
Publication: September 2017

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ON THE ROAD AGAIN – THE SKILLNET CLUSTER ROADSHOW

PIC: ALAN PLACE PHOTOGRAPHY



Over 200 solicitors attended the Limerick Skillnet Cluster at The Strand Hotel, Limerick, on 16 June. Pictured with representatives from the Limerick and Clare bar associations are speakers and the Law Society Skillnet team: (front, l to r) Darach McCarthy (Darach McCarthy & Co, Solicitors), Rachael Hession (Law Society Skillnet), Stephanie Power (president, Limerick Bar Association), Attracta O'Regan (head, Law Society Skillnet) and James V Woods; (back, l to r) Anne Stephenson (Stephenson Solicitors), Marina Keane, Edel Ryan (both Clare Law Association), Margaret Walsh (Sheil Solicitors) and Carol Anne Coolican (Law Centre, Tralee). The next cluster event will be the essential general practice update on 7 September at Ballygarry House Hotel, Tralee, Co Kerry

SHANNON HONoured AT DSBA AWARDS



PIC: PAUL SHERWOOD PHOTOGRAPHY

Geoffrey Shannon (left) was presented with the Dublin Solicitors' Bar Association 'Award for Outstanding Contribution to Legal Scholarship 2017'. The award was in honour of "of his entire body of work to date" and was presented by President of the High Court Peter Kelly (right) and Áine Hynes (president, DSBA) at the Mid-summer Gala Dinner and Law Book Awards on 23 June. Geoffrey was congratulated by Brendan Twomey (centre, representing Law Society Skillnet, the award sponsor)

A DISH BEST SERVED COLD

Solicitors from Sligo and Mayo battled it out for the annual James P Gilvary Golf Trophy on 26 May at Enniscrone Golf Club in Co Sligo. The event was born

out of a discussion between the late Justice James P Gilvary and Leo Loftus (a Ballina solicitor) all of 30 years ago and has grown in popularity with each passing

year. Bill Cashell (retired Sligo District Court clerk) has been the chief organiser of this event since its inception.

Sligo retained the title, tak-

ing some revenge for their recent defeat at the hands of Mayo in the Gaelic championship. The trophy will be displayed in the Sligo court office for the coming year.



At the presentation ceremony were (front, l to r) Eamonn Gallagher, Dermot Neilan, Michael Monahan, Elaine Coghill, Paula Daly, Joe Morris (Courts Service Sligo), Anne Cawley (court office, Ballina), Siobhan Terry (Courts Service, Ballina) and Lynda Lenehan; (middle, l to r) Denis Molloy, Michael J Horan, Brendan Johnston, David Gilvary BL, Kevin Bourke, Mel Bourke, Eoin Armstrong, Peter Loftus, Joe Keyes, Declan Gallagher, Declan Hegarty, Fergal Kelly, Eamonn Creed, Sean McTiernan and Rory O'Connor; (back, l to r) Vincent Deane, Michael Keane, Pat Moran, Damien Higgins BL, Stanley Harte and Bill Cashell (retired District Court clerk)



IRELAND TAKES SILVER IN THE HAGUE

A Law Society team representing Ireland at the final of the Telders International Law Moot Court Competition in The Hague has taken second place in Europe, writes *Eva Massa*.

The Law Society beat the King's Inns in the national final on 22 March for the right to represent the country at the international final.

In The Hague, the team took top spot in the oral phase, with Wuraola Olatunbosun (Matheson) picking up two awards – one for 'best oral pleading for the respondent', and runner-up in the 'best speaker' category.

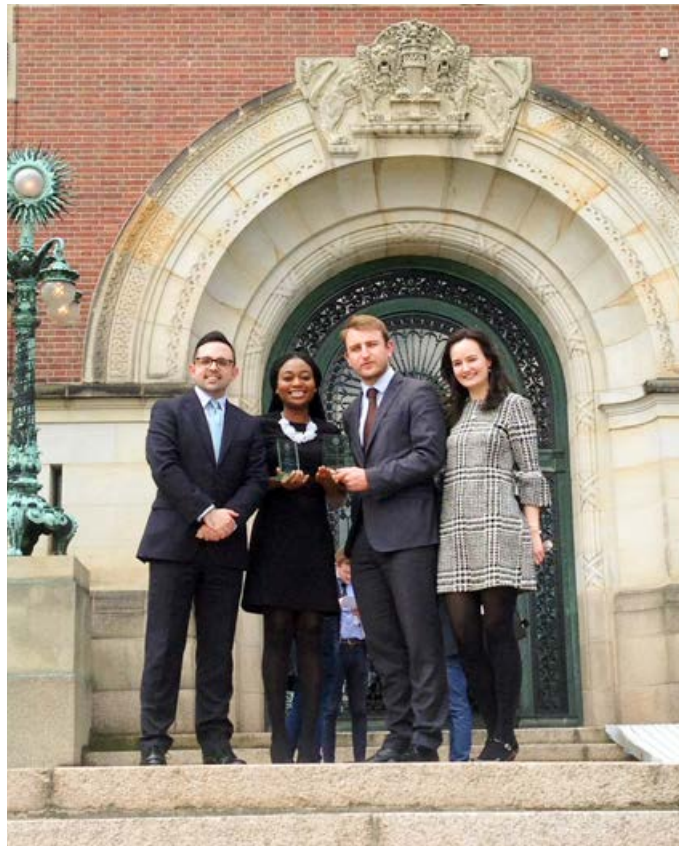
The prestigious moot court competition focuses on public international law, with international teams preparing cases that involve a dispute between two countries.

They must submit written memorials and plead their arguments before the International Court of Justice (ICJ).

This year's Telders' case involved issues of diplomatic immunity, inviolability of premises, sovereignty and breach of bilateral agreements.

In the lead-up to the competition, the Law Society team prepared arguments on behalf of the fictional 'Republic of Twiga' (applicant) and the 'Republic of Pundamilia' (respondent) – all of this was in addition to the trainees' normal course workload.

The winning team members were Glen Rogers (McCann FitzGerald), Faye Rowlands (A&L Goodbody), Gavin Anderson (Beauchamps) and Wuraola Olatunbosun (Matheson), while the team's coach was Eva Massa (Law Society).



BOYLAN SHINES AT DSBA LAW BOOK AWARDS



Michael Boylan (centre) was this year's winner of the DSBA 'Practical Law Book of the Year' award on 23 June. He was congratulated by President of the High Court Peter Kelly and Olive Doyle (ByrneWallace, sponsor)

TIME FOR A REFRESHER

The Midland Solicitors' Bar Association (MSBA) held an afternoon CPD session at the courthouse in Tullamore, Co Offaly, on 19 June.

Barrister Shane Geraghty updated members on recent developments in tort and criminal law. Tax consultant Cathal Lawlor delivered a capital tax-relief refresher, covering dwellinghouse relief, discretionary trusts, and tax compliance on estate administration, as well as VAT on property. Senior counsel Margaret Nerney spoke about trial conduct, and case-management rules.

CORK COURT BUILDING WORKS



Chief Justice Susan Denham paid a recent visit to Cork where she viewed the ongoing works at the redeveloped historic courthouse building at Anglesea Street.

The redeveloped Anglesea Street courthouse will boast six courtrooms, improved custody facilities, court offices, the regional office, and associated facilities. When completed, the total area of the courthouse will have expanded by 460%, bringing it to 8,400m².

PICTURE: PAUL SHERWOOD PHOTOGRAPHY



ROSCOMMON GATHERS AT THE ABBEY



PIC: MICHELLE GHEE PHOTOGRAPHY

The AGM of the Roscommon Bar Association was held on 13 June in the Abbey Hotel Roscommon. Law Society President Stuart Gilhooly and director general Ken Murphy attended as guests. Following the election of new officers, discussion ensued on the taxation of costs, the Setanta judgment, implications of Brexit, judicial appointments, cluster meetings and new section 150 notices. At the event were (front, l to r): Mary Frances Fahy (PRO), Jennifer Liddy Feehily, Tracey McDermott, Mary Rose McNally (CPD officer), Marie Conroy (outgoing treasurer), Ken Murphy, Stuart Gilhooly, Alan Gannon (incoming president), Gerard Gannon, Rebecca Finnerty and Bríd Miller; (back, l to r): Padraig Kelly, Seán Mahon (incoming vice-president), Dara Callaghan, Paul Wynne, Ivan Moran, Terry O'Keeffe, Dermot MacDermott, Christopher Callan, Conleth Harlow (outgoing president and incoming treasurer), and Sinead Neilan

A GRAND DAY OUT IN TRALEE



PIC: JOE HANLEY

Members of the Kerry Law Society met Stuart Gilhooly (Law Society president) and the director general Ken Murphy at the Grand Hotel, Tralee, on 12 June



PARCHMENT CEREMONY PORTRAITS

ALL PICS: JASON CLARKE PHOTOGRAPHY



Recently appointed High Court judge Charles Meenan and his wife Anita Meenan were proud parents when their son and daughter, Charles and Ruth, received their parchments on 16 March. The new solicitors were congratulated by Law Society President Stuart Gilhooly



Fianna Fáil spokesperson on justice Jim O'Callaghan (second from left) was a guest speaker at the parchment ceremony on 2 February. He is seen here sharing a laugh with Ken Murphy (director general), Mr Justice George Birmingham (Court of Appeal) and Stuart Gilhooly (Law Society president)



Caoimhghín Ó Caoláin (chairman, Joint Oireachtas Committee on Justice and Equality) was guest speaker at the parchment ceremony on 18 May 2017 and is seen here with director general Ken Murphy and some of our newest solicitor members



Charles Flanagan (then Minister for Foreign Affairs and Trade and current Minister for Justice) attended the parchment ceremony on 8 June 2017 as a guest speaker. He is seen here with Kevin O'Higgins (past-president of the Law Society) and Ken Murphy (director general)

LEGAL EZINE FOR MEMBERS

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

Make sure you keep up to date: subscribe on www.lawsociety.ie/newsletters or email eZine@lawsociety.ie.





JUSTICE MEDIA AWARDS 2017



Helen Bruce (*Irish Daily Mail*) won in the 'Court Reporting – Print' category for her coverage of the trial of Bernadette Scully at the awards on 22 June 2017, seen here with director general Ken Murphy (left) and president Stuart Gilhooly



Cianan Brennan (*thejournal.ie*) took the JMA in the 'Court Reporting – Digital' category for his report 'Shane Ross doesn't take no for an answer – court hears Dáil committee had remit to ask about Angela Kerins' salary'



Evelyn O'Rourke (RTÉ Radio 1) won in the 'National Radio' category for her family court reports series



Marian O'Flaherty (*Kerry Today*) took the Justice Media Award in the 'Local Radio' category for her report 'The special and substantial defence'



Tom Mooney (*Wexford Echo*) won in the 'Regional Newspapers' category for his article 'The last word'



Laura Hogan (TV3 News) won in the 'Court Reporting – Broadcast' category for her reports from the trial of Bernadette Scully

PHOTO: LENS MEN



Shane Phelan (*Irish Independent*) was the winner in the 'Daily Newspapers' category for his series 'Ireland's response to international terror threats'



Francesca Comyn (*Sunday Business Post*) won the JMA in the 'Sunday Newspapers' category for her article 'Inside the Commercial Court'



Eoin Ryan and Mary Kennedy (both of RTÉ's *Nationwide*)

FACES IN THE CROWD



Paul Murphy (*RTÉ Investigates*) and Kevin Brew (*RTÉ Drama on One*)



RISING FROM THE ASHES

Solicitor John O'Donohoe is a founding member of Phoenix Project Ireland. He speaks with **Mark McDermott** about the charity's work and its daily challenges in keeping the banks from the doors of family homes

MARK MCDERMOTT IS EDITOR OF THE *LAW SOCIETY GAZETTE*

John O'Donohoe is extremely likeable from the moment you meet him. He is the definition of 'busy' – before we had a chance to focus fully on this interview, he had taken three phone calls. That aside, John is totally engaging and exudes passion about his daily role as a solicitor – but especially as a volunteer lawyer with [Phoenix Project Ireland](#). Born in Waterford City, he attended Mount Sion CBS secondary school, after which he practised as an accountant and auditor, specialising in insolvency and tax work. He subsequently retrained and qualified as a solicitor in 2008.

"I always felt that my calling was to the law rather than accountancy. Accountancy was a way of making a living. I really enjoy the law, so really it was my first choice. I had no background in law whatsoever, but from dealing with people in my accountancy practice, I saw situations where people needed a good lawyer. At times, they weren't available, so I felt I could provide a good skill-set with my background in accountancy, tax and insolvency to be able to practise as a lawyer.

"Back in 2008, I saw so many people who were abjectly lost, without any support, due to the financial crisis. The banks had foreclosed on them, accountants and solicitors were nearly as badly off as the ordinary guy in the street, and it came to my attention that a number of people had committed suicide due to financial pressures.

"Myself, the current chair of the Phoenix Project John McGrath [who has a master's in economics and worked in the banking sector and the stock exchange] and CEO Willie Prior [an auctioneer by profession] met one day in 2008." The catalyst for the meeting was a friend of Willie's who had attempted suicide.

"Lo and behold, the rope broke, so that experience sent the guy in Willie's direction looking for help. Willie saw that there was an awful lot of this around – people felt paralysed because of the banks and the way they were being treated.

"As a solicitor, I have seen correspondence from banks that is totally unreasonable, especially in their attitude to people who are uneducated, have borrowed money and who want to pay it back, but end up being bullied by the banks.

"The Phoenix Project is a bulwark between the banks and our clients, in the hope that we can bring some sense to these situations and help clients enter into arrangements with the banks that will satisfy them, and equally the mortgagee.

"Many of the solutions being proposed by the banks have been short term. What we need are long-term solutions like split mortgages, where you park the majority of the debt, or even write-off all or part of the debt. The State needs to come on board to fund housing and buy back the debt that is now being sold to the funds, who are buying them at discounted prices.

"The State could just as easily have bought those mortgages, as was done in America, and then refinanced them. Everyone would have ended up paying the market value of a house as opposed to the situation now, where we have people who are endeavouring to pay €2,000-a-month mortgage repayments, when, in fact, the house next door can be rented for €1,000. It doesn't make economic sense."

Sympathetic

"I have to say that the courts, the county registrars and Circuit Courts, have been very sympathetic to people coming before them and in giving them every opportunity. Once they see that you are engaging with the bank, they will not make a repossession order. It is vital for people to know that if they engage with the banks, the banks will engage as well. Unfortunately, many people don't have the skill-sets to engage.

"That is where the Phoenix Project comes in. We are chiefly concerned with saving family homes. All the other commercial arrangements can be dealt with by way of insolvency, bankruptcy or whatever. But saving the family home is what matters most to us, especially where there are children involved.

"There is a huge issue with children being moved to different areas, different schools or living in hotels. Hotels are not a suitable place to bring up children. The State should never have entertained that. The obvious answer is



PHOTO: DAVID MURPHY



HOTELS ARE NOT A SUITABLE PLACE TO BRING UP CHILDREN. THE STATE SHOULD NEVER HAVE ENTERTAINED THAT. THE OBVIOUS ANSWER IS TO KEEP FAMILIES IN THEIR OWN HOMES AND TO PAY THE RENT ON THEIR BEHALF



WE RECEIVE NON-STOP CALLS ON A DAILY BASIS FROM PEOPLE IN TROUBLE WHO CANNOT GET SUPPORT, WHO CANNOT DEAL WITH THE BANKS, WHO CANNOT AFFORD AN ACCOUNTANT OR SOLICITOR TO DO EVEN THE MOST BASIC THING

to keep families in their own homes and to pay the rent on their behalf – that is the obvious solution.

“Then you don’t have to build new houses to accommodate them, you don’t have to move them out. If the State took over these mortgages and entered into a 20-year lease with the person as tenant – and with an option to repurchase the property if times got good, if they won the Lotto, if they got an inheritance, if they had life insurance and one of the partners died, for instance – then that windfall could be used to discharge the mortgage back to the tenant. There are economic solutions available to deal with these situations.

“The way things stand at present, another 100,000 people are going to be homeless in the next 12 months unless we embrace the idea of the State stepping in, buying the mortgages, and renting the accommodation back on the basis of disposal income, so that they can rent and have an opportunity to re-buy the house.

“This means that children are not moved from school, they continue to live in the same house, no-one knows that this has happened, and the big problem of the embarrassment of not being able to pay the mortgage is avoided.”

One of Phoenix Project Ireland’s biggest challenges was to gain charitable status, which they achieved in 2009.



Dark Phoenix: definitely not the Phoenix Project

“This meant that we could take moneys in, and help the people running the charity without having the problem of corporation tax. We pay PAYE and PRSI on the employees who provide the service, obviously, but our biggest problem from the outset has been in financing our work. We are not funded by the State in any shape or form. We depend on private donations and, in these times, it’s very difficult to get donations.”

The charity is headed up by six voluntary, unpaid board members. It is staffed by four

financial advisers, two solicitors, a barrister, a psychologist, and three receptionists and secretaries – a total of 11 staff.

“That represents a significant payroll. We have rent on offices, we have insurance, electricity, photocopying, postage and all the usual costs. We effectively need in excess of €500,000 a year to keep going.

“We receive non-stop calls on a daily basis from people in trouble who cannot get support, who cannot deal with the banks, who cannot afford an accountant or solicitor to do even the most basic thing, like filling out a standard financial statement.

“Our funding comes from donations from the general public. We have one or two very benevolent people who have funded us and who wish to remain anonymous, but other than that, it’s the public and certain other benefactors who assist us in our work.”

So how does his work with Phoenix Project Ireland affect his daily business?

“I do, on average, 70 hours a week. I work on Saturdays to make up for the day that I am away, but I get great satisfaction out of it. It’s great to see that you are saving people, that you are keeping people in their homes. People come back to thank you. That’s worth anything, you know.

“I would encourage everyone to give something back to their community. A charitable enterprise is a great way to do that. Anyone can throw money at problems, but people’s time and expertise is invaluable. Any solicitor who has the relevant experience should be prepared to share it for no financial gain.

“My experience has been that, ultimately, you will get it back. When people need to get their affairs sorted and need a solicitor to do that – whether it’s a will, to remortgage their property, or deal with a personal injury case – they will tend to come to you rather than anyone else, because you are the one they know.”

Q FOCAL POINT SUPPORT SERVICES

Phoenix Project Ireland is a registered charity that provides financial, legal, and emotional support to distressed borrowers. Each week, its team members assist up to 70 individuals and families facing the prospect of losing their homes.

Since its establishment in 2008, it has assisted more than 18,000 people. In contested cases, the project has maintained 90%

of families in their homes.

A total of 116,225 people face homelessness by reason of being in mortgage arrears for more than 12 months.

For assistance or to donate, contact Phoenix Project Ireland at 25 Kilminchy Court, Portlaoise, Co Laois; lo-call 1850 20 30 40, tel: 057 863 6830, email: support@phoenixproject.ie.



IF YOU WANT TO GO FAR, GO TOGETHER

From: Maureen Forrest, director, The Hope Foundation, Silverdale Grove, Ballinlough, Cork

The Hope Foundation was honoured to be chosen as a beneficiary of the Calcutta Run this year. It is a significant privilege for Hope for several reasons. First, we are deeply grateful for the trust placed in our organisation by the Law Society and members of the legal profession. Second, the awareness the partnership raises for its charity partners is paramount. Finally, the money donated to Hope and The Peter McVerry Trust will make an incredible life-changing difference to the vulnerable communities and children with whom we work.

Since its beginnings in 1999, we never regarded The Hope Foundation as a charity, but as an organisation that invests in the sustainability of human life, affording people the opportunity to learn necessary skills in order to become self-sufficient. We at Hope believe that the narrative of the Calcutta Run over the past 19 years embodies a similar message about what can be achieved when people unite and work together to invest in social change.

During our time working with the legal profession, the Law Soci-



ety, and the Calcutta Run team in the lead-up to the event, I discovered the incredible back story to the past 19 years. I learned that this event is the only initiative in Ireland that unites an entire profession to tackle a social cause. What an extraordinary testament to the power of solidarity to effect change at home and in Kolkata. The story of the Calcutta Run is a remarkable one, with unity as its main theme. It is a monumental example to other professions hoping to create such a positive movement for global good. The event has become a way for the legal profession to expand, grow, and exercise its core values and mission in tangible ways.


A body of like-minded professionals can bring their corporate and social responsibility (CSR)

efforts to life through authentic storytelling – and what a story the Calcutta Run has to tell. Since 1998, there have been countless fund-raising events organised by members of the legal profession and their families. People have united to organise everything from cake sales, coffee mornings, to pub quizzes – raising over €3 million. That is an astonishing amount of money, which has transformed so many lives and will continue to do so.

This inspiring achievement is a great example in showing what companies can do to make the world a better place. Today, members of the 'millennial generation' are renowned for their devotion to associating themselves with corporates who are aligned with their values.

It has become clear in recent years that strategically aligning your organisation with agencies to deliver social change is more than brand positioning – it is an important movement reflective of a changing social consciousness. Consumers are increasingly looking to CSR as a deciding factor when conducting business with a company. Navigating this changing consciousness will enable such organisations to thrive in the 21st century. Through the Calcutta Run event, the legal profession in Ireland has become a trailblazer and a game-changer, harnessing the power of a changing consciousness.

There is old African saying: 'If you want to go fast, go alone – if you want to go far, go together'. The story of the Calcutta Run encapsulates this proverb – how far the legal profession has travelled together in the past 19 years and how much has been achieved.

The social impact brought about by the run's organisers, sponsors, supporters, and participants will leave a lasting legacy and is shining a light on how, collectively, we can effect the change we want to see in the world. Together, we can continue this incredible journey and leave a positive footprint on our planet. 

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LAST STRAW FOR DEFINED BENEFIT SCHEMES?

Defined benefit scheme trustees are coming under pressure to meet increasingly stringent regulatory challenges. Proposed legislative changes could exacerbate issues, argues **Stephen Gillick**

STEPHEN GILLICK IS CHAIR OF THE LAW SOCIETY'S PENSIONS SUBCOMMITTEE

Over the last decade, there has been a decrease in the number of active defined benefit occupational pension schemes (DB schemes) and the number of members whose retirement benefits are provided through those schemes. The number of DB schemes currently operating in Ireland is approximately 670. In contrast, at the end of 2009, there were just over 1,200 DB schemes.

The recent financial crises have put immense pressure on DB schemes in Ireland. Asset values have fallen significantly and many are experiencing great difficulty in meeting minimum funding standards (MFS) imposed by the Pensions Authority. It could be argued that legislative changes designed to prevent the decline in the number of active DB schemes have had quite the opposite effect.

The introduction of the funding standard reserve in January 2016 has only served to heighten the funding issues. DB scheme trustees are coming under more pressure to meet increasingly stringent regulatory challenges, such as the requirement that all trustees complete the formal training requirements. It is likely that forthcoming legislative changes proposed under the recently announced *Social Welfare and Pensions Bill 2017* may only exacerbate the issues.

If enacted, the bill could have far-reaching consequences for the Irish pension landscape.

Most notably, the provisions of the bill could act as a catalyst for many employers to wind up their defined benefit arrangements and, consequently, jeopardise the retirement plans of the members the bill seeks to protect.

The changes proposed are significant. Employers and trustees are likely to have very different concerns and should carefully consider the provisions outlined in the bill with their advisors.

The bill came into being after attempts were made by Fianna Fáil and Sinn Féin in February 2017 to introduce their own pensions legislation that would prevent solvent employers from winding up their pension schemes.

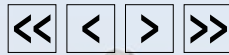
While the bill does not go this far, it does contain key measures designed to increase the protections available for members of DB schemes in Ireland. The bill also contains provisions to afford same-sex couples equal pension rights to those granted to married couples.

Key measures

The main purpose of the bill is to strengthen the position of trustees and increase the protections offered to pension scheme members. It intends to achieve these aims by shifting the balance of power in pension schemes from the employer to the trustee.

The bill introduces the following key measures for DB schemes in Ireland:

- Where a scheme is in deficit on the MFS basis, trustees will now need to submit a funding proposal to the Pensions Authority within six months of the effective date of the actuarial funding certificate – that is, the date on which the actuary carries out a scheme valuation.
- Employers who sponsor DB schemes, whether or not those schemes are in deficit, are required to give 12 months' notice to the trustees and to the authority of their intention to stop contributions. This 12-month period applies regardless of what is contained in the trust deed and rules. For a scheme in deficit, the employers and trustees are required to enter into discussions to agree a funding proposal before the 12-month period expires.
- The bill states that employer contributions payable during the notice period must not fall below those payable immediately prior to issuing the notice of intent to stop contributions. The notice period may be reduced, provided that such reduction is not contrary to the interests of the members.
- The bill also proposes a greater level of communication with all classes of members during the scheme wind-up. It requires that trustees and employers "make such notifications, consult with and provide such information to members, deferred



PIC: SHUTTERSTOCK



This is a wind-up, Colin

WHEN BRITAIN ADOPTED SIMILAR PROVISIONS, THEY DID SO OVERNIGHT, AND WITHOUT CONSULTATION, IN ORDER TO PREVENT A GLUT OF WIND-UPS

members and beneficiaries ... as may be prescribed in regulations”.

- Where a funding proposal has not been submitted, the bill provides powers to the authority to determine a schedule of contributions that will restore DB schemes that do not satisfy the funding standard or funding standard reserve to an adequate funding position. The amounts specified in the schedule will form a debt due by the employer to the pension scheme. If the debt is not paid, the employer may be pursued by the trustees in court proceedings.

Equal treatment provisions

The bill includes technical provisions to extend a spouse’s pension to same-sex spouses and civil partners.

The need for this change was highlighted recently by the Court of Justice of the EU in *David L Parris v Trinity College Dublin & Ors*. Although the changes will affect only a limited number of occupational pension schemes, this significant equal treatment proposal aims to


ensure that same-sex couples enjoy the same rights and entitlements as any other married couple.

We anticipate that the bill will be passed shortly, but there are likely to be a number of amendments made beforehand. The question really is what will happen between now and enactment? When Britain adopted similar provisions, they did so overnight, and without consultation, in order to prevent a glut of wind-ups.

Will employers see this as an opportunity to wind up defined benefit arrangements before the onerous new provisions become law, or will they continue to run these schemes irrespective of the new legislative changes? Given the onerous obligations that the bill will place on employers, trustees should be aware that there is a risk that employers may take pre-emptive action to wind up their schemes before the bill is enacted. Trustees in this position may want to consider whether a contribution demand might be appropriate as a defensive action?

The number of DB schemes has fallen steadily in recent years, but the bill highlights a growing desire from politicians to put in place measures to control this decline. The provisions of the bill indicate that employers will face more onerous obligations when winding up DB schemes in the future, but it is unlikely to lead to a flood of wind-ups in the short term.

On a practical note, the majority of DB schemes remaining most likely have notice periods in place already, which – to date – have prevented employers from winding them up. The bill will extend these notice periods, if the existing notice periods are less than 12 months long, but will not radically change the existing position for those schemes.

Employers and trustees should familiarise themselves with the governing documentation of their schemes and ascertain how these legislative changes will affect their schemes or business decisions. Scheme-specific advice is critical, as different considerations may apply for different schemes. 



GET SMART!

Medical educators have had to significantly rethink their approach to education as a result of substantial changes in the healthcare sector. **Raymond J Friel** warns that legal educators must do likewise

PROF RAYMOND J FRIEL IS DIRECTOR OF THE INTERNATIONAL ECONOMIC AND COMMERCIAL LAW RESEARCH GROUP AT THE [SCHOOL OF LAW](#), UNIVERSITY OF LIMERICK

It has sometimes been said that legal education is at the cutting edge of tradition. If one were to compare and contrast legal education with medical education, the difference could not be more dramatic. Medical students from 20 years ago would barely recognise the format and approach that today's aspirant medical students face.

Medicine has undergone rapid and substantial change in both the understanding and management of patient health. That change has occurred due to the numerous and radical advances in science and technology during that period. As the changing needs of medical practitioners became apparent, medical educators rethought the very basis of their approach to education and, in doing so, created a foundation for the modern medical practitioner.

But for legal education, the substantive framework has not changed. True, it has got significantly better in terms of consistency vis-à-vis

quality, performance, and standards. Today's legal educators are professionals who are highly skilled and trained. The end result has seen considerable improvements in legal education.

But those advances are similar to those made by the manufacturers of non-smart mobile phones like Nokia, which constantly improved the same product over and over again. However, fundamentally, it was still just a mobile phone. But how many of us just want a mobile phone when there is a smartphone alternative that can do so much more?

The natural question that springs to mind is why have legal educators trailed their more innovative colleagues in medical education? It's not due to any lack of desire on the part of legal educators. Truthfully, over the last 100 years at least, there has simply been no need for the legal equivalent of the smartphone rather than the Nokia. For the legal system, there has been no radical change – only the continued evolu-

tionary refinement of existing practices. Daniel O'Connell would not appear that out of place in today's legal world.

Beware the force

Yet the legal environment is changing at such a rate that it is about to hit legal practice with a force that may take many completely unaware. Of course, there is the uncertainty that Brexit will bring to the legal environment for the next few decades – but it is not all about Brexit.

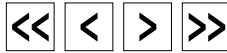
First, there is open access to legal information via the internet. Traditionally, knowing the law was a dark art understood only by its practitioners. To find an answer for a client required a baseline of legal knowledge and specialised research skills to search beyond that baseline for a more detailed answer. And, as lawyers, we hid all that information behind 'locks', which only we were trained to open.

Today, the locks have been broken open and there is very little information not readily available in an openly accessible form. Some might argue that this information is limited to simplistic issues, or comes from untrustworthy sources, but a trawl of the internet reveals otherwise. Government and respected non-governmental agencies provide copious amounts of reliable legal information. And advances in artificial intelligence will further extend client understanding of more complex legal problems.

If our education system is focused on providing the lawyers of tomorrow primarily with

THE NATURAL QUESTION THAT SPRINGS TO MIND IS WHY HAVE LEGAL EDUCATORS TRAILED THEIR MORE INNOVATIVE COLLEAGUES IN MEDICAL EDUCATION?





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THE LEGAL ENVIRONMENT IS CHANGING AT SUCH A RATE THAT IT IS ABOUT TO HIT LEGAL PRACTICE WITH A FORCE THAT MAY TAKE MANY COMPLETELY UNAWARE

narrow silos of legal knowledge, they are unlikely to be able to compete with the sheer volume and quality of knowledge available online to the client.

Second, the practice of law is truly becoming collaborative, multidisciplinary, and international. A perception has developed that sees lawyers poring over arcane case law and statutory provisions before running down the street shouting “eureka!” – having somehow discovered a solution to the client’s problem through solitary analysis based on a secret set of rules. This is no longer the case.

Today, lawyers must work together for their clients, not only with other lawyers but also with other disciplines in the same way that medical practitioners now undertake treatment through patient-care teams bringing together disparate expertise. And increasingly legal clients have global, not merely national, dimensions to their problems. If our education system concentrates on individualistic, discipline-specific training, it will ill-prepare the lawyers of tomorrow. It will merely compound that problem if, in addition, it adopts an Anglo-Irish myopia to the law.

New thinking

Finally, the downward pressure on fees from commercial actors in particular, but also from government and consumers, requires new thinking in the delivery of legal services in terms of project management and structured risk analysis. Too much of legal education is ‘pre-packed’, inasmuch as the student is given a narrow-focused topic within a subject-specific area on which to concentrate. But how is the student expected to manage the resolution of that issue in the most efficient manner? And perhaps more importantly, how is the student to distinguish between a case that is worth pursuing and one that is not? In legal education, one cannot be accused of teaching the price of everything and the value of nothing – for, in reality, we teach absolutely nothing about either price or value with respect to legal disputes.



PICTURE: SHUTTERSTOCK

Video killed the surgical star

The lawyer of tomorrow, the law student we are training today, must be more than simply a repository of hidden information. Instead they must be a problem-solver capable of working collaboratively in international multidisciplinary teams who understands risk analysis and project management. Are law schools doing this?

One suspects that the majority of academic law schools continue to focus on the transfer of legal knowledge to the student by way of the traditional lecture format, with slight variations. Online elements will consist primarily of reading material or podcasts, perhaps even a moderated forum. Guest lecturers from overseas may appear from time to time to provide insight into other approaches. Legal subjects like contract, tort, criminal law, etc, will be rigorously studied for one year from within their own perspective, and then forgotten – a box ticked.

Educating jurists


There is much to be said for a purely academic legal education, but law schools are, and should be, primarily focused on educating *jurists*, not academics or practitioners. The jurist of tomorrow must, as a student, take

personal responsibility for acquiring a baseline of legal knowledge, while the lecturer should provide the framework within which that knowledge can be applied safely, *in extremis*, by the student working in multidisciplinary and multi-jurisdictional teams.

This will not be easy. At my law school, we have been on a path towards this for the last 20 years and feel we have only just begun. For a start, all law students have the option to study another discipline or language along with their law degree. Further, our law students, for example, use the trial moot courtroom to work with engineering students litigating defective building hypotheticals.

Advanced lawyering courses link basic legal knowledge with faculty expertise and stakeholder engagement, such as the recent *Deaths in Custody Reports* by the late Judge Michael Reilly, Inspector of Prisons. Going forward, we are piloting a proof-of-concept US-Ireland course on the law of international business transactions. This will be co-taught in real time, jointly, by faculty on both sides of the Atlantic. It will involve US and Irish law students working together to resolve issues, including cooperating with business students in both institutions. Later, we will extend this in other areas to a mainland European law school.

Our new appellate moot court facility will be a central component of the new library, putting that building back at the core of legal education. These are but a few examples of the vital steps legal educators need to consider if we are to alter the paradigm of legal education to reflect the changing world we live in.

For those who think that there is a certain comfort in legal education being at the cutting edge of tradition, they would do well to remember that, today, Nokia has been reduced to a novelty item, while smartphones are ubiquitous. The introduction of smartphones provided functions that most of us did not even know we were missing. In contrast, we know exactly what we are missing in legal education: it’s time to let tradition go and get smart. 



NATIONWIDE GARNERS TOP GONG AT JMA 2017

Ireland's leading journalists gathered at Blackhall Place for the Justice Media Awards on 22 June. **Mary Hallissey** reports

MARY HALLISSEY IS A JOURNALIST AT GAZETTE.IE

This year, RTÉ's *Nationwide* was the overall winner in Ireland's longest continuously running legal reporting awards.

At the 26th annual Justice Media Awards, Law Society director general Ken Murphy pointed to the remarkable 50% increase in entries as indicative of rising standards in legal journalism throughout the country. Up to 120 journalists gathered for the awards, with 42 prizes awarded.

"The Justice Media Awards are a key highlight of the year for many within both the media and legal professions," said Law Society President Stuart Gilhooly.

"We believe it is vitally important to recognise, reward and encourage excellence in legal journalism. Since their instigation in 1992, these awards have sought to push the media industry to raise the bar and improve the public's understanding of justice, the legal system, and citizens' rights in Ireland.

"National, local and – increasingly – online media play a crucial role in this task. Now in their 26th year, these awards are as relevant as ever," he said. "Newsrooms are under great strain – and, as a result, long-form, investigative and analytical journalism is at a premium. We acknowledge this and appreciate those many journalists who took the time to submit entries and be with us today."

Against the tide

The president stressed how crucial factual reporting and background research are in pushing back against the tide of speculative and opinionated corporate propaganda that has, so much, become a part of our lives: "This is why honest, hard-working and in-depth investigative journalism is vital to uphold in Ireland. Our members are representing the interests of those often without a voice, and you can see by the standard and quality of reporting in this year's awards, the vast majority of journalists are also

driven by a need to seek the truth, raise issues and educate."

"The Justice Media Awards set extremely high standards. I would like to congratulate all of our winners today, and I wish them continued success in their journalistic endeavours."

Impact of legal reporting

Director general Ken Murphy highlighted one of the judges' criteria – the impact of legal reporting.

Excellence in legal journalism fostered a greater public understanding of the law, he added. Where necessary, journalism should throw a spotlight on legal practices or procedures needing reform, so as to encourage the development and modernisation of Irish laws and the courts system.

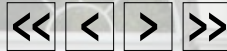
Radio Kerry was praised for its monthly 'Legal Lowdown' feature on the Kerry Today show, where solicitor and law lecturer Miriam McGillicuddy deals with listeners' legal queries. Murphy praised this collaboration between journalist and solicitor, and said that the Law Society would encourage its replication by other media.

Radio Kerry also took the overall award for local radio, for reporting by Marian O'Flaherty on a drink-driving case at Listowel District Court involving Tyrone footballer Owen Mulligan.

Media lawyer Michael Kealey, a member of the judging panel, commented that the quality in the court reporting section had been particularly high this year. "A number of years ago, the organising committee decided to incorporate a section specifically for this category. There is great work being done by court reporters around the country, and we wanted to encourage a high quality of reporting in this sector. The quality was exceptional this year."



RTÉ's *Nationwide* wins overall award for coverage of the Law Society's Access and Street Law programmes



WHERE NECESSARY, JOURNALISM SHOULD THROW A SPOTLIGHT ON LEGAL PRACTICES OR PROCEDURES NEEDING REFORM

Q JUSTICE MEDIA AWARDS – RESULTS

■ OVERALL AWARD WINNER

Winner: Mary Fanning, Mary Kennedy and Eileen Magnier: feature on RTÉ *Nationwide* on the 'Access Programme and Street Law'.

■ DAILY NEWSPAPERS

Winner: Shane Phelan of the *Irish Independent* for his excellent series of articles, 'Ireland's response to international terror threats'. Merit: Kieran Dineen (*The Irish Sun*) 'Claims, pains and automobiles'; Liz Farsaci and Conor Gallagher (*Irish Examiner*): 'Concerns grow over private appeals tribunal'; David Labanyi (*The Irish Times*) 'Garda breath test figures fail to add up'; Conor Gallagher (*The Irish Times*) 'Rape sentences averaging ten years after rise over the last decade'; Laura Colgan (*Irish Daily Star*) 'Killers on the loose'; Aaron Rogan (*The Times Ireland*) 'Diesel-gate in Mayo'.

■ SUNDAY NEWSPAPERS

Winner: Francesca Comyn (*Sunday Business Post*), 'Inside the Commercial Court'. Merit: Niall Brady (*Sunday Times*): 'Road rage'; Mark Tighe, Catherine Sanz and Karrie Kehoe (*Sunday Times*): 'Judging the judges'.

■ REGIONAL NEWSPAPERS

Winner: Tom Mooney (*Wexford Echo*): 'The last word'. Merit: Carol Byrne (*Clare Champion*): 'Breaking new ground in prison law: the late Judge Michael Reilly'; Ann Murphy (*Evening Echo*): 'Fathers' rights – or lack of them?'; Tony Galvin (*Tuam Herald*): 'The best judges are human'.

■ NATIONAL RADIO

Winner: Evelyn O'Rourke (RTÉ Radio 1) 'Family Court reports'. Merit: John Cooke (RTÉ Radio 1 – *Today with Sean O'Rourke*): 'Human stories from the repossession courts'.

■ LOCAL RADIO

Winner: Marian O'Flaherty (*Kerry Today*) 'The special and substantial defence'. Merit: Niall Delaney (*Ocean FM*): 'In the soup on North West today'; Jerry O'Sullivan and Miriam McGillicuddy (*Radio Kerry*): 'The legal lowdown'.

■ TELEVISION NEWS

Winner: Katie Hannon and Nigel (RTÉ *Prime Time*) 'The McCabe file'. Merit: Dyane Connor (RTÉ News): 'Held to ransom: law firms under fire'; Michael Ryan, Marie Mulcahy and Ruairi Carroll (TV3 News): for their reports on the Apollo House occupation.

■ TELEVISION FEATURES/DOCUMENTARIES

Winner: Mary Fanning, Mary Kennedy and Eileen Magnier (RTÉ *Nationwide*) on Street Law and the Law Society Access Programme. Merit: Eithne O'Brien (RTÉ *Prime Time*): 'Legal pains'; *Spotlight* team (BBC Northern Ireland): 'Stalking law'.

■ COURT REPORTING – PRINT

Winner: Helen Bruce (*Irish Daily Mail*) for her coverage of the trial of Bernadette Scully. Merit: Noel O'Driscoll (*Kildare Nationalist*): series of reports from the family courts; Mark Tighe (*Sunday Times*): 'Why won't you leave me alone?'; Nicola Don-

nelly (*Evening Herald*): 'Justice and a voice for animals'; Michael Tracey (*Carlow Nationalist*): 'Businessman sues car dealership over rust on his luxury Merc'. Catherine Fegan (*Irish Daily Mail*): 'View from the gallery – the Bernadette Scully trial'. Declan Brennan (*Sunday Independent*, *Sunday Times* and *The Irish Times*): the Anglo/Irish Life trial.

■ COURT REPORTING – BROADCAST

Winner: Laura Hogan (TV3 News) for her reports from the trial of Bernadette Scully. Merit: Brian O'Connell (RTÉ Radio 1): 'A home for Christmas'; Stephanie Grogan (98FM News): 'The Jobstown protests: a day in the Children's Court'.

■ COURT REPORTING – DIGITAL/ONLINE

Winner: Cianan Brennan (*journal.ie*) 'Shane Ross doesn't take no for an answer'.

■ DIGITAL/ONLINE NEWS

Winner: Conor Gallagher (*irishtimes.com*) for his series on lay litigants. Merit: Michelle Hennessy (*thejournal.ie*) 'Is it illegal for gardai to go on strike?' Paul O'Donoghue (*fora.ie*): 'Here's why a scheme for struggling companies has never been used'.

■ DIGITAL/ONLINE FEATURES

Winner: Sinead O'Carroll (*journal.ie*): 'The tribunal is dead, long live the tribunal'. Merit: Orla Ryan (*journal.ie*): series on wills: personal stories and legal advice. Conor Gallagher (*irishtimes.com*): series on drug treatment.



PRIVATE INVESTIGATIONS

A Strasbourg judgment has found that inspection of a lawyer's bank account breached his right to professional confidentiality and his private life.

Michelle Lynch reports

MICHELLE LYNCH IS POLICY DEVELOPMENT EXECUTIVE AT THE LAW SOCIETY

In April, the European Court of Human Rights delivered a unanimous finding in *Sommer v Germany* (application no 73607/13) that there had been a violation of article 8 of the *European Convention on Human Rights* (ECHR), which protects the right to respect for private life. The case involved a complaint brought by a criminal defence lawyer (Sommer, a German national) regarding the inspection of his professional bank account by the public prosecution office.

In 2011, the public prosecution office requested information from Sommer's bank regarding transactions on his professional bank account over the previous two years. This was done in the context of a criminal investigation into fraud, with one of Sommer's clients being a suspect. The client's fiancée had trans-

ferred money for legal fees to the applicant's professional account from her private bank account, and they suspected that this money had stemmed from illegal activities.

The prosecutor's office requested information from Sommer's professional account on two occasions, and the bank complied with both of these requests. No official orders had been made, but the public prosecutor had advised the bank of the obligations of witnesses under the *German Code of Criminal Procedure* (GCCP) and the possible consequences of non-compliance. Sommer had no knowledge of these requests.

The information from the bank was examined by the police and the public prosecutor, and everyone who had access to the case file also had access to the applicant's banking

information, including the names of clients who had transferred fees. After several unsuccessful attempts, Sommer managed to gain access to his investigation file and, thereafter, requested the chief public prosecutor to hand over all data received from the bank and for all the related data of the office to be destroyed. He argued also that there was a lack of legal basis for the investigative measures taken.

Suspicion

The chief public prosecutor rejected this request, maintaining that there had been a suspicion of illegal activities and, as a result, the investigation was legitimate and the information gathered during the investigation had to be kept in the file. The chief public prosecutor cited article 161 of the GCCP as a legal basis for the information requests, arguing that the bank was an authority, as it was under public law, and that there was no legal basis for returning the data or removing it from the file.

The file was then transferred to the Bochum Regional Court, as criminal proceedings against Sommer's client had begun. Sommer applied to the court to have the data returned. The regional court refused, on the basis that the investigation was lawful and that the information from the bank had been provided voluntarily and could only, therefore, be returned to the bank, as the information had not been in the applicant's possession. However, the court did concede, on the basis of safeguarding the lawyer/client privilege, that

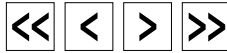
SOMMER ARGUED THAT THE GERMAN AUTHORITIES HAD, 'WITHOUT JUSTIFICATION, COLLECTED, STORED AND MADE AVAILABLE INFORMATION ABOUT HIS PROFESSIONAL BANK ACCOUNT, AND HAD THEREBY REVEALED INFORMATION ABOUT HIS CLIENTS'



PICTURE: SHUTTERSTOCK



Strasbourg: not Kronenburg



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HE MAINTAINED THAT, AS HE WAS A LAWYER, THERE WERE SAFEGUARDS IN PLACE REGARDING THE SEIZURE OF DOCUMENTS, AND THESE SHOULD NOT HAVE BEEN BYPASSED MERELY DUE TO THE FACT THAT THE DOCUMENTS WERE STORED AT THE BANK AND NOT AT HIS OFFICE

the documents should be separated from the general court file and access only be given to those providing reasons of sufficient interest to warrant such access.

Sommer appealed this decision, on the basis that he disputed the finding that the bank had acted voluntarily and that the suspicion had been sufficient to warrant such an extensive investigation of his banking information.

He again maintained that, as he was a lawyer, there were safeguards in place regarding the seizure of documents, and these should not have been bypassed merely due to the fact that the documents were stored at the bank and not at his office.

The Hamm Court of Appeal upheld the decision of the regional court, finding the decision had been proportionate and that the safeguards were not applicable, as the bank could not be construed as a person assisting Sommer or a person involved in the professional activities of Sommer, as set down under article 53a of the GCCP. Sommer applied to the Federal Constitutional Court, but they refused to admit the complaint, without providing reasons.

Analysis of the court

Sommer brought the case to the European Court of Human Rights, arguing that the German authorities had, “without justification, collected, stored and made available information about his professional bank account, and had thereby revealed information about his clients”.

He relied on article 8 of the ECHR and maintained that the actions of the chief public prosecutor had not only interfered with the lawyer/client privilege, but had also circumvented this obligation through their requests from his bank.

Sommer maintained that the basis of the requests was not suitable, as article 161 of the GCCP allowed only minor interferences

PICTURE: SHUTTERSTOCK



with the fundamental rights of a suspect and that it required an official investigation into the suspect. However, no criminal investigation had been opened against him, and he also noted that, under article 160a of the GCCP, the investigative measure directed against him as a lawyer was prohibited. Further, he maintained, even if there had been a legal basis, the interference had been “disproportionate and not necessary in a democratic society”.

The court considered articles 161 and 160a of the GCCP as very general in terms and reiterated that, in the context of covert data gathering, it is essential to have clear, detailed rules setting out the scope and application of measures. It also emphasised the need for “minimum safeguards concerning, among other things, duration, storage, usage, access of third parties, procedures for preserving the integrity and confidentiality of data, and procedures for its destruction”. It found that the interference did have a legitimate aim of preventing crime, protecting the rights and freedoms of others, and the economic well-being of the country.

In considering the necessity of interference, the court stated that it must be satisfied that there are “sufficient and adequate guarantees against arbitrariness”. It emphasised the


importance of specific procedural guarantees where it involves confidentiality between lawyer and client, and lawyer/client privilege.

Decision of the court

The court found that article 161 of the GCCP had been the suggested legal basis for the requests for information and their subsequent collection and storage, but held that the “threshold for interference under article 161 of the CCP is relatively low and that the provision does not provide particular safeguards”.

It also expressed doubt as to whether the bank had acted entirely voluntarily, since a warning had been given to the bank that a refusal to submit the requested information could result in a summons being issued for official questioning. The court found that the threshold for inspection of Sommer’s account had been low, and did not require an official investigation, as it involved relatively low levels of interference. It further held, based on the information and documents provided to the court, that while the lawyer/client privilege could be suspended where facts substantiated a suspicion of participation in a crime, in this case the suspicion was both vague and general.

Finally, the court found that the inspection of Sommer’s bank account was not ordered by a judicial authority, and no specific procedural safeguards had been utilised to ensure legal professional privilege was protected.

Ultimately, the court – having regard to “the low threshold for inspecting the applicant’s bank account, the wide scope of the requests for information, the subsequent disclosure and continuing storage of the applicant’s personal information, and the insufficiency of procedural safeguards” – concluded that the inspection of Sommer’s bank account had not been proportionate or necessary in a democratic society and found there had been a violation of article 8 of the ECHR. It also ordered Germany to pay Sommer €4,000 in non-pecuniary damage. 



A HARD ACT TO FOLLOW

The LRC has published a report on section 117 of the *Succession Act 1965*, which recommends that the law should be reformed, specifically as it applies to adult children. **Karl Dowling** comes home to roost

KARL DOWLING IS A BARRISTER SPECIALISING IN PROBATE AND SUCCESSION LAW, AND IS THE AUTHOR OF *THE IRISH PROBATE PRACTITIONERS' HANDBOOK*

It is now over 50 years since the *Succession Act 1965* came into operation and, having considered the social and economic change that has taken place in the intervening period, the Law Reform Commission (LRC) published a report on section 117 of the act, which was launched on 30 May 2017 by Ms Justice Baker. It recommends that the law should be reformed, specifically as it applies to adult children.

The commission make 19 recommendations in all for the reform of section 117, with the report including a draft *Succession (Amendment) Bill 2017* for that purpose. The main recommendations are that:

- Section 117 should be extended to intestacy,
- Section 117 should be based on 'proper provision' and not 'moral duty',
- There exists a presumption that parents have provided for their adult children, subject to three exceptions,
- Reforms should take account of changing family relationships and changing demographics,
- The legal right share for surviving spouses be ring-fenced,
- The current time limits should remain, but be clarified, and
- There is no duty on the legal personal representatives to notify potential claimants.

In practical terms, two recommendations, if enacted, will result in a seismic shift in succession law.

In its current form, an application pursuant to section 117 can only be maintained where the deceased has died having made a will.

During the Oireachtas debates on the *Status of Children Act 1987*, the then Minister for Justice held a concern that to extend section 117 to instances where a person dies without a will would "unnecessarily introduce scope for legal proceedings in the area of intestate's estate and that this ... would increase the prospects of estates being whittled away on legal costs".

Notwithstanding the arguments advanced by the minister, the commission in its 1989 *Report on Land Law and Conveyancing Law* (LRC 30 1 1989) observed that it was difficult to justify a situation wherein the child of a testate parent has redress, while the child of an intestate parent has none.

The commission proposes an amendment to section 117(1) by the addition of the words 'or intestate'.

The commission has taken an important step in guarding against injustice by recommending that section 117 should be extended to intestate estates. If a parent is deemed to have failed to make proper provision, undeniably they can have done so either by making or by failing to make a will. It is not always appropriate for the estate to be divided equally among children, which would happen on intestacy.

A failure to make proper provision for a child is as likely to occur by way of omission in failing to make a will. It is self-evident that injustice can occur by application of the rules

of intestacy, which are unbending and do not take account of the individual circumstances of vulnerable children.

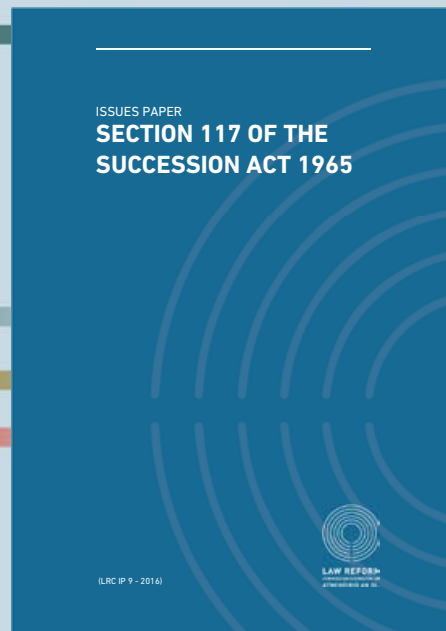
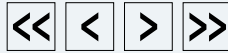
Proper provision

The commission has also recommended that section 117 should be amended by the removal of references to 'moral duty' and should simply provide that a deceased parent has a duty to make 'proper provision' for a child.

Section 117(1) of the draft *Succession (Amendment) Bill* provides that: "Where, on application by or on behalf of a child of a testator or intestate, (a) the court is of the opinion that the testator or intestate has failed to make proper provision for the child in accordance with his or her will or otherwise, then (b) the court may order that such provision shall be made for the child out of the estate as the court thinks just."

The use of the phrase 'moral duty' in section 117(1) is not typical of legislative language and, in general, more neutral language is used in other common law jurisdictions. England and Wales employs the phrase 'reasonable provision ... for maintenance', while New Zealand uses the wording 'adequate provision' for 'proper maintenance'.

In this jurisdiction, the meaning of 'moral duty' has received a significant amount of judicial consideration. The commission's view is that "the wording 'moral duty' can be divisive ... leads to uncertainty and is partially out of line with other duties the law imposes on



IN PRACTICAL TERMS, TWO RECOMMENDATIONS, IF ENACTED, WILL RESULT IN A SEISMIC SHIFT IN SUCCESSION LAW

parents” – hence the proposed amendment to section 117.

The commission has taken a bold step in seeking to limit the amount of ‘speculative’ actions that come before the courts by recommending that a presumption exists that adult children have been properly provided for, the wording of which is to be found in draft section 117(3)(a): “Where an application is made by a child who is 18 years of age or more (or, if the applicant is in full time education, who is 23 years of age or more) at the time of death of the testator or intestate, the court shall presume that the testator or intestate made proper provision for the child within the meaning of subsection (1)(a).”

Given that the vast majority of claimants are adult children, this recommendation will certainly go a long way in protecting estates from less-than-forthright actions and the costs implications that arise from same.

However, in applying the needs test, the commission went on to recommend at subsection (3)(b) that such a presumption could be

rebutted by the establishment of one or more of the following:

- That the applicant has a particular financial need, including such need by reasons of the applicant’s health or decision-making capacity,
- That the estate contains an object of particular sentimental value to the applicant, or
- That the applicant relinquished or, as the case may be, had foregone the opportunity of remunerative activity in order to provide support or care for the testator or intestate during the testator’s or the intestate’s lifetime.

While section 117(3)(b)(i) and (iii) are self-explanatory, it will be interesting to see, if enacted, how the courts will interpret ‘an item of particular sentimental value’. I presume that such an item can be of monetary value as well as being of sentimental value, and it will be important for the legislature to clarify what such an item can or cannot be.

Given that approximately 70% of LRC

recommendations make it onto the statute books, there is every chance that the *Succession (Amendment) Bill 2017* will be enacted. Considering the commission’s recommendation that the six-month time limit in which proceedings must be issued should not change, it is incumbent on probate practitioners to be alive to the potential for change.

On the issue of time limits, there appears to be little doubt that the potential for gross injustice exists under the current and proposed regime in the case of infants without any guardian and persons of unsound mind without any committee, or indeed adult children experiencing mental health difficulties, having regard to the short time limit. The commission has recommended that the current time-period be retained and the reasoning is more than acceptable, in that estates must be administered in a timely fashion. Notwithstanding that, perhaps the legislature will give due consideration to permitting a degree of judicial discretion in order to ensure that the most vulnerable in society are adequately protected. [G](#)

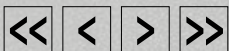


A shot at the title

One of the problems often faced by practitioners dealing with multi-unit developments is locating the original title holder to the common areas, generally the former developer. **Dean Regan** coulda been a contender

DEAN REGAN IS A PRACTISING BARRISTER WITH A PARTICULAR FOCUS ON EQUITY, TORT AND REGULATORY LAW





PICTURE: REX FEAT JAMES NUALA REDMOND



iven the current upturn in the property market, practitioners in the area of apartment complex

conveyancing and management company litigation are faced with an increasing trend of having to rectify the title of the common areas of multi-unit development complexes. Whether this arises in seeking to rectify the title for an individual apartment, or on foot of a personal injuries claim within the common areas of the complex itself, one of the problems faced by practitioners in dealing with this issue is locating the original title holder to the common areas, generally the former developer. This problem is rendered more difficult where the developer/title holder is no longer in existence and has failed to transfer the common areas in accordance with the scheme of disposal for the development.

In such developments, the full implementation of the scheme of disposal by the transfer of common areas to the owners' management company is an essential element in completing the title of each apartment owner. If this becomes impossible because of the dissolution of the developer or the management company, or both, the title of each apartment owner remains incomplete. This position will have ramifications for the future sale and transfer of such properties. There are a number of avenues available to remedy this situation, depending on the status of the former title holder of the common areas.

AT A GLANCE

- There is an increasing trend of having to rectify the title of the common areas of multi-unit development complexes
- The full implementation of the scheme of disposal by the transfer of common areas to the owners' management company is an essential element in completing the title of each apartment owner
- An application pursuant to the *Multi-Unit Developments Act* is adversarial in nature: one is seeking to compel the developer
- Under the *Trustee Act 1893*, however, one is seeking the assistance of the High Court to rectify a problem with title

Where the former title holder is the original development company, the dissolution of that company has a significant effect on the assets of the company. Section 28 of the *State Property Act 1954* maintains that, where a body corporate holds property that it does not dispose of prior to its dissolution, immediately upon such dissolution that property vests in the State. An exception to this principle is property held by the dissolved body corporate upon trust for another person. In the case of a dissolved development company that has retained the title of the common areas, such title may be held on trust for the owners of

the individual units within the development complex, among other things, by virtue of the provisions of the management company agreement.

Once one can establish that a trust is created between the owners of the individual units and the former development company in respect of the common areas, one may seek to rely upon section 26 of the *Trustee Act 1893*, which provides that where a trustee entitled to or possessed of any land cannot be found, the High Court may make an order, termed a vesting order in the act, vesting the land in any such person, in any such manner, and for any such estate as the court may direct. The High Court in *Heidelstone Company Ltd* held that a "trustee who cannot be found" includes a dissolved company. Thus, one may seek to rely upon the antiquated section for the purposes of an application to vest the common areas of an apartment complex in a new management company where the former title holder has dissolved before completing the transfer of the common areas. The court in *Heidelstone* held that the use of the *Trustee Act 1893* represented an efficient way in which to deal with such a problem that was not precluded by the provisions enabling restoration of the developer company to the Register of Companies and thereafter to effect a transfer to the owners' management company.

Dissolution of management company

That position may be contrasted where one is dealing with an owners' management company that has obtained a transfer of the common areas from the original title holder but, for one reason or another, has been struck off the Registrar of Companies or is dissolved, perhaps for failure to file annual returns. In such a situation, the principles enunciated by section 28 of the *State Property Act 1954* remain the same. The assets of the company are vested in the State unless it can be shown that they are held on trust for another person. The comments of Justice Laffoy in *Heidelstone* are noteworthy in considering this issue.

The court stated that: "It is not inconceivable that ... an application might be brought under section 12B(3)

THE FINAL CONSIDERATION IS WHERE ONE IS DEALING WITH A DEVELOPMENT COMPANY THAT REMAINS ACTIVE AND TRADING BUT HAS FAILED, REFUSED, OR NEGLECTED TO TRANSFER THE COMMON AREAS



P.C. SHUTTERSTOCK

IF THIS BECOMES IMPOSSIBLE BECAUSE OF THE DISSOLUTION OF THE DEVELOPER OR THE MANAGEMENT COMPANY, OR BOTH, THE TITLE OF EACH APARTMENT OWNER REMAINS INCOMPLETE

of the *Companies (Amendment) Act 1982* [now governed by sections 736-744 of the *Companies Act 2014*] to have the [development] company restored to the Registrar of Companies. If such an application were successful, the [development] company would be deemed to have continued in existence as if its name had not been struck off.”

The use of section 738 of the *Companies Act 2014*, to restore a dissolved management company to the Registrar of Companies is more appropriate where the management company has already obtained a transfer of common areas from the original title holder but has been struck off the Registrar

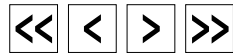
of Companies on grounds of administrative oversight or due to the default of the developer.

Multi-Unit Developments Act 2011

The final consideration is where one is dealing with a development company that remains active and trading, but has failed, refused, or neglected to transfer the common areas or, alternatively perhaps, where the common areas are in the name of the developer personally. In such circumstances, one may seek to rely upon the provisions of the *Multi-Unit Developments Act 2011* – more particularly, section 24 thereof – for the purposes of compelling the title holder of the

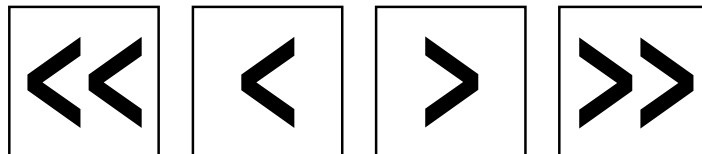
common areas to transfer the areas into the name of the owners’ management company.

Post 1 April 2011, the act laid down a number of safeguards to ensure that common areas were transferred in advance of any difficulties with the development company arising. Section 3 maintained that, in new developments, no unit may be sold without (a) the establishment of a management company, (b) the transfer of the legal interest in the common areas to the management company, (c) certification of compliance with fire safety to be provided to the management company, and (d) the developer to enter into a contract with the management company outlining duties



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THE APPROPRIATE AVENUE FOR REDRESS FOR AN INDIVIDUAL LITIGANT WILL DEPEND ON WHETHER THE ORIGINAL TITLE HOLDER TO THE COMMON AREAS REMAINS IN EXISTENCE OR NOT

and obligations – that is, the management company agreement.

Section 4 of the act addresses partially completed developments as of 1 April 2011 and maintains that “the developer shall ... arrange for the transfer of the ownership of the relevant parts of the common areas of the multi-unit development concerned, together with the reversion to the relevant owners’ management company within six months of the commencement of the legislation” (1 October 2011).

Section 5 deals with completed and substantially completed developments. The legislation maintains that, in such situations, the developer is under the same obligations as in section 4. The definition of ‘completed’ is not provided within the legislation; however, ‘substantially completed’ is defined as being where sales of not less than 80% of residential units have been closed by 1 April 2011.

Where it arises that an active development company has failed to transfer the common areas within the statutory specified time limits, one may rely on section 24 of the act (order 46B of the *Circuit Court Rules*) for the purposes of compelling compliance with the relevant section of the


Multi-Unit Developments Act. Applicants to such proceedings are those as defined by section 25(1) of the act and include, among other things, the owners’ management company and any/or individual members of such management company. However, persons outside the section 25(1) definition may nonetheless apply to the Circuit Court *ex parte* pursuant to section 25(2) for permission to proceed under act prior to instituting proceedings.

Existential issues

Unlike an application pursuant to the provisions of the *Trustee Act 1893*, an application pursuant to the *Multi-Unit Developments Act* is adversarial in nature: one is seeking to compel the developer or other relevant party to do something it ought to have done – in this instance, comply with section 4 and/or section 5 of the 2011 act. Such a form of litigation will carry with it the usual risks of adversarial litigation.

Under the *Trustee Act 1893*, however, one is seeking the assistance of the High Court to rectify a problem with title where the former developer or title holder for the common areas of an apartment complex no longer exists. The appropriate avenue for

redress for an individual litigant will depend on whether the original title holder to the common areas remains in existence or not.

The ability to restore a former developer company to the Register of Companies pursuant to section 738 of the *Companies Act 2014* does not militate against an application pursuant to section 26 of the *Trustee Act 1893* when dealing with a dissolved development company. Indeed, the latter may be the more prudent course of action, particularly where the development company is financially unsound or where it is not possible to take effective control on restoration. 

LOOK IT UP

CASES:

- *Heidelstone Company Ltd* [2006] IEHC 408; [2007] 4 IR 175

LEGISLATION:

- *Companies Act 2014*
- *Multi-Unit Developments Act 2011*
- *State Property Act 1954*
- *Trustee Act 1893*

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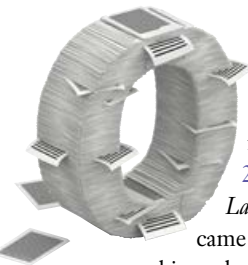
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We are family

Major changes to practice and procedure in the Circuit Family Court came into effect on 14 June. **Keith Walsh** and **Aidan Reynolds** flag the changes brought about by the new *Circuit Court Rules (Family Law) 2017*

KEITH WALSH IS PRINCIPAL OF KEITH WALSH SOLICITORS AND CHAIR OF THE LAW SOCIETY'S CHILD AND FAMILY LAW COMMITTEE. AIDAN REYNOLDS IS A PARTNER WITH GALLAGHER SHATTER SOLICITORS AND A MEMBER OF THE SAME COMMITTEE



Order 59 of the *Circuit Court Rules* deals with family law matters. It has been amended in a piecemeal fashion over the past 12 years. However, SI 2017/2017 introduced the *Circuit Court Rules (Family Law) 2017*. The new rules

came into effect on 14 June 2017 and introduce significant changes to the practice of family law.

The major changes are:

- Order 59 has been consolidated,
- Additional requirements (jurisdiction and marriage certificates) for all originating documents – order 59, rule 3(3) and (4),
- Provision has been made for procedure to rule settlements by notice of motion – order 59, rule 3(5),
- The affidavit of means of both parties must be vouched for a period of one year prior to the date on which the civil bill was issued (previously, it was

one year prior to the date on which the defence was filed) – Form 37L, order 59, rule 42(2),

- Changes to case progression in Dublin only – order 59, rule 65.

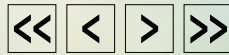
AT A GLANCE

- The *Circuit Court Rules (Family Law) 2017* introduce significant changes to the practice of family law
- There are additional requirements for all originating documents referring to jurisdiction and marriage certificates
- Provision has been made for procedure to rule settlements by notice of motion
- There are changes to case progression in Dublin only

Consolidation

The consolidation of order 59 involves a reorganisation of the order under the following headings:

- Preliminary and general (rules 1-13),
- Proceedings covered by the order (rules 14-63),
- Case progression (rules 64-78),
- Appointment of guardians (rule 79),
- Declaration of parentage (rules 80-82),
- DNA tests where parentage is in issue (rule 83),
- Domestic violence (rules 84-91),
- Proceedings under the *Protection of Children (Hague Convention) Act 2000*



THE CHANGES TO ORDER 59 WERE LONG OVERDUE AND HAVE BEEN WELCOMED BY PRACTITIONERS. IT IS HOPED THAT THEY WILL BE EFFECTIVE, STREAMLINE THE RESOLUTION OF FAMILY LAW CASES, AND REDUCE SOME OF THE PRESSURE ON COURT SERVICES AND STAFF





and the *Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children 1996* (rules 92-101),

- Section 12 of the *Gender Recognition Act 2015* (rules 102-109),
- Section 40 of the *Civil Liability and Courts Act 2004* (rules 110-113).

The effect of the consolidation is to make order 59 more user-friendly and easier to navigate for practitioners. A number of the old forms have been changed and are contained in schedule 2 of SI 207/2017, and two new forms introduced: **Form 37W** (certificate of completion of pre-case progression steps) and **Form 37X** (certificate of readiness for trial).

Practitioners should immediately update their precedent family law civil bill, as the changes to the family law civil bill contained in the amended Form 2N in Schedule 2 of the statutory instrument, although relatively minor, are effective from 14 June 2017, and so the old civil bill format may not be accepted by your local Circuit Court office.

Additional requirements

Order 59, rule 3(2) and (4) sets out additional requirements for all originating documents (jurisdiction and marriage certificates).

The originating document, whether civil bill or notice of motion, must set out the basis for jurisdiction on its face where neither party to the proceedings nor any child to whom the proceedings relate resides in the county. This would apply, for example, if one of the parties worked in the country but neither resided in the country. The civil bill must set this out, together with details of the address of the employer.

In any proceedings concerning the marriage of any person, an original marriage certificate must be produced. Where the certificate is not in Irish or English, the certificate, duly notarised, must be produced, together with a translation of that certificate into Irish or English, and this translation must be verified by the translator on oath or affidavit.

Notice of motion

Order 59, rule 35 makes provision for a procedure to rule settlements by notice of motion.



I got all my sisters with me...

Prior to the introduction of the procedure to rule settlements by notice of motion within the *Circuit Court Rules*, there was no provision in the rules specifically dealing with the ruling of consent terms. Practices differed from circuit to circuit. Some circuits adopted a particular approach to this, while others required that a notice of motion for judgment be issued, with the consent terms being annexed thereto. Other practices included issuing a motion for judgment in default of defence, or mentioning the matter to the court and having the matter listed before a judge. The new procedure is most welcome, as it clarifies the position for all.

Where the parties are agreed in respect of all of the reliefs being sought, either party may apply to the court for judgment in the agreed terms. If pension orders are being sought, then the trustees of the pension scheme concerned must be put on notice. The minimum notice to be given to the court of any such application is 14 clear days before the hearing.

The notice of motion must be grounded upon:

- An affidavit exhibiting the agreed terms, and
- An affidavit or updated affidavit of means of each party, sworn in each case not earlier than six months before the date on which the motion is issued.

On the hearing of the application, the court may, upon hearing such evidence, oral or otherwise, as may be adduced:

- Give judgment in the terms agreed between the parties, or
- Adjourn the application and direct the attendance of a party or other person, or the giving of further evidence on the application, as the court may require, or
- Give directions in relation to the service of a notice of trial or notice to fix a date for trial.

Where an agreement or consent to the making of an order under this rule is given in writing by a party who does not intend to appear on the hearing of the motion, such agreement or consent must be verified on affidavit, or otherwise verified or authenticated in such manner as the court considers sufficient.

In cases where an order for pension relief is sought, a draft of such order (which has, so far as the pension relief sought is concerned, been served on the trustees of the pension scheme in question) shall be handed into court on the hearing of the application. Although not specified in the rules, it is likely that a letter from the pension trustees, confirming that the proposed pension order is capable of being implemented, will be a necessary proof.

Affidavit of means

The affidavit of means of both parties must be vouched for a period of one year prior to the date on which the civil bill was issued (previously it was one year prior to the date on which the defence was filed) – **Form 37L**; order 59, rule 42(2).

This change to the vouching requirements was made to ensure that a respondent could not profit from their delay in filing a defence so as to avoid providing vouching documents for a certain period. The vouching period now begins from the date of issue of the civil bill.

Dublin only changes

Order 59, rule 65 makes changes to case progression in Dublin only. The purpose of case progression is to ensure that proceedings are prepared for trial in a manner that is just, expeditious, and likely to minimise the costs of the proceedings, and that the time and other resources of the court are employed optimally.

A case progression hearing is not required post filing of defence where both parties agree and both have certified completion of pre-case progression steps in Dublin Circuit only (order 59, rule 38).

A notice to fix a date for trial can be filed without the necessity for case progression where a defence has been filed and both parties have certified compliance with the pre-case progression steps using the appropriate forms as contained in the new rules – **Forms 37X** and **37W**. The applicant can serve the notice any time after the defence and form has been filed and served.

The respondent can file the notice if the



A NOTICE TO FIX A DATE FOR TRIAL IS NOT A NOTICE OF TRIAL, AND SO THE DATE ON THE NOTICE TO FIX A DATE FOR TRIAL WILL BE THE DATE OF THE LIST TO FIX DATES IN THE DUBLIN CIRCUIT

applicant has not done so within ten days of filing and service of the defence (and provided both parties have certified completion of pre-case progression steps) (order 59, rule 39).

A notice to fix a date for trial is not a notice of trial, and so the date on the notice to fix a date for trial will be the date of the list to fix dates in the Dublin Circuit, which is currently held on select Fridays in the Dublin Circuit at 9.30am. The notice to fix a date for trial must be issued and served on the other side and, where pension relief is sought, on the trustees of the pension scheme. The minimum notice for a notice to fix a date for trial is ten days.

In Dublin, once a defence is filed, a case progression summons will not now automatically issue to fix a date for a case progression hearing within 70 days. Instead, order 59, rule 65 gives the following options to parties:

- Where both parties have lodged a duly signed joint certificate of completion of the pre-case progression steps, as set out in [Form 37W](#), then the county registrar must list a case progression hearing and issue a case progression summons ([Form 37L](#)) for the next available date, or
- Where one party has lodged a certificate of completion by that party of the pre-case progression steps in [Form 37W](#), and has given the opposing party not less than 14 days' written notice of his completion of the pre-case progression steps and his intention to apply for a case progression hearing – and calling on that party to complete the pre-case progression steps – then the county registrar must list a case progression hearing and issue a case-progression summons ([Form 37L](#)) for the next available date following the expiry of 21 days from the date of issue of the summons,
- If neither party has caused the case progression summons to issue within six months after the date for filing by the respondent of his defence, his affidavit of

means and, where required, his affidavit of welfare, the proceedings shall be listed before the court for an explanation of the delay in proceeding with case progression. The court may make such orders and give such directions as it considers appropriate, which may include striking out the proceedings, including any counterclaim, or directing the issue of a summons for case progression by the county registrar.

Where, during the course of case progression, both parties – not less than seven weeks before any adjourned case-progression hearing date – jointly certify completion of the pre-case-progression steps (in [Form 37W](#)) and comply in full with all orders made and directions given in case progression and readiness for trial by completing new [Form 37X](#), and attaching copies of every order made and direction given in case progression, the proceedings shall be listed before the county registrar to fix a date for hearing, notwithstanding that the case-progression hearing is adjourned to a later date.

The county registrar must – save in exceptional circumstances to be identified in any order made – fix a date for the hearing by the court of the proceedings and vacate any adjourned date for the case progression hearing.

Case progression outside Dublin

The same case-progression rules as applied for all circuits prior to the commencement of the new rules will still apply to all circuits other than Dublin. That is, the county registrar must cause the proceedings to be listed before him for a case progression hearing on a date that is not later than 70 days after filing by the respondent of his defence, his affidavit of means and, where required, his affidavit of welfare.

The county registrar shall issue a summons (in [Form 37L](#)) to each of the parties to attend

a case-progression hearing, to which shall be attached a case-progression questionnaire. In fixing the date on which the proceedings are listed before him for case progression, the county registrar shall allow the parties sufficient time to vouch the items referred to in their respective affidavits of means and to complete the case-progression questionnaire within the time prescribed.

Overdue changes

The changes to order 59 were long overdue and have been welcomed by practitioners. It is hoped that they will be effective, streamline the resolution of family law cases, and reduce some of the pressure on court services and staff.

The recent revival of the Circuit Court Users Group in relation to family law has provided practitioners with a direct link to the Courts Service to provide feedback on the operation of the new rules, and family law matters generally, in the Circuit Court. In addition, the consultative process set up by the President of the Circuit Court resulting in these changes to the *Circuit Court Rules* in family law has been recognised by representatives of the Law Society, the Bar Council, and the Family Lawyers' Association as being very successful. [g](#)

LOOK IT UP

LEGISLATION:

- [Circuit Court Rules \(Family Law\) 2017 \(SI 207/2017\)](#)
- [Civil Liability and Courts Act 2004, section 40](#)
- [Gender Recognition Act 2015, section 12](#)
- [Protection of Children \(Hague Convention\) Act 2000](#)



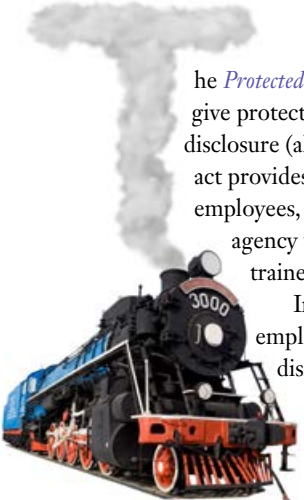
Whistle-stop tour

It is important for solicitors advising either employers or employees to be clear as to what amounts to a ‘protected disclosure’, when an employee is or is not protected, and what an employer should and should not do.

Anne O’Connell hops on board

ANNE O’CONNELL IS A SOLICITOR SPECIALISING IN EMPLOYMENT LAW, A MEMBER OF THE LAW SOCIETY’S EMPLOYMENT LAW COMMITTEE, AND PRINCIPAL OF [AOC SOLICITORS](#)

The *Protected Disclosures Act 2014* was introduced to give protection to all workers who make a protected disclosure (also known as ‘whistleblowing’). The act provides protection to all workers, including employees, contractors, agency workers, and trainees.



In respect of an employee who was dismissed wholly or mainly for making a protected disclosure, the employee does not require a year’s service to claim under the *Unfair Dismissals Acts* – the dismissal will be deemed to be automatically unfair, and the maximum compensation award is increased from two years’ remuneration to five years’ remuneration. Furthermore, an employee who makes such a claim may apply to the Circuit Court within 21 days of the dismissal for the continuation of the contract of

employment until the hearing of the unfair dismissal claim. This means that the employer may be required to pay the employee’s salary and benefits up until the conclusion of the unfair dismissal claim.

AT A GLANCE

- The *Protected Disclosures Act 2014* provides protection to all workers, including employees, contractors, agency workers, and trainees
- The act also provides significant protection for whistleblowers against penalisation
- It also protects a worker making a protected disclosure from defamation claims and from any civil or criminal liability in respect of same – however, the immunity in relation to criminal liability is limited to circumstances where the whistleblower reasonably believed that he was making a protected disclosure

All down the line

In a recent case involving two employees against Lifeline Ambulances, the Circuit Court granted the employees an injunction for the continuation of the employees’ contract of employment until the hearing of the unfair dismissal claim. The Circuit Court held that it was not satisfied that the employees’ dismissal was wholly or mainly due to the protected disclosure they had made, but that the employees had met the threshold of establishing that “there were substantial grounds for contending [their dismissal] was wholly or mainly due to the protected disclosure”. Therefore, this decision indicated that, once a protected disclosure was established to have been made,




ONCE IT IS PROVEN THAT THE DISCLOSURE COMES WITHIN THE DEFINITION OF A 'PROTECTED DISCLOSURE', THE WORKER WILL ONLY BE ENTITLED TO A REMEDY IF HE/SHE PROVES THAT HE/SHE HAS SUFFERED A DETRIMENT

P.C. SHUTTERSTOCK

the employees did not have to prove that they were likely to be successful in the unfair dismissal case in order to be granted interim relief by the Circuit Court.

The act also provides significant protection for whistleblowers against penalisation. 'Penalisation' is widely defined in the act, and an employer is prohibited from carrying out any act or omission that affects a worker to the worker's detriment, including suspension, layoff or dismissal, demotion or loss of opportunity for promotion, transfer

of duties or change of location of place of work or reduction in wages or a change in working hours. Penalisation also includes the imposition of any disciplinary reprimand or other penalty or other unfair treatment, coercion, intimidation or harassment. The redress for penalisation includes an order requiring the employer to take a specified course of action and/or require the employer to pay compensation up to a maximum of five years' remuneration if the adjudicator finds in the employee's favour.

An adjudicator made a finding of penalisation under the act in a recent decision (ref: ADJ-00004519) where the employee had only received a verbal warning. The adjudicator awarded the employee €10,000 and ordered the removal of the disciplinary sanction. In this case, the employee had made a protected disclosure that had been investigated and dealt with. However, a month later, a number of complaints were made against the complainant and two other employees by his colleagues and his manager.



IF THE EMPLOYEE IS SANCTIONED OR SUFFERS A DETRIMENT, CONSIDER WHETHER OR NOT A PENALISATION CLAIM SHOULD BE LODGED

The respondent employer provided evidence that there was no causal link between the protected disclosure and the disciplinary sanction. However, the adjudicator appeared to base his decision on the fact that there was a breach of confidentiality in relation to the protected disclosure; and the disciplinary procedures followed – which resulted in a verbal warning – were flawed. This decision indicates that an employer needs to ensure strict compliance with fair procedures in any disciplinary process in relation to an employee who has made a protected disclosure, even where they are unrelated.

Long train runnin'

Persons, including workers, employees and third parties, may have a cause of action in tort against a person who causes detriment to them because they or another person has made a protected disclosure. Such an action in tort cannot be brought together with a claim for penalisation under the act or a claim under the *Unfair Dismissals Acts*. 'Detriment' is defined as including coercion, intimidation or harassment, discrimination, disadvantage or adverse treatment in relation to employment, injury, damage or loss, and/or threat of reprisal. This provision gives protection to persons other than the employee who actually made the disclosure, and one could envisage family members or perhaps even fellow workers suffering detriment because of an act of whistleblowing using this tort.

The act also protects a worker making a protected disclosure from defamation claims and from any civil or criminal liability in respect of same. However, the immunity in relation to criminal liability is limited to circumstances where the whistleblower reasonably believed that he was making a protected disclosure. Employers should therefore first be aware of what is a 'protected disclosure' and train their managers to be able to identify a protected disclosure when made. The protections (with the exception of criminal liability) apply to the worker

whether or not the worker realises that he/she is making a protected disclosure, and employers may take an action in respect of the worker unrelated to the disclosure without realising the worker has such protections.

A 'protected disclosure' is a disclosure by a worker of 'relevant information', defined as information that "(a) in the reasonable belief of the worker ... tends to show one or more relevant wrongdoings, and (b) came to the attention of the worker in connection with the worker's employment".

The important points here are as follows:

- It must be 'information' of a wrongdoing – an allegation is not sufficient,
- It must show a 'relevant wrongdoing' as defined in the act,
- It must have come to the worker's attention in connection with his/her employment.

The act provides an exhaustive list of what is a 'relevant wrongdoing', and it includes:

- The commission of a criminal offence,
- The failure to comply with a legal obligation,
- The occurrence of a miscarriage of justice,
- The endangerment of the health or safety of an individual,
- Damage to the environment,
- Misuse of public funds,
- Mismanagement by a public body, and
- The concealment or destruction of information tending to show any of the above.

Crazy train

A number of alleged 'protected disclosures' do not meet the above criteria, usually as they do not contain information of a relevant wrongdoing, but are allegations of wrongdoing. The difference between 'information' and 'allegation' was set out in the British case of *Cavendish Munro Professional Risks Management Ltd v Geduld*, which dealt with the equivalent British legislation where the definition of 'qualifying disclosure' is very similar to the

definition of protected disclosure in this jurisdiction.

In that decision, it was stated: "Further, the ordinary meaning of giving 'information' is conveying facts. In the course of the hearing before us, a hypothetical was advanced regarding communicating information about the state of a hospital. Communicating 'information' would be: 'The wards have not been cleaned for the past two weeks. Yesterday, sharps were left lying around'. Contrasted with that would be a statement that: 'You are not complying with health and safety requirements'. In our view this would be an allegation not information."

In the Irish case of *Philpott v Marymount University Hospital and Hospice Limited*, the employee made an application under the act for interim relief pending the hearing of the unfair dismissal claim. However, the Circuit Court refused to grant the relief, as it concluded that the disclosure made by the employee did not constitute a protected disclosure, as the employee did not hold a reasonable belief that the information disclosed tended to show one or more of the relevant wrongdoings under the act.

Once it is proven that the disclosure comes within the definition of a 'protected disclosure', the worker will only be entitled to a remedy if he/she proves that he/she has suffered a detriment or has been dismissed wholly or mainly from having made a protected disclosure.

It has become typical for an employee to raise a protected disclosure in the knowledge that he/she is likely to be subject to disciplinary sanction in the near future and/or restructuring is occurring that is likely to have an impact on his/her role. However, in some instances, neither the employer nor the worker realises that a protected disclosure has been made, as there is no requirement to call the disclosure a 'protected disclosure' and this usually occurs where an employee has raised a concern in '360-degree feedback' or in a team meeting. Employers need to be extra vigilant to ensure that its managers are aware



of what may be a protected disclosure and to have it followed up and/or investigated. The employee's motivation behind the protected disclosure is completely irrelevant. However, the employer must be able to illustrate clearly that any future action relating to that employee is nothing to do with the protected disclosure.

Midnight train to Georgia

It is important for solicitors advising either employers or employees to be clear as to what amounts to a 'protected disclosure', when an employee is or is not protected, and what an employer should and should not do.

Practitioners advising employers should note the following:

- Have them educate their managers as to what amounts to a protected disclosure and to be bear in mind when concerns are raised by a worker,
- If a protected disclosure is made (in line with the definition), have it investigated and ensure not to penalise the worker in any way,
- If a restructure or disciplinary process

involving the worker is already underway, ensure the employer can justify and prove that the disciplinary sanction and/or the termination of the contract or employment had nothing to do with the protected disclosure.

Practitioners advising employees should note the following:

- Did the employee raise any concerns before being dismissed or penalised?
- Do the concerns come within the definition of a protected disclosure or were they allegations?
- If the employee is sanctioned or suffers a detriment, consider whether or not a penalisation claim should be lodged.
- If the employee was dismissed, can the employee make a good argument to establish that the dismissal was wholly or mainly due to the protected disclosure? If so, lodge a claim under the *Unfair Dismissals Acts* seeking the increased five years' compensation.
- Remember, even if there is doubt that the employee will successfully meet the

burden of proof in the dismissal claim, he/she may meet the burden of proof to be granted interim relief until the hearing of the unfair dismissal case. Therefore, within 21 days immediately following the date of dismissal, an application should be made to the Circuit Court for interim relief on the basis that there are substantial grounds for contending that the dismissal was wholly or mainly due to the protected disclosure.

LOOK IT UP

CASES:

- *Cavendish Munro Professional Risks Management Ltd v Geduld* [2010] ICR 325
- *Philpott v Marymount University Hospital and Hospice Limited* [2015] IECC 1

LEGISLATION:

- *Protected Disclosures Act 2014*
- *Unfair Dismissals Acts 1977-2007*



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LAW SOCIETY
OF IRELAND



Remains of the day

The CJEU recently examined whether a third-country national may, as the parent of a minor who is an EU citizen, rely on a derived right to reside in the EU.

Cormac Little checks and **Marco Hickey** balances

CORMAC LITTLE IS A PARTNER AT [WILLIAM FRY](#) AND MARCO HICKEY IS A PARTNER AT [LK SHIELDS](#)



The 10 May 2017 judgment of the Court of Justice of the European Union (CJEU) in [Case C-133/15 Chavez-Vilchez & Others v Raad van bestuur van de Sociale verzekeringsbank & Others](#) addressed the rights of third-country nationals, who are parents to EU citizens, to reside in the EU. In its decision, the CJEU revisited [C-34/09 Gerardo Ruiz Zambrano v Office national de l'emploi](#) (2011), where it had held that a parent of a child holding EU citizenship derived a right of residence to live and work in the relevant member state in order to protect that child's rights to remain in the EU.

The fact that all nationals of member states are also citizens of the EU is established by article 20 of the [Treaty on the Functioning of the European Union](#) (TFEU). Article 20 also provides that EU citizens shall enjoy certain rights,

including the right to move and reside freely within the territory of the now 28 member states. Indeed, article 21 TFEU stipulates that this right is subject to certain limitations. Indeed, [Directive 2004/38/EC](#) of the

European Parliament and of the Council (usually referred to as the *Free Movement Directive*) stipulates certain conditions governing the exercise of free movement and rights of residence, including the limitations placed on these rights.

Zambrano concerned two Belgian children living in that country with their Colombian parents. The CJEU ruled that expelling the non-EU parents from Belgium would result in the departure of the children from the EU, thereby risking the genuine use of the substance of their EU citizenship rights. However, subsequent cases such as [Case C-434/09 Shirley McCarthy v Secretary of State for the Home Department](#) (2011) and [C-87/12 Kresbnik Ymeraga and](#)

AT A GLANCE

- The applicants in *Chavez-Vilchez* – eight mothers of Dutch children – argued that being responsible for the day-to-day and primary care of their minor children entitled them to a derived right of residence under article 20 TFEU, in accordance with *Zambrano*
- Previous judgments referred to the child's best interests, age, situation, and dependency
- *Chavez-Vilchez* also refers to factors regarding the relevant child, such as physical and emotional development, emotional ties to both parents, and the effect of separation on the child



PG: SHUTTERSTOCK

THE KEY QUESTIONS ARE: WHO HAS CUSTODY OF THE CHILD AND WHETHER THAT CHILD IS LEGALLY, FINANCIALLY, OR EMOTIONALLY DEPENDENT ON THE THIRD-COUNTRY PARENT

Others v Ministre du Travail, de l'Emploi et de l'Immigration (2013) appear to disapply this rule to EU citizens who had never exercised their rights of free movement.

Social welfare applications refused

Chavez-Vilchez concerned a case taken by eight mothers of Dutch children who had applied for financial support under the domestic social welfare system. A third-country national who is not lawfully resident in the Netherlands

cannot claim such benefits under Dutch law. The relevant administrative bodies thus refused the applications for social assistance and child benefit on the basis that the mothers did not have a right of residence in the Netherlands. They then challenged these refusals before the courts. After the cases were rejected at first instance, the applicants appealed to the Higher Administrative Court of the Netherlands, which stayed proceedings and referred various questions to the CJEU

for a preliminary ruling under article 267 TFEU.

Ms Chavez-Vilchez is a Venezuelan who originally came to the Netherlands on a tourist visa. She entered into a relationship with a local man, culminating in the birth of a child with Dutch nationality. The family resided in Germany until 2011, when Ms Chavez-Vilchez was forced to leave home. She then returned to the Netherlands, where she applied for social welfare benefits to support her child.



Ms Chavez-Vilchez's case is thus different, since her child has exercised its right of free movement. All of the other minors have always resided in the Netherlands.

Issues referred to the CJEU

The applicants argued that they were responsible for the day-to-day and primary care of their minor children, and were thus entitled to a derived right of residence under article 20 TFEU in accordance with *Zambrano*. The referring court sought to ascertain whether the individuals concerned could, as mothers of minor EU nationals, acquire a right of residence under article

20 TFEU. If so, those individuals would be entitled where appropriate to receive social welfare in the Netherlands.

Ruling of the CJEU

Since Ms Chavez-Vilchez's child had previously 'exercised' his/her right to free movement within the EU, the CJEU found that their situation should, first, be analysed in light of both article 21 TFEU and of Directive 2004/38. The general understanding of these provisions is that only EU citizens who exercise their free movement rights can invoke the right to be joined or accompanied by their

dependents. An EU citizen who moves to another member state may bring his family along, even if the latter are not EU citizens themselves. The same is true if and when the EU citizen later returns to his home member state. The court essentially found that both situations should be treated the same, since the key reference point is the EU citizen (even if he or she is a minor.) On this basis, the CJEU held that it was for the Dutch court to assess whether the conditions laid down by Directive 2004/38 were satisfied and, consequently, whether Ms Chavez-Vilchez could rely on a derived right of residence. If not, her situation and that of her child was to be examined in light of article 20 TFEU, along with the other seven applicants.

The CJEU considered that article 20 TFEU precludes national measures, including decisions refusing a right of residence to the family members of an EU citizen, that have the effect of depriving EU citizens of the genuine enjoyment of the substance of the rights conferred by virtue of their nationality.

The CJEU found that consideration had to be given as to whether depriving the child of the care of one of its parents would deprive him/her of the genuine enjoyment of the substance of those rights by compelling those children to leave the territory of the EU. To assess this risk, there is a need to determine which parent is the primary carer of the child and whether there is a relationship of dependency between the child and the third-country national parent.

In making such an assessment, the authorities should take account of the right to respect for family life. However, the CJEU focused on the best interests of the child, including the age of the child, the child's physical and emotional development, the extent of his/her emotional ties both to the EU citizen parent and to the third-country national parent, allied to the risks that separation from the latter might entail for the child's equilibrium.

In this regard, Advocate General Szpunar, in his 8 September 2016 opinion, referred to article 3(1) of the UN *Convention on the Rights of the Child*, which provides that, in all matters concerning children, whether undertaken by public or private social welfare bodies, law courts, administrative authorities or legislatures, the best interests

THE APPLICANTS ARGUED THAT THEY WERE RESPONSIBLE FOR THE DAY-TO-DAY AND PRIMARY CARE OF THEIR MINOR CHILDREN, AND WERE THUS ENTITLED TO A DERIVED RIGHT OF RESIDENCE





THE GENERAL UNDERSTANDING OF THESE PROVISIONS IS THAT ONLY EU CITIZENS WHO EXERCISE THEIR FREE MOVEMENT RIGHTS CAN INVOKE THE RIGHT TO BE JOINED OR ACCOMPANIED BY THEIR DEPENDENTS

of the child shall be a primary consideration. The advocate general also relied on article 3(3) of the *Treaty on European Union* (TEU) and article 24 of the *EU Charter of Fundamental Rights*. Article 3(3) TEU provides that the EU will combat social exclusion and discrimination while promoting social protection, equality between the sexes, solidarity between generations, and protection of children's rights. Article 24 of the charter recognises children as independent and autonomous holders of rights.

The CJEU noted that the question of whether the other parent, an EU citizen, is actually willing to assume sole responsibility for the primary day-to-day care of the child is a relevant factor, but is not in itself a sufficient ground for the concluding a lack of relationship of dependency between the child and the third-country national parent, such that the child would be compelled to leave the EU if a right of residency were refused. The burden of proof was held to lie with the third-country national parent.

The circumstances of the child

Chavez-Vilchez clarifies issues relating to *Zambrano* and other CJEU judgments, such as *Case C-304/14 Secretary of State for the Home Department v CS* (2016) and *Case C-165/14 Alfredo Rendón Marín v Administración del Estado* (2016), which shed light on when non-EU parents could be expelled for public policy reasons. While previous judgments referred to the child's best interests, age, situation and dependency, *Chavez-Vilchez* also refers to factors regarding the relevant child, such as physical and emotional development, emotional ties to both parents, and the effect of separation on the child.

Notably, the CJEU found that the Dutch government's focus on the capability/availability of the EU citizen parent to care

for the child is, nonetheless, essentially subordinate to the child's best interests. The key questions are: who has custody of the child and whether that child is legally, financially, or emotionally dependent on the third-country parent. Oddly, the court did not take express account of situations of joint custody or the more general argument that the child's best interest will usually be to maintain strong relationships with both parents (assuming they are not negligent or abusive).

Humane judgment

Taking the broader view, *Chavez-Vilchez* is a humane judgment, notwithstanding the extra burden it places on member states. The children of the various applicants were clearly living in difficult situations, with many of the families staying in emergency/sheltered accommodation.

On the basis of this ruling, for the purpose of assessing whether an EU child is compelled to leave the EU, regard must be had to whether, in so refusing the relevant parent's application for residency, the child would be deprived of the benefits of EU citizenship. The fact that there is an EU national parent willing and available to raise the child is a factor to be weighed in the balance, but is not fatal to such an application.

An assessment must take into account the best interests of the child as well as the particular circumstances of the case. The court held that it was for the member state concerned to conduct the relevant investigations, while scrutinising the evidence in order to assess whether, in light of the particular circumstances, such a refusal would indeed have such consequences.

The CJEU's judgment should also be examined in the light of the planned departure of Britain from the EU. The EU has made it clear that its first priority

in the article 50 TEU negotiations is to give certainty to the rights of EU citizens in Britain (and vice versa) now and into the future. Accordingly, and in a clear contradiction to one of the main grievances aired by the 'Leave' campaign, *Chavez-Vilchez* could clearly be pleaded by third-country nationals seeking to remain in Britain post-Brexit. [E](#)

LOOK IT UP

CASES:

- [Case C-133/15 Chavez-Vilchez and Others v Raad van bestuur van de Sociale verzekeringsbank and Others](#) (2017)
- [Case C-34/09 Gerardo Ruiz Zambrano v Office national de l'emploi](#) (2011)
- [Case C-434/09 Shirley McCarthy v Secretary of State for the Home Department](#) (2011)
- [Case C-87/12 Kreshnik Ymeraga and Others v Ministre du Travail, de l'Emploi et de l'Immigration](#) (2013)
- [Case C-304/14 Secretary of State for the Home Department v CS](#) (2016)
- [Case C-165/14 Alfredo Rendón Marín v Administración del Estado](#) (2016)

LEGISLATION:

- [Directive 2004/38/EC \(Free Movement Directive\)](#)
- [EU Charter of Fundamental Rights](#)
- [Treaty on European Union and Treaty on the Functioning of the European Union \(consolidated versions\)](#)
- [UN Convention on the Rights of the Child](#)



Wishing well

Having worked as an in-house lawyer for nearly half of his professional career, there are many things **Richard O’Sullivan** wished he’d known when he first moved in-house. Here are some of them

RICHARD O’SULLIVAN IS GENERAL COUNSEL WITH GLOBAL SHARES



The August/September 2016 *Gazette* (p20) reported on a RED C poll conducted for the Law Society that noted that nearly 20% of all solicitors work in an in-house role in Ireland. For many of us, in-house legal has become like a third branch of the profession. Some people might argue that there are now three distinct types of lawyer – solicitor, barrister, and in-house. Those poll figures had real results. More than ever before, the Law

Society is recognising and supporting the unique requirements of in-house lawyers.

In-house legal can be a very rewarding career. As a lawyer in a commercial law firm, you are likely to be a specialist, or even a micro-specialist, in one area of law. As a general practitioner, you have to spread yourself across many different areas, from probate and conveyancing to litigation. As an in-house lawyer, you become what I call a ‘specialist generalist’. While you will often have an in-depth knowledge of a small number of areas (for example intellectual property, data protection, and contracts), you will also be expected

to know enough about most other areas of law to at least spot legal issues and provide some preliminary advice.

In-house lawyers are an integral and indispensable part of their companies. Mark H McCormack, renowned businessman, author and Yale-educated lawyer, uses the analogy of a car. Business executives are like the accelerator pedal. The in-house lawyer is like the brake pedal. Too much accelerator and the car lurches forward and crashes. Too much brake and it never gets going at all. It is when the two work well together that the business is able to drive forward. That teamwork is what all in-house lawyers should aim for.

AT A GLANCE

- In-house legal is the fastest growing sector of our profession – nearly 20% of all solicitors work in an in-house role in Ireland
- There are many practical differences between private practice and in-house work – which are often only learned through experience
- More than ever before, the Law Society is recognising and supporting the unique requirements of in-house lawyers

Top of the pops

With that in mind, my list of things I wish I had known seemed ripe to be converted into a top-ten list. This list reflects some of the key issues that any solicitor wanting to move from private practice into an in-house role should bear in mind. Some of the items on the list are really touchstones – they are points that every in-house lawyer should think about at least once a day. Others are pointers and are the result of practical experience. Hopefully, this list will guide new and



Ding dong dell

prospective in-house lawyers and provide a sanity check for those of us who have been around for a while.

Remember, you are a support service

As a private practice lawyer, you are used to being the goose who lays the golden eggs. You are a fee earner in your firm, and everything is structured to support you to earn money. When you move in-house, the dynamic changes radically. You change from being the star of the show to being a support service for the other people (sales, operations, R&D) who make the money.

A corollary to this is that, when you move in-house, you also become a cost to the business, in the same way that stationery or electricity is a cost. This change in dynamic means you must continuously ask “what am I doing to justify my cost?” It pays to never be complacent in an in-house role.

You only have one client

In private practice, you have many clients. Clients come and go. You might see one client several times a year and another client just once. When you move in-house, you have just one client, and you need to know that client

intimately. You need to know your client’s business in a level of detail that would never apply in private practice. You need to know the people, the personalities, and the politics. If your client is a software company, you need to understand everything about what that software does. If your client makes widgets, you need to become an expert in widgets.

Take proper instructions

Every in-house lawyer has stories of conversations in corridors, or in the canteen, that are later quoted back as formal legal advice. Be mindful that what you might think is an informal chat can often be seen as a legal consultation by your business colleagues. It is often a good idea to summarise these informal conversations afterwards in a short email to your colleague. Tell your colleague that if she wants more formal legal advice, you can arrange that. It is also a good idea to have a legal advice policy in place, setting out who

can ask you for advice (for example, managers and department heads) and what the process is. This helps the business to use you most efficiently and is a good cost-control measure.

Don’t become a crutch for the business

In many businesses, particularly regulated ones, there can be a temptation to send everything to the Legal Department for ‘legal sign-off’. You should be clear with your colleagues as to what ‘legal sign-off’ actually means. It is not a universal blessing that immunises their decisions from any future criticism. It is, at best, the considered opinion of you, as a lawyer, on the relevant legal issues involved. In some cases, business colleagues can become overly reliant on having legal sign-off before they make a decision. That is not good for you, for them, or for the business. Watch out for those people who use your legal advice to give them cover for their own decisions: “Well, I checked with Legal and

IT PAYS TO NEVER BE COMPLACENT IN AN IN-HOUSE ROLE

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20 July	LAWYERS' ETHICS-COMPARING ITALIAN AND IRISH RULES	€95		2 Regulatory Matters (By Group Study)
7 Sept	SKILLNET CLUSTER - ESSENTIAL GENERAL PRACTICE UPDATE 2017 - Ballygarry House Hotel, Tralee	€115 (Hot lunch and networking drinks included in price)		6 (by Group Study)
21 Sept	THE IN-HOUSE SOLICITOR – SETTING UP A LEGAL FUNCTION AND KEY RESPONSIBILITIES - Kingsley Hotel, Cork	€150	€176	5 M & PD Skills plus 1 General (by Group Study)
15/16 Sept & 29/30 Sept	FUNDAMENTALS OF COMMERCIAL CONTRACTS	€1,000	€1,100	20 General (including 3M & PD Skills) by Group Study
27 Sept	CRIMINAL LAW UPDATE	€150	€176	3 General (By Group Study)
28 Sept	EMPLOYMENT LAW UPDATE	€150	€176	3 General (By Group Study)
29/30 Sept & 13/14 Oct	THE FUNDAMENTALS OF DISTRICT COURT Civil Procedure, Drafting & Advocacy Skills - (Focus on General Tort & Personal Injuries Litigation)	€750	€850	18 General including min 3 M & PD Skills Matters (by Group Study)
4 Oct	LAW SOCIETY FINUAS NETWORK -PROFESSIONAL WELLBEING FOR A SUCCESSFUL PRACTICE – Kingsley Hotel Cork	€150	€176	5 M & PD Skills (by Group Study)
Starting 6 Oct	LAW SOCIETY FINUAS NETWORK -EXECUTIVE LEADERSHIP Module 1: Leadership in Perspective Friday 6 October 2017 (9.30am-5.00pm) Module 2: Leading Self Friday 10 Nov 2017 (9.30am-5.00pm) & Sat 11 Nov 2018 (9.30am-5.00pm) Module 3: Leading People Friday 26 Jan 2018 (9.30am-5.00pm) & Sat 27 Jan (9.30am-5.00pm) Module 4: Leading Business Friday 9 March 2018 (9.30am-5.00pm) & Sat 10 March 2018 (9.30am-5.00pm) <i>Places are strictly limited. Contact Finuas@lawsociety.ie to register your interest</i>	€3,400	€4,080	Individual Executive Coaching: A unique feature of this programme is the inclusion of three (1.5 hr) executive coaching sessions with members of the programme delivery team who are all experienced Executive Coaches. Each module is supported by a pivotal 'one-on-one' session offering confidential professional support with your leadership development.
3/4 Nov	CONSTRUCTION LAW – AN INTRODUCTION An intense, practical series of lectures and case studies	€350	€425	10 General (By Group Study)
1 Dec	LAW SOCIETY SKILLNET CPD CERTIFICATE IN PROFESSIONAL EDUCATION	€1,250	€1,450	Full General and M & PD Skills CPD requirement for 2017 (by Group Study) including 5 hours M & PD Skills (by eLearning)



YOU HAVE A DUTY TO BE NOT ONLY A LOYAL EMPLOYEE TO YOUR COMPANY, BUT ALSO TO BE A RELIABLY INDEPENDENT LEGAL ADVISER TO YOUR CLIENT

they said it was okay”. Consider putting a legal advice policy in place that sets out what legal advice is, and what it is not.

Be practical

As lawyers, we often have a fascination with the minutiae of judgments and legal arguments. This fascination is usually not shared by our business colleagues. Remember, they generally want to know “can I do the thing I want to do – and, if not, why not – and what can I do to rectify that situation?” Try to answer that question simply and clearly. Use plain language – avoid Latin and legal jargon. Try to put yourself in your colleague’s position and ask: “If I had to make the decision, what advice would I want to get from my lawyer?”

A corollary to this is to try to give practical, workable solutions to your client. Avoid becoming the ‘Department of No’. If you think the business should not do what has been proposed, explain that and try to provide a positive answer as to what the business can do instead that might achieve the same goal.

Become a trusted advisor

As an in-house lawyer, you should aim to be more than the person who gives legal advice and drafts contracts. Your objective should be to become a trusted adviser to the board, the CEO, and the senior management. Aim to be the sensible sounding board for all key business decisions and the first person the CEO calls when there is a crisis. In short, you want to be the consigliere to the company. Think Robert Duvall’s character in *The Godfather* movies – he was the trusted in-house lawyer to the eponymous Godfather (pro tip: if you haven’t seen *The Godfather* movies, watch them).

Remember your independence

When you are an in-house lawyer, you are not only an adviser to your client, but also an employee of your client. However, even though you are an employee, bear in mind that you are not like everyone else in the organisation. You are a solicitor. You are a

PICTURE: SHUTTERSTOCK



member of a separate, distinct profession with its own rules and ethics. You have a duty to be not only a loyal employee to your company, but also to be a reliably independent legal adviser to your client. This can strengthen your position in the organisation. Your independence often allows you to question decisions and to act as devil’s advocate.

Remember your integrity

As a lawyer, you are only as good as your integrity. Along with your independence, it is part of what sets you aside from everyone else. If you have thought through all the possibilities and you have to tell your client not to proceed with a particular decision, then stand by your advice. It can be very difficult to withstand the pressure from colleagues who think that the Legal Department is not being commercial, or is a blocker to the business. Resist the temptation to change your advice to keep everyone happy. Once you have lost your integrity, it is gone forever, so guard it jealously.

Remember to add value

Remember tip number 1 – you are a support and a cost. Ask yourself, on a continuous basis, “What am I doing to add value?” It is no longer enough to just give basic advice and negotiate contracts. You should try to expand your role. Become a company secretary, head of compliance or data protection officer (note: the [GDPR](#) becomes effective in May 2018). As lawyers, we are particularly suited to risk

management. In-house lawyers should try to be the chief risk officer for their client where possible. It is a great way to add value, and it places you at the heart of the business.

Have fun!

There are some great advantages to working in-house. There is no more ‘red clock, green clock’ time billing, invoicing, or compulsory marketing. That is not to say that in-house work is any less challenging than private practice. In many ways, it can be even more complex, with multiple business units in multiple jurisdictions. But working in-house can open up career options to move into a business management role, or even to head the business as CEO. It can be invigorating to work with non-legal colleagues who are just as eager to learn from you as you are from them. Whether you are in a start-up or an established company, working in-house can add a wonderful variety to your work life.

Bonus tip

This is really half tip, half plea. When you first make the move in-house from the comforting and familiar environment of a law firm, it can be quite a shock to realise that you are out on your own. There are no longer any legal colleagues down the corridor. There is no one to sanity-check your ideas or give a helping hand.

As in-house lawyers, we are not in competition with each other. There is no reason why we cannot help each other or be at the other end of the phone when a colleague has a question. So remember to reach out for support and to stay in touch.

Here is the plea – be open to taking cold calls from other in-house lawyers who need advice, and be open to making those calls yourself. Consider setting up an informal network of in-house lawyers in your area. You could meet for coffee once a month and share experience, advice, and maybe the odd template document. We have everything to gain by extending a helping hand to each other. [G](#)



CONVEYANCING COMMITTEE

PERMANENT TSB POLICY ON SOLICITORS ACTING FOR FAMILY MEMBERS

There is no law that prohibits a solicitor acting for a family member. However, solicitors are prohibited by law from giving certain undertakings to lending institutions in certain cases. Some lending institutions, as a matter of policy on their part, will not accept undertakings from solicitors in a broader range of cases than is addressed by the law applicable in this regard. This, in effect and practice, means that solicitors are being told by banks that they cannot 'act' for their family members in those cases.

Following requests from practitioners, the Conveyancing Committee asked Permanent TSB to change its policy, which previously precluded solicitors from acting for a wide range of family members borrowing from the bank. It is the view of the committee that this policy was applied too broadly by the bank.

Following a consideration of the matter, the bank has advised the committee that it has narrowed the scope of its policy and now will accept undertakings from solicitors, except where the 'connected person' in respect of whom an undertaking is being given is a parent, child, or sibling of the solicitor (or is in one of the categories of 'connected persons' set out in SI 211 of 2009).

The bank has also advised the committee that the bank may permit exceptions to the categories of connected persons set out in the statutory instrument and also in respect of the above three categories of connected persons at its discretion and on a case-by-case basis.

It should be noted that SI 211 of 2009 allows a lending institution to specifically agree to accept

an undertaking (which would otherwise be prohibited by the statutory instrument) in respect of a connected person where:

- The solicitor asks the bank in writing for permission to give the undertaking, and
- The bank agrees in writing to accept the undertaking (see below for more detail).

It is important for solicitors to keep these written records on file requesting and receiving permission to give undertakings (which would otherwise be prohibited) to satisfy a future regulatory or other audit.

While the committee is pleased to note that the bank has narrowed the scope of its policy, it is still of the view that the policy exceeds the scope of the restrictions imposed by SI 211 of 2009. The committee is pleased to note that the bank may be flexible in its approach to giving exemptions on a case-by-case basis.

The committee wishes to clarify the application of SI 211 of 2009, as follows.

Residential loan transactions

The committee notes that SI 211 of 2009 provides that a solicitor may not give an undertaking for his or her own secured loan transactions or those of 'connected persons' unless the solicitor has notified the bank (of the beneficial interest in the underlying property used to secure the loan) and the bank has, in writing, both acknowledged receipt of such notice and has consented to the solicitor supplying the undertaking.

While this statutory instrument, on the face of it, applied at the time to both residential and commercial loan transactions, it now, in effect, applies only to residential loans, because SI 366 of 2010 has since prohibited borrowers' solicitors from giving undertakings to lenders in commercial loan transactions.

The term 'connected person' is defined in the above SI as including:

- The spouse of the solicitor,

- Another solicitor who is a sole principal or a partner in the firm in which the solicitor is engaged,
- A person who is cohabiting with (but not married to) the solicitor in domestic circumstances for at least three years,
- A fiancé(e) of the solicitor.

Other family members are not included in the definition of 'connected persons'.

Commercial loan transactions

In commercial loan transactions where a borrower's solicitor acts solely for the borrower and is not furnishing an undertaking to the lending institution, and the lender has its own legal representative, the committee sees no justification of any bank policy that would purport to prevent a solicitor from acting for any of the above categories of 'connected person' or any other family member in a commercial loan transaction.

CONVEYANCING COMMITTEE

ULSTER BANK NOT PROVIDING ORIGINAL DEEDS ON ATR FOR NEGATIVE EQUITY SALES

It has been brought to the attention of the Conveyancing Committee that Ulster Bank says its "current protocol with regard to release of deeds is that copy deeds are to be issued to facilitate the drawing up of contracts, with original deeds being issued at closure of sale".

This matter was referred to the committee by a solicitor

whose clients were under direction by the bank to sell their property, which was in negative equity but who could not obtain the original deeds from the bank on ATR (accountable trust receipt). The initial correspondence from the bank to the solicitor indicated that the original deeds would be released to the solicitor on receipt of net proceeds of sale.

The committee expressed the view that the original title deeds should be released to the purchaser's solicitor on accountable trust receipt in advance of the sale. The committee is clear that the original deeds are required in order to prepare a contract for sale, and that the above conforms to standard conveyancing practice.



CONVEYANCING COMMITTEE

E-DISCHARGES IN RECEIVER SALES – REGISTRATION TIMELINE WARNING

A difficulty has come to the attention of the Conveyancing Committee arising out of the use of e-discharges in receiver sales, whereby, if the mortgage on foot of which the receiver was appointed is cancelled off a Land Registry folio by e-discharge prior to lodgement of the transfer by the purchaser's solicitor, the application for registration of the transfer will be rejected by the PRA because there is, by then, no evidence on the folio that the transferor (the receiver) has any power to sell the property.

When a dealing is rejected in these circumstances, the remedy appears to be an application

to the High Court under the *Registration of Title Acts*, which is a cumbersome procedure and involves the purchaser in considerable expense.

The committee has been in touch with the PRA about this issue, and it appears that the Land Registry's hands are tied, as it must register an e-discharge when it is lodged by a receiver. A change in legislation would be required in order to address the matter, and the committee is preparing a submission to Government in this regard.

In the meantime, however, there is no fail-safe solution, but the committee is issuing this practice note to alert prac-

tioners to the risk. There is obviously some merit in purchasers' solicitors ensuring that they lodge the transfer dealing in the Land Registry as quickly as possible following closing. However, there could still be a problem if the e-discharge has been lodged ahead of the transfer dealing or, if the dealing is rejected, before the dealing is re-lodged.

Ideally, provision should be made in the contract to provide for the use of a paper discharge in receiver sales, which would be channelled through the purchaser's solicitor. While all who support e-conveyancing (including the committee)

might see this as a retrograde step, it seems to the committee that a paper form of discharge is safer than an e-discharge from a practice point of view in receiver sales.

Purchasers' solicitors might also consider lodging a priority search on or before closing.

The committee also intends highlighting this issue to the Banking Payments Federation Ireland with a request that their members, when appointing receivers, would ask receivers to instruct their solicitors acting in sales to use a paper discharge.

The committee will keep this matter under review.

CONVEYANCING COMMITTEE

ULSTER BANK LOAN CONDITION FOR HOMEBOND FOR SECOND-HAND DWELLINGS

It has been brought to the attention of the Conveyancing Committee that Ulster Bank has introduced a requirement by way of a loan condition that second-hand dwellings built in the ten-year period preceding the loan must be covered by HomeBond or an equivalent cover.

Following enquiries made by the committee, it has been confirmed that it was not a universal requirement across the lending industry over the past ten years to have HomeBond or equivalent cover in relation to new housing, particularly self-builds. It was also acknowledged that many companies in the market previously offering this type of structural protection cover were not writing new business at vari-

ous stages during the past ten years. The committee concluded that, as it was not the standard industry practice in the past ten years for new dwellings to have HomeBond or equivalent cover, it is an onerous and unrealistic requirement to expect that all second-hand dwellings built in the last ten years would have such cover for the remainder of the ten-year term.

The committee had also observed that Ulster Bank is treating the above loan condition as a matter of title for the solicitor to deal with, which the committee considers is incorrect on the basis that it is not a title issue and, therefore, not a matter for a solicitor's undertaking or a certificate of title.

The committee asked the bank to dispense with this requirement and, in the absence of a reply from the bank, the committee wishes to bring to

the attention of the profession that this requirement is not a matter of title and is, therefore, not a matter for solicitors to deal with.

CONVEYANCING COMMITTEE

BUILDING AGREEMENTS IN NEW DWELLING SALES

The Conveyancing Committee has received complaints from solicitors for purchasers of new dwellings that some builders are refusing to provide a building agreement as part of the contract documentation for the purchase.

The committee disapproves of a purchaser of a new house not getting a building agreement, as

the purchaser is entitled to the benefits of the covenants in such an agreement.

The committee suggests that solicitors acting for purchasers also consider whether or not they are in a position to give a certificate of title to a lending institution in a residential lending case if there is no building agreement.



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 Patrick Joseph Smith, a solicitor formerly practising as Fitzpatrick Smith & Co, Solicitors, Market Street, Cootehill, Co Cavan, and in the matter of the Solicitors Acts 1954-2011 [4994/DT127/15]

Law Society of Ireland (applicant)

Patrick Joseph Smith (respondent)

On 26 January 2017, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in that he:

- 1) Failed to comply with an undertaking dated 17 February 2004 expeditiously, within a reasonable time, or at all, given by him on behalf of his former clients over a property in Co Monaghan to the financial institution,
- 2) Failed to reply adequately or at all to the complainant's correspondence and, in particular, letters dated 23 February 2005, 24 August 2005, 15 March 2006, 22 June 2006, 10 March 2010, 29 November 2010, 19 December 2010, and 31 July 2013 respectively.

The tribunal ordered that the respondent solicitor:

- 1) Stand censured,
- 2) Pay the sum of €1,500 to the compensation fund,
- 3) Pay a contribution of €2,000 towards the whole of the costs of the Law Society of Ireland.

In the matter of Patrick A Hurley, solicitor, 15 Adelaide Street, Cork, and in the matter of the Solicitors Acts 1954-2011 [5772/DT48/16]

Named client (applicant)

Patrick Hurley (respondent)

On 31 March 2017, the Solicitors Disciplinary Tribunal found the respondent guilty of misconduct in respect of the following complaint: delay without proper reason or cause in the conveyancing and purchase of the applicant's house.

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

In the matter of Robert Sweeney, formerly practising as Robert Sweeney Solicitors, First Floor, Crossview House, High Road, Letterkenny, Co Donegal, and as Robert Sweeney, solicitor, Suite 209, The Capel Building, Mary's Abbey, Dublin 7, and in the matter of the Solicitors Acts 1954-2011 [10658/DT127/14; 10658/DT128/14; 10658/DT129/14; 10658/DT163/14; 10658/DT10/15; 10658/DT12/15; 10658/DT28/15; 10658/DT30/15; 10658/DT31/15; 10658/DT47/15; and High Court record 2017/46SA]

Law Society of Ireland (applicant)

Robert Sweeney (respondent solicitor)

On 13 November 2015, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of professional misconduct in his practice as a solicitor in that he:

10658/DT127/14

- 1) Failed to apply the stamp duty fee provided to him by a complainant to the purchase of the complainant's property in a timely manner, with the result that the relevant transfer deed was not properly stamped and registered in the complainant's name,

- 2) Failed to register the complainant's title to the property in a timely manner or at all,
- 3) Failed to comply with a direction of the committee on 19 February 2013, 9 April 2013, 14 May 2013, 16 July 2013 and 15 October 2013,
- 4) Failed to respond, adequately or at all, to correspondence from the complainant in respect of the above,
- 5) Failed to respond, adequately or at all, to correspondence from the Society in respect of the above.

10658/DT128/14

- 1) Failed to release to the complainant some or all of the forfeited deposit moneys relating to the sale of the property held by him for the complainant in a timely manner,
- 2) Failed to account to the complainant in respect of the forfeited deposit monies,
- 3) Failed to comply with the directions given by the committee at its meeting of 15 October 2013 and/or 3 December 2013,
- 4) Failed to respond, adequately or at all, to correspondence from the complainant in respect of the above,
- 5) Failed to respond, adequately to correspondence from the Society in respect of the above.

10658/DT129/14

- 1) Failed to apply the stamp duty fees provided to him by the complainant to the purchase of the complainant's property in a timely manner, with the result that the relevant transfer deed was not properly stamped and registered in the complainant's name,
- 2) Failed to register the complainant's title to the property in a

- timely manner or at all,
- 3) Failed to comply with the directions given by the committee at its meeting of 9 April 2013, 14 May 2013, 16 July 2013 and/or 15 October 2013,
- 4) Failed to respond, adequately or at all, to correspondence from the complainant in respect of the above,
- 5) Failed to respond, adequately or at all, to correspondence from the Society in respect of the above.

10658/DT163/14

- 1) Failed to register the complainants' title to their property in a timely manner or at all,
- 2) Failed to apply moneys provided to him by the complainants to discharge management company fees on the property in a timely manner or at all,
- 3) Failed to respond, adequately or at all, to correspondence from the complainants in respect of the above,
- 4) Failed to respond, adequately or at all, to correspondence from the Society in respect of the above.

10658/DT10/15

- 1) Failed to register the complainant's title to her property in a timely manner or at all,
- 2) Failed to respond, adequately or at all, to correspondence from the complainant in respect of the above.

10658/DT12/15

- 1) Failed to comply with a direction of the committee on 15 October 2013,
- 2) Failed to respond, adequately or at all, to correspondence from the Society in respect of the above.



10658/DT30/15

- 1) Failed to apply the stamp duty fee provided to him by the complainant to the purchase of the complainant's property in a timely manner, with the result that the relevant transfer deed was not properly stamped and registered in the complainant's name,
- 2) Failed to register the complainant's title to the property in a timely manner or at all,
- 3) Failed to respond, adequately or at all, to correspondence from the complainant in respect of the above,
- 4) Failed to respond, adequately or at all, to correspondence from the Society in respect of the above.

10658/DT31/15

- 1) Failed to register the complain-

- ant's title to the Laois property in a timely manner or at all,
- 2) Failed to respond, adequately or at all, to correspondence from the complainant in respect of the above,
 - 3) Failed to respond, adequately or at all, to correspondence from the Society in respect of the above.

On 22 June 2016, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of professional misconduct in his practice as a solicitor in that he had:

10658/DT28/15

Failed to comply with the directions of the Complaints and Client Relations Committee on 3 September 2013, and/or 15 October 2013, and/or 3 December 2013.

10658/DT47/15

- 1) Failed to comply adequately or at all with 32 undertakings to a financial institution,
- 2) Failed to respond adequately or at all to correspondence from the financial institution in respect of one or more of the undertakings referred to above,
- 3) Failed to respond adequately or at all to correspondence from the Society in respect of one or more of the undertakings referred to above,
- 4) Failed to comply adequately or at all with one or more of the directions of the Complaints and Client Relations Committee.

The tribunal ordered that these matters go forward to the High Court and, on 15 May 2017, the High Court, having noted that the respondent solicitor had

already been struck off the Roll of Solicitors by order of the High Court on 2 November 2015:

- 1) Declared that the respondent solicitor is not a fit and proper person to be a member of the solicitors' profession, in respect of each referral,
- 2) Ordered that the respondent solicitor pay a total sum of €24,000 plus VAT as a contribution towards the whole of the costs of the Society in respect of all referrals,
- 3) Ordered that the respondent solicitor pay the whole of the costs of the Society before the High Court to be taxed in default of agreement,
- 4) Ordered that the respondent pay the sum of €5,700 plus VAT on account to the solicitors for the Society within 90 days, pending taxation.

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NEWS FROM THE EU AND INTERNATIONAL AFFAIRS COMMITTEE
 EDITED BY TP KENNEDY, DIRECTOR OF EDUCATION, LAW SOCIETY OF IRELAND

MODERNISATION OF THE EU'S COPYRIGHT LAWS

On 14 September 2016, the European Commission published important legislative proposals to modernise the EU's copyright laws. In many ways, these proposed changes to EU copyright are the most revolutionary since the adoption of the (transformative) *Information Society Directive* (2001/29/EC) in May 2001. The proposals attempt to adapt the EU copyright regime to the realities of the digital single market.

The legislative package comprises four legal instruments:

- Draft regulation on the exercise of copyright and related rights to online transmissions of broadcasting organisations and retransmissions of television and radio programmes (COM (2016) 594 final),
- Draft regulation on the cross-border exchange between the union and third countries of accessible format copies of certain works and other subject-matter protected by copyright and related rights for the benefit of persons who are blind, visually impaired, or otherwise print disabled (COM (2016) 595 final);
- Draft directive on copyright in the digital single market (COM (2016) 593 final), and
- Draft directive on certain permitted uses of copyright works and related rights for the benefit of persons who are blind, visually impaired or otherwise print disabled (COM/2016/0596 final).

The two legal instruments that make reference to “the blind, visually impaired, or otherwise print disabled” refer to the *Marrakesh Treaty* and its implementation into EU law. This WIPO-administered treaty came into effect on 30 September 2016 and its objective is to ease the production and transfer across national boundaries of books that are specially adapted for use by people with visual impairments, most of whom live in lower-income countries. Importantly, the treaty creates a set of mandatory copyright limitations and exceptions for the benefit of the blind, visually impaired, and otherwise print disabled.

The proposed changes to the copyright rules are in fact an important component of the *digital single market strategy* that was adopted by the European Commission in May 2015. This strategy comprises three policy areas or ‘pillars’:

- Improving access to digital goods and services,
- Helping to make the EU's digital world a seamless and level marketplace to buy and sell, and
- Designing rules that match the pace of technology and support infrastructure development.

In addition, the four draft laws complement the following:

- The proposed regulation on cross-border portability of online content services in the internal market (COM (2015)

627 final), published December 2015,

- Ongoing proposals to revise *Directive 2010/13/EU* on the provision of audiovisual media services, and
- The *Communication from the European Commission on Online Platforms and the Digital Single Market* (COM (2016) 288 final), published May 2016,
- The communication from the European Commission *Promoting a Fair, Efficient and Competitive European Copyright-based Economy in the Digital Single Market* (COM (2016) 592 final), published September 2016.

Of the four legislative proposals adopted in September, the one that has sparked most controversy is the draft directive on copyright in the digital single market.

This draft directive lays down rules that aim to further harmonise the union law applicable to copyright and related rights in the framework of the internal market, taking into account, in particular, digital and cross-border uses of protected content. It also lays down rules on copyright exceptions and limitations, the protection of press publications concerning digital uses, fair remuneration for authors and performers (including a contract adjustment mechanism), and a particularly controversial provision – article 13 – that attempts to tackle the so-called ‘value gap’.

Widening copyright exceptions

Title II of the draft directive is of particular importance, as it provides for a widening of the copyright exceptions to encompass such elements as:

- Text and data mining (article 3),
- The use of copyright works in digital and cross-border teaching activities (article 4),
- The preservation of cultural heritage (article 5).

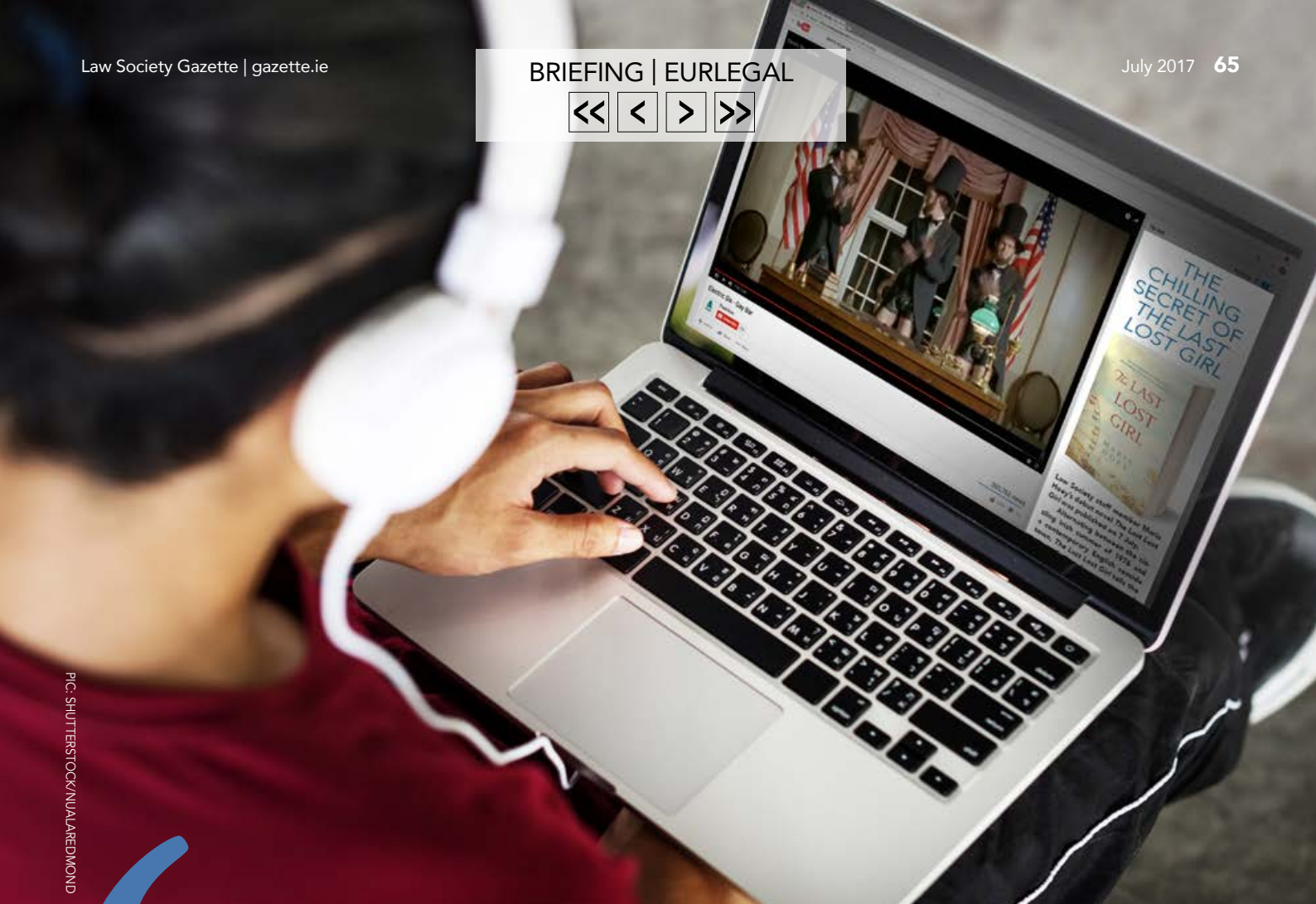
Importantly, all of the exceptions above are mandatory in nature. This contrasts sharply with the all-important *Information Society Directive*, which contains 20 optional exceptions/limitations to the reproduction right and communication to the public right.

Text and data mining

Under article 3, reproductions and extractions made by research organisations in order to carry out text and data mining of works for the purpose of scientific research will not be deemed a breach of EU copyright law. Any contractual provision contrary to this new exception shall be unenforceable.

Digital teaching activities

The new exception/limitation in article 4 permits the digital use of copyright works for the sole purpose of illustration for teaching, to the extent justified by the non-commercial purpose to be achieved. Two conditions apply. First, the use of the works must take place on the premises of an educational establishment or through a secure electronic



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IF ARTICLE 13 SURVIVES IN ITS CURRENT FORM, IT WILL SPELL BAD NEWS FOR INTERNET PLATFORMS. NOT ONLY WILL IT FORCE THEM TO INVEST IN EXPENSIVE FILTERING TECHNOLOGY, BUT IT WILL ALSO ERODE THE HOSTING EXEMPTION OF THE E-COMMERCE DIRECTIVE

network accessible only by the educational establishment's students and teaching staff. Secondly, the use of the work must be accompanied by the indication of source, including the author's name, unless this turns out to be impossible.

Member states may decide not to apply this exception generally, or as regards specific types of works. There is an obligation on the 28 member states to take the necessary measures to ensure appropriate availability and vis-

ibility of the licences authorising the use of works for the purpose of illustration for teaching activities.

Cultural heritage

'Cultural heritage institutions' are defined in article 2 of the draft directive as "publicly accessible libraries or museums, an archive or a film or an audio heritage institution". Article 5 permits these institutions to make copies of any works that are permanently in their collection, in any format

or medium, for the sole purpose of the preservation of such works. This provision addresses the realities and risks of technological obsolescence and degradation of original supports. Article 5 should also allow for the making of copies by the appropriate preservation tool, means or technology, in the required number and at any point in the life of a work (or other subject matter) to the extent required in order to produce a copy for preservation purposes only.

Value gap

Article 13 addresses what in Brussels parlance has become known as the 'value gap'. This rather obscure notion refers to the idea that revenues generated from the online use of copyright-protected content are being unfairly distributed between the different players in the value chain of online publishing. Article 13 is aimed principally at internet platforms like YouTube, Daily Motion and Vimeo, which host user-generated content.



OF THE FOUR LEGISLATIVE PROPOSALS ADOPTED IN SEPTEMBER, THE ONE THAT HAS SPARKED MOST CONTROVERSY IS THE DRAFT DIRECTIVE ON COPYRIGHT IN THE DIGITAL SINGLE MARKET

The value gap also refers to difficulties faced by rights-holders when they seek to authorise and be fairly remunerated for the use of their content online. Recital 37 of the draft directive refers to the value gap by alluding to the ‘online content marketplace’ and the uploading of copyright content by internet users without the involvement of a rights-holder. The recital goes on to say how this uploading by third parties affects rights-holders’ possibilities to determine whether and under which conditions their work is achieving “an appropriate remuneration”.

New duties for ISSPs

Despite being poorly drafted and containing rather vague language, there is still enough in article 13 to cause considerable anxiety for information society service providers (ISSPs). The use of the term ‘information society service provider’ is rather unfortunate, as it is not consistent with the term ‘service provider’, used in the *E-Commerce Directive* (Directive 2000/31/EC).

In essence, article 13 imposes a number of distinct duties on ISSPs. Firstly, it envisages ISSPs entering into agreements with rights-holders covering the use of the latter’s works. Secondly, it refers to measures being taken by the ISSPs to “prevent the availability on their services” of copyright protected works that have been identified to them by the rights-holders. The type of measure envisaged might, for example, be content recognition technolo-

gies (content filters), and such technologies must be “appropriate and proportionate”.

A further duty is imposed on ISSPs by virtue of article 13(1). ISSPs must provide rights-holders with adequate information on the functioning and deployment of the agreements and content recognition technologies, along with adequate reporting on the recognition and use of the works and other subject matter.

Article 13(3) envisages “co-operation between the ISSPs and rights-holders” through stakeholder dialogues, aimed at defining best practice in the context of content recognition technologies and constant technological evolution.

Tensions

Importantly, by requiring ISSPs to ensure that their services/networks do not contain any illegal works, article 13 is in direct conflict with the hosting exemption for ISSPs contained in article 14 of the *E-Commerce Directive*.

This exemption applies where an ISP that does not have actual knowledge of illegal activity/information on its communications system or, where it obtains such knowledge or awareness, acts expeditiously to remove or disable access to the illegal information. This is the ‘notice-and-take-down’ mechanism, and it splits the responsibility and costs associated with preventing copyright infringements between rights-holders and intermediaries. Under the notice-and-take-down mechanism, the onus is on the

rights holder to identify infringing material (and to inform the ISP of it) but, under article 13, the roles are reversed, with a new obligation placed on the ISSP to identify infringing material on its systems through monitoring. While this new ISSP obligation clearly benefits the rights-holder, it is inimical to the interests of ISSPs, particularly their financial interests.

Recital 38 of the draft directive does very little to clear up the confusion. It actually confirms that the new ISSP obligation applies when the ISSP is eligible for the hosting exemption under article 14 of the *E-Commerce Directive*.

If article 13 becomes law, the new ISSP obligation to proactively monitor their own systems for infringing material would negate the hosting exemption and drive a coach and horses through the notice-and-take-down procedure. It would also disturb the current delicate balance between responsibilities and costs that is inherent in the mechanism.


In addition, article 13 of the draft directive also seems to be in conflict with article 15 of the *E-Commerce Directive*. Article 15 provides that ISPs cannot be placed under a general obligation to monitor the information that they transmit or store when providing mere conduit, caching, and hosting services. Nor can they be obliged to actively seek facts or circumstances indicating illegal activity.

Moreover, article 13 of the draft directive also seems to con-

tradict two important CJEU rulings, namely, Case C-70/10 *Scarlet v SABAM* and Case C-360/10 *SABAM v Netlog*. In both of these rulings, the EU’s most senior court ruled that ISPs do not have a general obligation to monitor their systems for illegal content.

Bad news bears

If article 13 survives the EU legislative process in its current form, it will spell bad news for internet platforms. Not only will it force them to invest in expensive filtering technology, but it will also erode the safe harbour of article 14 of the *E-Commerce Directive* (the hosting exemption). But is the erosion of the safe harbour the right way to go? Perhaps improving the notice-and take-down procedure would be preferable and less disruptive to the current delicate balance between ISSP responsibility and rights-holder responsibility? Article 13 clearly heralds heavier ISSP responsibility in terms of policing copyright infringements and arguably marks a philosophical shift in Brussels in terms of which party should shoulder the greatest responsibility for online monitoring of possible copyright infringements.

As for the contradictions between article 13 of the draft directive and articles 14/15 of the *E-Commerce Directive*, it is likely that they will have to be ironed out ultimately by the courts of the member states. 

Dr Mark Hyland is a solicitor and lecturer in law at Bangor Law School.

RATES

PROFESSIONAL NOTICE RATES

RATES IN THE PROFESSIONAL NOTICES SECTION ARE AS FOLLOWS:

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

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

WILLS

Bertaut, Joseph (deceased), late of 14 Orchard Road, Clonliffe Road, Drumcondra, Dublin 3. Would any person having knowledge of any will made by the above-named deceased, who died on 10 October 1987, please contact Hamilton Turner Solicitors, 66 Dame Street, Dublin 2; tel: 01 671 0555, email: law@hamiltonturner.com

Bertaut, Michael (deceased), late of 14 Orchard Road, Clonliffe Road, Drumcondra, Dublin 3. Would any person having knowledge of any will made by the above-named deceased, who died on 16 April 2015, please contact Hamilton Turner Solici-

tors, 66 Dame Street, Dublin 2; tel: 01 671 0555, email: law@hamiltonturner.com

Burke, Christopher Michael (deceased), late of 16 Granville Road, Reading, Berkshire, OX3 3QD, and formerly of Killawalla, Westport, Co Mayo, who died on 26 April 2014. Would any person having knowledge of any will made by the above-named deceased please contact Messrs Conor A Maguire Solicitors, Sean McDermott Street, Manorhamilton, Co Leitrim; tel: 071 985 5983, email: mail@camsolicitors.com

Burke, John (deceased), late of Clareen, Cashel, Co Tipper-

ary. Would any person having knowledge of any will made by the above-named deceased, who died on 2 May 2017, please contact David Barry, solicitor, John Street, Cashel, Co Tipperary; tel: 062 61077, email: dbarry@davidbarry.ie

Carrick, Patrick (deceased), late of 16 Friar’s Hill, Ragoon, Galway, and formerly of 40 Ballinfoyle Park, Headford Road, Galway. Would any solicitor holding or having knowledge of a will made by the above-named deceased, who died on 27 February 2017, please contact HG Donnelly & Son, Solicitors, 5 Duke Street, Athy, Co Kildare; reference RP/CAR 023/0001;

email: ross.phillips@hgdonnelly.ie

Cassidy, Richard (deceased), who died on 14 August 2016, late of Archdeaconry, Kells, in the county of Meath. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Nathaniel Lacy & Partners, Solicitors, Kenlis Place, Kells, Co Meath; tel: 046 928 0718, email: law@nlacy.ie

Crowley, Mary Teresa (or se Mona) (deceased), late of 142 Braemor Road, Churchtown, Dublin 14, who died on 21 May 2017. Would any person having knowledge of the whereabouts of any will made or purported to have been made by the above-named deceased, or if any firm is holding same, please contact Sherry McCaffery, Solicitors, 2 Green Park, Orwell Road, Rathgar, Dublin 14; tel: 01 496 2184, 087 919 8097, email: info@sherry,ccaffery.com

Desmond, Josephine (deceased), who died on 2 April 2017, late of Clonmellon, Navan, in the county of Meath, and Roselodge Nursing Home, Killucan, Co Westmeath. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Nathaniel Lacy & Partners, Solicitors, Kenlis Place, Kells, Co Meath;

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Fallon, Nora Cecilia (deceased), late of 94 Mobhi Road, Glasnevin, Dublin 9, and Nazareth House Nursing Home, Malahide Road, Dublin 3. Would any solicitor holding or having knowledge of a will made since 30 October 2003 by the above-named deceased, who died on 13 February 2017, please contact Smith Foy & Partners, Solicitors, 59 Fitzwilliam Square, Dublin 2; ref: SS/RUA1-1; tel: 01 676 0531, email: sinead.smith@smithfoy.ie

Greaney, Rory (deceased), late of St Joseph's Road, Prussia Street, Stoneybatter, Dublin 7, who died on 20 April 2017. Would any person having knowledge of the whereabouts of any will made by the above-named deceased, or if any firm is holding same, please contact David Osborne, Osbornes Solicitors, Abbey Moat House, Abbey Street, Naas, Co Kildare; DX 187 001 Naas 2; tel: 045 899 485, email: info@osbs.ie

Hoey, Patrick (deceased), late of 39 Mount Pleasant Avenue, Lower Rathmines, Dublin 6, who died on 2 June 2017. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Brian Callaghan, Maurice Leahy Wade & Company, Solicitors, Archway House, The Plaza, Swords, Co Dublin; tel: 01 840 6505, fax: 01 840 1156, email: lexleahy@leahywade.ie

Kelly, Cousins Mary (deceased), late of Ballygortin, Kilmuckridge, Gorey, Co Wexford, who died on 20 May 2017. Would any person having knowledge of the whereabouts of any will executed by the above-named deceased please contact Maeve Breen, MT O'Donoghue & Co, Solicitors, 11 Main Street, Gorey, Co Wexford, Y25 A3T8; DX 48-003 Gorey; tel: 053 942 1137, email: maeve.breen@mtodonoghue.com

Kokaram, Stefanie (née Mayer) (deceased), formerly of 2 Green Park Road, Bray, Co Wicklow, who died on 30 April 2017 in Co Dublin. Would any person having knowledge of the whereabouts of any will made by the above-named deceased, or if any firm is holding same, please contact Mark Finucane, solicitor, Porter Morris Solicitors, 10 Clare Street, Dublin 2; tel: 01 676 1185 or email: mfinucane@portermorris.ie

Owens, Vincent (deceased), late of 10 Springfield, Blackhorse Avenue, North Circular Road, Dublin 7, who died on 5 October 2016. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Gaffney Halligan & Co, Solicitors, Artane Roundabout, Malahide Road, Artane, Dublin 5; tel: 01 831 2470, email: info@gaffneyhalligan.com

Quinn, Noel (deceased), formerly of 271 Cashel Road, Crumlin, Dublin 12, who died on 17 May 2017. Would any person having knowledge of the whereabouts of any will made by the above-named deceased, or if any firm is holding same, please contact Romaine Scally & Company, Solicitors, Main Street, Tallaght, Dublin 24; tel: 01 459 9506, email: legal@scally.ie

Sweeney, Peter Paul (deceased), formerly of Co Mayo and late of Paul Sweeney & Co, Solicitors, Corner Park, Peamount Road, Newcastle, Co Dublin, who died on 29 December 2015. Would any person having knowledge of the whereabouts of any will made by the above-named deceased, or if any firm is holding same, please contact Noel Gargan, Christie & Gargan Solicitors, Unit 2, Stewart House, Parnell Street, Rotunda, Dublin 1; tel: 01 872 6974, email: cgargan@christiegargansolrs.ie

Tobin, Patrick (deceased), late of Griston East, Ballylanders, Co

Limerick, who died on 1 June 2017. Would any person having knowledge of the whereabouts of any will made or purported to have been made by the above-named deceased, or if any firm is holding same, please contact Kenneth Molan, John Molan & Sons, Solicitors, 29 Lower Cork Street, Mitchelstown, Co Cork; email: info@molansolicitors.ie

Walsh, Dora (deceased), late of Acres, Ballyduff, Co Kerry, who died on 18 March 1995. Would any person having knowledge of the whereabouts of any will made by the above-named deceased, or if any firm is holding same, please contact Horan and Son, Solicitors, 23 Eyre Square, Galway; tel: 091 567091, email: info@horansolicitors.ie

Watterson, Nuala (deceased), late of 58 Rockville Drive, Blackrock, Co Dublin, who died on 6 September 2016. Would any person having knowledge of the whereabouts of any will made or purported to have been made by the above-named deceased, or if any firm is holding same, please contact Moran & Ryan Solicitors, 35 Arran Quay, Dublin 7; tel: 01 872 5622, email: reception@moranryan.com

MISCELLANEOUS

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TITLE DEEDS

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of an application by Martin & Garvan Insurances Limited

Any person having a freehold estate or any intermediate interest in all that and those that plot of ground on the east side of Upper Drumcondra Road in the city of Dublin, containing in front along Upper Drumcondra Road, 19 feet, 6 inches, in the rear

19 feet, 6 inches, in depth from front to rear, 75 feet, 6 inches, and on the south side, 75 feet, 6 inches, with the shop, dwellinghouse, and premises erected thereon and known as 96 Upper Drumcondra Road in the city of Dublin, being the entirety of the premises the subject of an indenture of lease dated 23 May 1934 between Charles Ridgway of the one part and Patrick Francis McCarty of the other part for the term of 150 years from 25 March 1916 (except the last two days thereof), subject to the yearly rent of £20 sterling per annum, and more particularly described as above and coloured in red and laid down on the map endorsed on the said lease.

Take notice that Martin & Garvan Insurances Limited intends to apply to the county registrar of the county of Dublin to vest in it the fee simple and any intermediate interests in the said property, and any party asserting that they hold a superior interest in the aforesaid property is called upon to furnish evidence of title to same to the below-named within 21 days from the date of this notice.

In default of any such notice being received, Martin & Garvan Insurances Limited 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 to the Dublin county registrar for such directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interests including the freehold reversion in the aforesaid property are unknown or unascertained.

Date: 7 July 2017

Signed: *Maguire McErlean (solicitors for the applicant)*, 78-80 Upper Drumcondra Road, Dublin 9

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 Joseph



O'Farrell and Eugene Maguire

Any person having a freehold estate or any intermediate interest in all that and those that piece or parcel of ground situate on the east side of Upper Drumcondra Road formerly known as Keith Place in the parish of Clonturk and city of Dublin, containing in front on the west to Upper Drumcondra Road aforesaid 21 feet, 6 inches, in the rear on the east, 20 feet in depth, from front to rear on the north side, 82 feet, 9 inches, and in depth from front to rear on the south side, 84 feet, be all or any of the said several admeasurements more or less together with the shop dwellinghouse now erected thereon, which said premises are known as number 84 Upper Drumcondra Road and are more particularly delineated and described on the map thereto annexed and thereon surrounded by a red verge line, held by the applicants Joseph O'Farrell and Eugene Maguire as lessees under a lease dated 7 October 1954 between Francis Kelly of the one part and Francis Watters of the other part for a term of 142 years from 25 March 1954 at a rent of £30 per annum, being the entirety of the premises the subject of that lease.

Take notice that Joseph O'Farrell and Eugene Maguire intend to apply to the county registrar of the county of Dublin to vest in them the fee simple and any intermediate interests in the said property, and any party

asserting that they hold a superior interest in the aforesaid property is called upon to furnish evidence of title to same to the below-named within 21 days from the date of this notice.

In default of any such notice being received, Joseph O'Farrell and Eugene Maguire intend 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 to the Dublin county registrar for such directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interests including the freehold reversion in the aforesaid property are unknown or unascertained.

Date: 7 July 2017

Signed: Maguire McErlean (solicitors for the applicant), 78-80 Upper Drumcondra Road, Dublin 9

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 Fionn Murphy and Shane Byrne

Any person having a freehold estate or any intermediate interest in all that and those that portion of ground with the houses and buildings thereon formerly known as 'Kelly's Garden', bounded on the north by John Street, on the west by the street or lane known as Stoneylane, on the south by other premises in

the occupation of said lessee, and on the east by premises in the occupation of the lessor and lessee, which said demised premises are situate in John Street in the town of Ardee, parish of Ardee, barony of Ardee, and county of Louth, as the same are more particularly delineated and described on the map or plan there hereon endorsed and edged red, subject to a lease dated 11 April 1934 between Catherine Callan of the first part and Thomas Halpenny of the second part.

Take notice that Fionn Murphy and Shane Byrne, being the persons currently entitled to the lessees' interest under the said lease, intend to apply to the county registrar of the county of Louth for the acquisition of the freehold interest and all intermediate interests in the aforesaid properties, and any party asserting that they hold a superior interest in the aforesaid property are called upon to furnish evidence of title to same to below named within 21 days from the date of this notice.

In default of any such notice being received, Fionn Murphy and Shane Byrne intend 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 of Louth for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interests including the freehold reversion in the aforesaid premises are unknown and unascertained.

Date: 7 July 2017

Signed: Aaron Kelly & Co, Solicitors (solicitors for the applicant), 8 Palace Street, Drogheda, Co Louth

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 of Mark Smyth, Sandra Kinnear, and Séamus Fagan

Any person having a freehold estate or any lesser or intermediate interest in the lands

in all that and those 10 Leinster Square, Rathmines, Dublin 6, which said premises are held by the applicant, Davencrest Limited, as lessees under a lease dated 4 September 1928 between Godfrey Robert Wills Sandford and Howard Rundell Guinness of the first part, Amy Henrietta Wills Sandford-Wills of the second part, Charles Joseph Priest and Frederick James Priest of the third part, and Edward Percy Maybury Butler of the fourth part for a term of 153 years from 1928.

Take notice that Davencrest Limited intends to apply to the county registrar of the county of Dublin to vest in it the fee simple and any intermediate interests in the said property, and any party asserting that they hold a superior interest in the aforesaid property is called upon to furnish evidence of title to same to the below-named within 21 days from the date of this notice.

In default of any such notice being received, Davencrest Limited 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 to the Dublin county registrar for such directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interests including the freehold reversion in the aforesaid property are unknown or unascertained.

Date: 7 July 2017

Signed: Chris van der Lee & Associates (solicitors for applicant), 9-10 Eustace St, Dublin 2

In the matter of the Landlord and Tenant Acts 1967-2005 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978 and in the matter of an application of Mark Smyth, Sandra Kinnear, and Séamus Fagan

Take notice that any person having an interest in the freehold estate or any lesser or intermediate interest in the lands

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and premises now known as the Newbridge Arcade, and formerly the Odeon Picture House, Main Street, Newbridge, in the county of Kildare, as demised by an indenture of lease dated 17 October 1940 and made between John Conlon of Bride Street, Kildare, in the county of Kildare, of the one part and Christopher Sylvester of the Curragh in the county of Kildare and Robert Kirkham of Sylvan House, Belmont Avenue, Donnybrook, in the county of Dublin, of the other part for a term of 99 years (less the last three days thereof) commencing 1 May 1940 (hereinafter referred to as 'the property'), should give notice of their intentions to the undersigned solicitors.

Further take notice that Mark Smyth, Sandra Kinnear, and Séamus Fagan, the said applicants, being the persons entitled to the lessee's interest under the said lease, intend to submit an application to the county registrar for the county of Kildare for the acquisition of the fee simple interest in the property, and any party asserting that they hold any interest in the property superior to that of the said applicants are called upon to furnish evidence of title to the property to the undersigned solicitors within 21 days of the date of this notice.

In default of any such notice being received, Mark Smyth, Sandra Kinnear, and Séamus Fagan, the said applicants, intend

to proceed with the application before the said county registrar at the end of 21 days from the date of this notice and will apply to the said county registrar for such directions as may be deemed meet on the grounds that the person or persons beneficially entitled to all and any superior interests in the property, up to and including the fee simple estate if appropriate, are unknown or unascertained.

Date: 7 July 2017

Signed: McEvoy Partners (solicitors for the applicant), 27 Hatch Street Lower, Dublin 2

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of an application by OFMC Company CLG in relation to the *Franciscan Friary, Francis Street, Wexford*

Take notice that any person having any interest in the freehold estate of the following property: all that and those the premises at Francis Street and School Street, Wexford, known as the Franciscan Friary, as more particularly described in the deed of appointment and vesting dated 27 July 1976 between the Commissioner of Charitable Donations and Bequests of the one part and SF Trust Limited on the other part, comprising 1 rood and 28 perches, being part of the lands under a lease dated 4 February 1833

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between Charlotte Bell of the first part and John Corrin of the other part.

Take notice that OFMC Company CLG, of 91 Haddington Road, Dublin 4, intends to submit an application to the county registrar for the county of Wexford for acquisition of the freehold interest in the aforesaid properties, and any party asserting that they hold a superior interest in the aforesaid premises (or any of them) are called upon to furnish evidence of the title to the aforementioned premises to the below named within 21 days from the date of this notice.

In default of any such notice being received, the applicant intends to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the

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

Date: 7 July 2017

Signed: O'Hanrahan Quaney (solicitors for the applicant), 54 Fairview Strand, Fairview, Dublin 3, D03 K573; DX 223 002 Fairview

RECRUITMENT

Solicitor, very experienced in all areas of general practice, including probate, conveyancing, litigation, mental health law, District Court work, house repossessions, and family law, seeks employment on a part-time basis in the Leinster area. I have my own practising certificate and am capable of working on my own initiative as required. Flexible as regards working hours. Curriculum vitae available on request. Please reply to **box no 01/06/17**



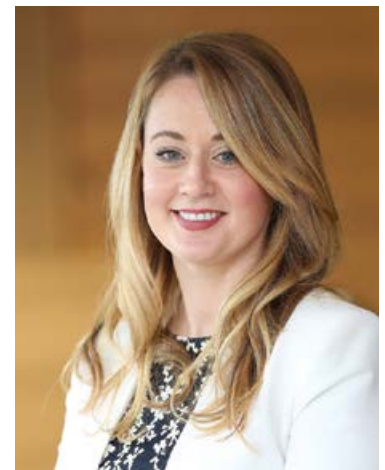
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UNITAM LOGICA FALSA TUAM PHILOSOPHIAM TOTAM SUFFODIANT STRANGER THAN FICTION

London School of Economics' students sitting a tort exam last month answered a question involving characters named 'Nigel' and 'Donald' crashing a plane into the Thames, *Legal Cheek* reports.

The exam's scenario had 'Nigel' and 'Donald' drinking "several pints of imported Belgian beer", before using Nigel's light aircraft as part of a "publicity stunt" over Westminster.

Unfortunately, the banner Nigel planned to unfurl becomes entangled in the propellers, causing the plane to plunge into the river. Nigel swims to safety, while Donald is ignored by police offers and suffers from hypothermia.

But wait, there's more: a witness in the back of a taxi opens the door in order to get



a closer look. However, he fails to spot a man named 'Boris', who

is riding "carefully in the cycle lane". Boris wasn't wearing a

cycle helmet and suffers a minor head injury as a result.

MOUNTIES ALWAYS GET THEIR... WHAT?

Canadian police are investigating after a patron at a Yukon bar stole the famed ingredient of their signature drink, *The Guardian* reports.

For more than 40 years, the Downtown Hotel in Dawson City has served the 'sourtoe cocktail': a shot of whisky with a blackened, mummified toe inside.

After the theft of the toe, the hotel's Terry Lee said: "We are furious. Toes are very

hard to come by."

The tradition dates to the 1920s, when a rum-runner preserved his frostbitten, amputated big toe in a jar of alcohol. Fifty years later, it was brought to the Downtown, where it became a celebrated ingredient in its drinks.

The stolen toe was the newest addition to their collection, donated by a man who had it surgically removed. After cur-



ing it for six months in salt, the staff had only begun adding it to drinks. The hotel manager said: "This was our new toe, and it was a really good one."

At least eight other toes have gone missing over the years, giving rise to another tradition: the hotel's constant search for toes. The hotel said it had received ten donated toes over the years, including a few that were left to the establishment in wills.

BRITISH JUDGES IN DEATH PENALTY SHOCKER!

British Supreme Court judges are hearing death penalty cases, *Legal Cheek* reports.

In their capacity on the Judicial Committee of the Privy Council (JCPC), all 11 justices hear cases from a number of Commonwealth countries, plus overseas territories

and crown dependencies – some of which still have capital punishment. They typically hear appeals two or three times a year. Two cases are currently ongoing.

A JCPC spokesperson said that the court adopts an open and honest approach: "We publish case

details for death penalty appeals in the same way as for any other case, and this material has helped inform award-winning journalism on the subject."

Birmingham Law School's Bharat Malkani says that, though the moral implications of this

jurisdiction are "thorny" ("it smacks of colonialism", he says), "the JCPC has done a lot to restrict the use of the death penalty in these countries and, through this, is saving lives. It's great the court can exert its influence over other legal systems and help them develop."



LEGAL COUNSEL



Keane McDonald has been exclusively retained to source a Legal Counsel for World Rugby.

World Rugby is the world governing and law-making body for the sport of Rugby Union based in Dublin. The Legal Counsel will be involved in a broad range of commercial legal work supporting the operational needs of World Rugby and the various World Rugby tournaments.

Principal accountabilities

- To assist in the drafting and negotiation of high value complex commercial agreements with an international element across several areas.
- To provide legal guidance and input into specific tournament areas such as accreditation, commercial activations and other tournament initiatives.
- To advise on general trademark, design, copyright and domain name issues and manage the protection and enforcement of IP rights on World Rugby's international trademark portfolio.
- To provide accurate and timely advice to all areas of the organisation on generic and complex legal matters including liaising with external counsel.

Key skills and attributes

- Qualified Lawyer in a common-law jurisdiction with strong academic credentials.
- Solid training and experience gained in a leading Irish or International law firm.
- Proven ability to deal with all aspects of contract law.
- Working knowledge of intellectual property rights.
- Excellent negotiation skills.
- Ability to work in a pressurised and often time sensitive environment.
- Team player with enthusiasm for the sports sector.

Interested applicants should contact Carrie Richmond of Keane McDonald on +353 1 6087713. Alternatively please email your CV to crichmond@keanemcdonald.com. Absolute discretion is assured.

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

World Rugby is an equal opportunities employer



Keane McDonald
executive legal recruitment

Keane McDonald
Pembroke House
28-32 Pembroke Street
Dublin 2
Tel: +353 1 6087713
Email: info@keanemcdonald.com
Web: www.keanemcdonald.com

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Top Tier & Top 10
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Niche Boutique Firm
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Ref: 913084

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Top 10
€70,000 - €90,000
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Top Tier
€65,000 - €75,000
Ref: 908344

Banking Solicitor

Top Tier & Top 10
€60,000 - €80,000
Ref: 912483

Tax Solicitor

Top Tier & Top 10
€60,000 - €90,000
Ref: 912786

Commercial Litigation Solicitor

Top Tier
€70,000 - €100,000
Ref: 910245

IP/IT Solicitor

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€70,000 - €90,000
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Featured Jobs

COMMERCIAL PROPERTY SOLICITOR Top 10 / Dublin**€70,000 - €90,000**

Our client is seeking to recruit a solicitor to join its' commercial property department. The role will involve acting operators, investors, tenants, vendors & purchasers, advising on the acquisition, disposal & management of property portfolios. Advising clients on development & financing of property assets. Advising private landlord & multi-national clients on commercial & retail leases. Assisting clients in the purchase of real estate assets to form funds for medium term retention or sale. The ideal candidate will have a minimum of 2 years' PQE from a commercial property firm.
Ref: 912671

EMPLOYMENT SOLICITOR**Top 10 / Dublin****€60,000 - €80,000**

Our client, a top 10 firm, is seeking to recruit a solicitor to join its busy employment department. The role will involve acting on behalf of clients before the EAT, Rights Commissioner service of the Labour Relations Commission, Labour Court & Equality Tribunal, Circuit & High Courts, as well as advising clients in relation to the management of investigative, disciplinary & appeal procedures to avoid litigation disputes. The ideal candidate will be 2+ years' PQE, specialising in Employment Law.
Ref: 912809


CORPORATE & COMMERCIAL PARTNER / SENIOR ASSOCIATE**Top 10 / Dublin Central****€90,000 - €120,000**

Our client is seeking to recruit a senior solicitor to join its' corporate & commercial department. The role will involve growing a team within the department, sophisticated legal advice to leading domestic & international companies from all industry sectors. The role requires excellent technical knowledge & transactional experience in commercial contracts & agreements, mergers & acquisitions, corporate finance & corporate governance. The ideal candidate will be ambitious & driven to grow out a corporate & commercial practice within this established firm.
Ref: 913312

Should you require further information about any of these roles or any other legal recruitment requirements, please contact **Michael Minogue, Assistant Manager** (m.minogue@brightwater.ie) in strictest confidence.

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JULY INSOLVENCY LITIGATION FOCUS

We have significant new opportunities for practitioners across many practice areas from Recently Qualified to Partner level. The following are examples of the latest roles our clients are seeking to fill. Please make sure to visit our website for other positions.

INTERNATIONAL

Senior Commercial Litigation Solicitor/Barrister – Hong Kong

The Role

Our Client, a well-established global legal practice with an excellent offshore Litigation team, is seeking to recruit a Senior Commercial Litigation lawyer to join the Hong Kong office of its Litigation and Restructuring Department. You will be dealing with a high value caseload comprising primarily insolvency/restructuring, shareholder disputes and contentious trusts.

The Requirements

The successful candidate will be a solicitor or barrister with at least 5 years' ppe and first rate experience in Commercial Litigation matters and Insolvency. You will possess an excellent academic background in addition to being a confident communicator and team player. The position will require significant travel around Asia and you will be prepared and expected to work long hours as and when required.

You will be required to:

- Drive tempo of client file under supervision of partner
- Consider case strategy and litigation risk
- Draft averments, pleadings, correspondence, witness statements, affidavits, draft orders and skeleton arguments
- Manage junior associates, paralegals and secretaries
- Understand billing, WIP, A/R
- Participate in marketing to include providing seminars and attending sporting events with clients
- Liaise with international counterparts to ensure filings in litigation are correct and to work collaboratively to ensure an agreed litigation strategy that results in the best possible client outcome
- Travel to meet with clients and attend Court throughout Asia and occasionally, the Caribbean and London

An excellent salary and benefits package awaits the successful candidate.

DOMESTIC

Senior Litigation/Insolvency Solicitor

The Role

Our Client, a high ranking Dublin practice is seeking to recruit a Litigation solicitor with strong Insolvency exposure.

The Requirements

You will be a qualified solicitor with at least 4 years' ppe and expertise in some or all of the following areas:

- Wind up applications
- Appointment of liquidators
- Examinership
- Receivership and Applications to Court.
- The successful candidate will also advise and prepare commercial documentation to implement solutions

For more information on these and other vacancies, please visit our website or contact Michael Benson bcl solr in strict confidence at: Benson & Associates, Suite 113, The Capel Building, St. Mary's Abbey, Dublin 7.

T +353 (01) 6703997 E mbenson@benasso.com www.benasso.com