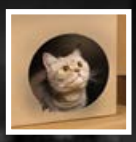

Muddling through
Multi-unit developments and how they interact with the law can be a fraught area

To buy a fat hen
How to value shares in a private company when a transfer or sale is required

Mining the motherload
Speaking to a psychotherapist or counsellor can help you deal with work and personal stress

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WITNESS PROTECTION

The dangers of inexpert testimony

IMA MAGAZINE OF THE YEAR

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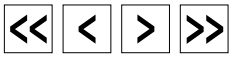

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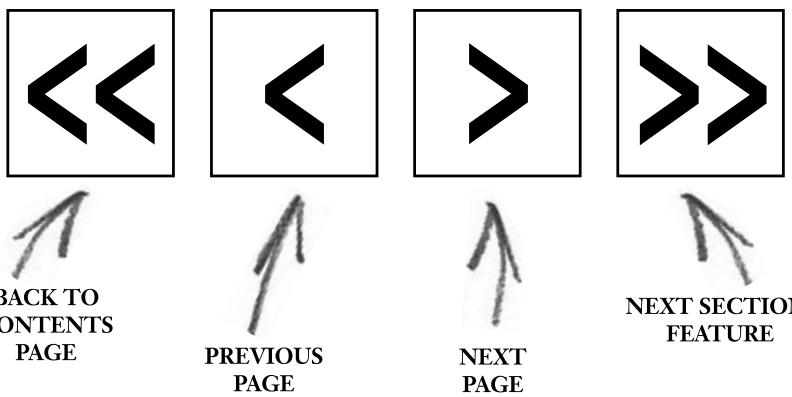

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A CHANGE IN THE MOOD MUSIC

You know something has changed in the mood music. Your calls aren't returned instantly. There is someone parked in your space. Ken Murphy gazes past you at someone in the background. Gradually, it begins to dawn on you that your year as president is coming to a close.

By the time you read this, Michele O'Boyle from Sligo will be on the cusp of being appointed as only the fourth female president of the Law Society. I say 'only', as it seems strange that – as we celebrate the centenary of women being entitled to practise law in this country – there should only have been four. However, that will change rapidly, as the demographic of the profession changes rapidly – to the extent that I was asked recently at a bar association meeting what steps the Society was taking to ensure that more male trainees came into the system.

Highlights

Some of the highlights of the year have included the visits the director general and I made to the bar associations around the country and, indeed, the various collegial events to which we were invited. In addition, we have fostered and continue to enjoy excellent relationships with our colleagues in Northern Ireland, Scotland, and England and Wales. We believe this to be of great and increasing importance as Brexit beckons.

One of the most memorable invitations I received was to the installation dinner for our colleague John Finucane (son of our murdered colleague Pat Finucane) as Lord Mayor of Belfast, in Belfast City Hall.

Big developments

The year has seen a number of big developments, of which the commencement of various parts of the *Legal Services Regulation Act* is probably the most significant in terms of day-to-day practice. Hopefully, as you read this, the forms and fees for registration as limited liability partnerships will be available, and I hope that all partners and firms will avail of this significant advantage, long fought for. We will continue to engage with Government and the new authority to ensure that this protection is extended to sole practitioners – there is not the slightest logical or legal reason why it should not be so.

There was lots else – section 150 fees notices, complaints handling and, maybe of relevance to some of our colleagues, the ability to apply for patents of precedence. Who will be the first solicitor senior counsel?

Thriving profession

The results of the Council election for the two-year term commencing November 2019 will be known by the time you read this. We have a busy, engaged and active Council, as well as a large number of committees that continue to steer the profession successfully. I am very grateful for their hard work and support during the past year. My best wishes go to my successor Michele O'Boyle, and to incoming senior and junior-vice presidents, James Cahill and Maura Derivan, respectively. Finally, thanks to everyone whom I have met or engaged with over the year – you have been courteous and supportive. A special thanks to our director general Ken Murphy and deputy director general Mary Keane, all of the fantastic staff of the Law Society, and everyone at Ronan Daly Jermyn, for their professional and personal support in what has been an unexpectedly busy year. g

LAW SOCIETY OF IRELAND

> ONE OF THE LARGEST NUMBERS OF COLLEAGUES EVER CONTESTED THE COUNCIL ELECTION

PATRICK DORGAN,
PRESIDENT

gazette
LAW SOCIETY

PIC: SHUTTERSTOCK

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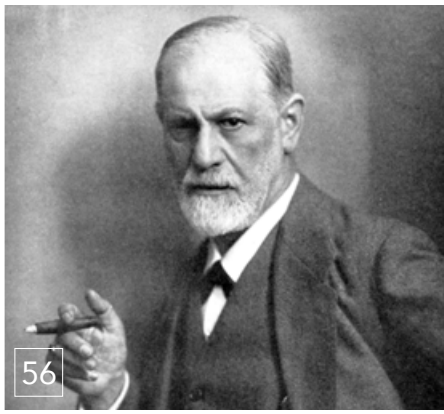

FEATURES

REGULARS

THE BIG PICTURE

SELFIE ASSURED

Protesters take a selfie as they block the Dora highway in the north-east of Beirut, Lebanon, during a protest on 18 October 2019. An unexpected Lebanese Government plan to impose a fee of 20 cents a day for messaging-app users led to widespread bonfire protests (which were fed by mounting levels of discarded rubbish). Protesters are demanding proper public services, jobs, action against rising crime levels, the dropping of new austerity measures, and reform of the political elite. Telecoms Minister Mohamed Choucair announced that plans for the new charge have been dropped due to the civil strife

PIC: EPA-EFE/WAEL HAMZEH


ACAPULCO
DIVER

LAW SOCIETY GALA – A NIGHT TO REMEMBER

PICS: DEIRDRE BRENNAN AND AILBHE O'DONNELL

At the Law Society Gala at the Shelbourne Hotel, Dublin, on 11 October were: Ken Murphy (directory general), Mary Keane (deputy director general), Oliver Callan (MC), Patrick Dorgan (Law Society president), Paul Wyse (Smith & Williamson, sponsors), Teri Kelly (director, representation and member services), and Marc Lowry (Smith & Williamson, sponsors)

IronLaw athletes presented the Solicitors Benevolent Association (SBA) with a cheque for €31,226 at the gala event: President Patrick Dorgan, Darren Toombs, Brian McMullin and Thomas Menton (chair, SBA)

Michele O'Boyle

Susan Deasy, Brian McGovern and Aoife Fitzpatrick

David Smyth and Morette Kinsella

Patrick Dorgan, Minister Charlie Flanagan and Ken Murphy

Minister Josepha Madigan

Evin, Emma and Bryan Carthy

Oliver Callan

Elaine Morgan and Liam O'Neill

Teri Kelly

Kerry Lyons and Lindsey Murphy

Darren and Virginia Toombs

Ann McRann and Michelle Daly

Charlotte Chestnutt and Sorcha Kinder

Ken Murphy and Yvonne Chapman

Catherine Hayden and Anna Shaw

The Dorgan family: David, Robert Coughlan, Jennifer, Patrick, Maria and Frank

Patrick Dorgan, Paul Wyse (Smith & Williamson) and Ken Murphy

Minister Josepha Madigan, Law Society President Patrick Dorgan, Minister Charlie Flanagan and director general Ken Murphy

Oliver Callan and Mary Keane

SOLICITORS GATHER IN MONAGHAN

ALL PICS: GLENN MURPHY PHOTOGRAPHY, MONAGHAN

The main speakers and organisers of the North-East Cluster event, which was held in Monaghan on 11 October 2019, were *(front, l to r)*: Attracta O'Regan (Law Society Finuas Skillnet), Mary McAveety (McAveety McKenna Solicitors, Cavan), Noel O'Gorman (Noel O'Gorman Solicitors, Cavan), Pierce O'Sullivan (Pierce O'Sullivan & Associates, Cavan), Conor MacGuill (event chairman, Conor MacGuill Solicitors), Catherine MacGinley (MacGinley Quinn, Louth), John Elliot (Law Society of Ireland); *(back, l to r)*: Katherine Kane (Law Society Finuas Skillnet), Lynda Smyth (Coyle Kennedy Smyth, Monaghan), Áine Curran (O'Mara Geraghty McCourt Solicitors, Dublin), Brendan Twomey (revenue sheriff, Donegal), Patrick Sweetman (Matheson, Dublin), Kevin Hickey (Hickey Henderson & Co, Monaghan) and Anne Stephenson (Stephenson Solicitors, Dublin)

Brendan Twomey (revenue sheriff, Donegal)

Event chair, Conor MacGuill

Damien Rudden, Kelly Ann Keegan, Clare Gormley and Pauric Murray

Lorraine Kane, Colm O'Cochlain, Gillian O'Shea

Donna Crampsie, Niall Sheridan and Christopher Quinn

Ann Skinnader, Gráinne Dolan and Elaine Gray

Linda Smith, David McAlinden, Cathy Donald, Shane McMahon and Michael Bishop

Kevin Byrne, Brendan Twomey and Michael Woods

David Thorpe, Warren Bolger and Sinéad McCabe

Catherine McGinley, Carthage Conlon, Áine Curran and Conor MacGuill

CELEBRATING THE CLASS OF 2019

Pictured at the annual conferral ceremony 2019 for the Certificate in Professional Education are *(front, l to r)*: Ita Lyster, Michelle Nolan (Law Society Finuas Skillnet), Antoinette Moriarty (programme director), Deirdre Fox (Law Society Finuas Skillnet Committee), Attracta O'Regan (head, Law Society Finuas Skillnet), Dr Gabriel Brennan (programme director) and Lisa Finlay; *(back, l to r)*: Joanna Jackson, Martin O'Brien, Paul McMahon, Cian Monahan, Claire O'Mahony, Bill Holohan, Gillian Lynch, Nicholas Kelly and Gwen McDevitt (Law Society Finuas Skillnet)

Pictured at the annual conferral ceremony 2019 for Coaching Skills for Managers are *(front, l to r)*: Michelle Nolan (Law Society Finuas Skillnet), Isolde Norris (programme delivery team), Attracta O'Regan (head, Law Society Finuas Skillnet), Deirdre Fox (Law Society Finuas Skillnet Committee), Antoinette Moriarty (programme director) and Rosemarie Hayden; *(back, l to r)*: Ann-Marie Carroll, Sandrine Greene, Keith O'Malley, Michael Moore, and Gwen McDevitt (Law Society Finuas Skillnet)

Pictured at the annual conferral ceremony 2019 for the Executive Leadership Programme are *(front, l to r)*: Monica Hynds O'Flanagan, Carmel Kelly, Deirdre Fox (Law Society Finuas Skillnet Committee), Katie da Gama (programme delivery team) and Antoinette Moriarty (programme director); *(back, l to r)*: Michelle Nolan (Law Society Finuas Skillnet), David Mulvihill, Rita Monaghan, Attracta O'Regan (head, Law Society Finuas Skillnet), and Gwen McDevitt (Law Society Finuas Skillnet)

A WARM WEST CORK WELCOME

ALL PICS: THE BARN STUDIO/GEORGE MAGUIRE

Law Society President Patrick Dorgan and director general Ken Murphy met with the West Cork Bar Association (WCBA) at Dunmore House Hotel on 8 October. *(Front, l to r)*: Myra Dineen, Anthony Greenway (vice-president, WCBA), Catherine O'Brien, Donna Wilson, Siun Hurley (honorary secretary, WCBA), Ken Murphy (director general), Kevin O'Donovan (president, WCBA), Patrick Dorgan (president, Law Society), Plunkett Taaffe, Veronica Neville, Barbara Daly, Paul O'Sullivan (CPD officer, WCBA) and Phil O'Regan; *(back, l to r)*: Jim Brooks, Siobhan Daly, Maria O'Donovan, Diarmuid O'Shea, P J Feeney, Lorna Brooks, Eamonn Fleming, Eileen Hayes, Laetitia Baker, Frank Purcell (PRO, WCBA), Mary Jo Crowley, Virgil Horgan, Fiona Lucey, Ronnie Collins, Denis O'Sullivan, John McCarthy, James Long, Flor McCarthy, Lisa Crowley, Susan Lee, Flor Murphy and Shane McCarthy

Anthony Greenway, Siun Hurley, Catherine O'Brien and Myra Dineen

Denis O'Sullivan, Paul O'Sullivan, Barbara Daly, Fiona Lucey and Kevin O'Donovan

Virgil Horgan and Patrick Dorgan

Laetitia Baker, Siun Hurley and Mary Jo Crowley

Eamonn Fleming, Diarmuid O'Shea and Jim Brooks

BRUTON CHAIRS BREXIT LEGAL SERVICES INITIATIVE

The Government has appointed former Taoiseach John Bruton to chair the Implementation Group for its Brexit Legal Services Initiative. The initiative seeks to identify and pursue any dividend that may result from the fact that, post-Brexit, Ireland will be the only English-speaking, common law jurisdiction in the EU.

The proposal for a 'Brexit Legal Services Initiative' was made jointly by the Bar of Ireland and the Law Society in May 2018. It was proposed as an integral part of the State's national economic response to Brexit, and also to support the country's existing and very successful foreign direct investment programmes.

At the advance meeting in the Department of Justice on 11 October: Patrick Dorgan (Law Society president), former Taoiseach John Bruton, Ken Murphy (director general), and Liam Kennedy (Council member)

Joint initiative adopted

In January 2019, following a memorandum brought to Government by Justice Minister Charlie Flanagan, the Government welcomed and adopted the joint initiative of the Bar of Ireland and the Law Society.

Already this year, delegations that have included the chief justice, the attorney general and representatives of both the Bar and the Law Society have separately visited both Washington DC and Dallas, Texas. Meetings and social events have been held with leading figures in the legal and business communities in the United States.

The first meeting of this project's Implementation Group (as appointed by Government) took place on 25 October 2019 and sees the project now proceeding on a firm footing. The group is chaired by John Bruton who, subsequent to his having served as taoiseach in the mid-1990s, has also served as the EU's ambassador in Washington DC, and as chairman of the IFSC Ireland with the role of promoting Ireland as a location of choice for international financial services.

Advance meeting

In advance of the first meeting of the implementation board, Bruton met with representatives of the Law Society, comprising president Patrick Dorgan, director general Ken Murphy and Council member Liam Kennedy on 11 October 2019.

Mr Bruton was briefed on what the Law Society sees as the priorities and possibilities of this exciting new initiative, which is designed to attract additional legal work to Ireland.

In broad terms, it is anticipated that the role of the group will be to identify opportunities and the best pathway to promote the use of Irish law and Irish legal services in contracts and transactions. An initial pooled fund of up to €100,000 is being established to support the initiative, with the Law Society and the Bar having agreed to initially fund it on a 'two-thirds/one-third' basis.

High-level representatives

In addition to the two professional bodies, also represented at a high level on the group will be the Departments of the Taoiseach, Finance, Justice and Equality, Business Enterprise and Innovation, Public Expenditure and Reform, Foreign Affairs and Trade, and IDA Ireland. The attorney general Seamus Woulfe SC will also be a member of the group.

Director general Ken Murphy remarked: "This is a contested space. Other EU jurisdictions, including France, Germany and The Netherlands, are positioning themselves to avail of any opportunities for additional legal work that may result from London potentially losing some of its pre-eminence as a legal centre, post-Brexit – not least because of the end to automatic enforceability of UK court judgements in EU member states.

A choice of Irish law and Irish courts in dispute-resolution clauses in international agreements may be the solution. But that message has to be delivered persuasively, and to the right people."

ONE IN TWO FEMALE LAWYERS BULLIED AT WORK, IBA FINDS

At its meeting on 13 September 2019, the Law Society Council received a presentation from director general Ken Murphy on the disturbing findings of International Bar Association (IBA) worldwide research. The IBA report was published in May 2019 under the title *Us Too? Bullying and Sexual Harassment in the Legal Profession*.

Nearly 7,000 individuals from 135 countries responded to the IBA's survey. The results provide empirical evidence that bullying and sexual harassment are rife in the legal profession. Approximately one in two female respondents, and one in three male respondents, had been bullied in connection with their employment. One in three female respondents had been sexually harassed in a workplace context, as had one in 14 male respondents.

No one on the Council sought to pretend that Ireland was immune to the problems of bullying and sexual harassment in the legal profession. It was agreed that the Law Society must confront these insidious issues in our profession through a series of measures, including consciousness raising (this is the second *Gazette* article on the topic in recent months), and a seminar that is currently being planned.

Director General Ken Murphy welcomed former Prime Minister of Australia Julia Gillard, who was the keynote speaker at the IBA annual conference in Seoul

Ken Murphy, in his capacity as an officer in the Bar Issues Commission of the IBA, served as a member of the working group that produced the IBA report. As such, he recently had the opportunity to meet with the keynote speaker, former Prime Minister of Australia Julia Gillard, at the IBA's standing-room-only seminar on the topic at its annual conference in Seoul, South Korea.

Among her contributions in a riveting address to the seminar, Julia Gillard observed: "Sexual harassment is not one horrible moment in time," she said. "It undermines a sense of self, corrodes confidence, and can give rise to anxiety, depression – even suicidality."

Citing the IBA's landmark report, Ms Gillard noted that female lawyers were more likely than their male peers to be targeted.

A particular problem in the legal profession is that of the serial offender whose 'eccentricities' are brushed under the carpet because they are a high-earning partner or a 'courtroom magician'. New reporting methods are needed to expose such 'brilliant jerks', Gillard said.

But rather than dwell on the problem, the former solicitor chose instead to focus on solutions, declaring that our goal should be to create safer and more productive workplace environments.

"I want to explore how we can end up with a legal profession where sexual harassment and bullying have gone the way of ink pots and quills," she said.

TRANSFER OF COMPLAINTS-HANDLING TO LSRA

Legislation transferring responsibility for complaints handling from the Law Society to the Legal Services Regulatory Authority came into effect on 7 October.

Part 6 of the *Legal Services Regulation Act 2015* states that any new complaints regarding solicitors must now be made to the authority, and not the Law Society. The Society will continue to investigate existing complaints that were received prior to the commencement of part 6 of the act, until those complaints have reached conclusion.

In circumstances where a complainant attempts to reopen a complaint with the authority that has been previously decided by the Society, the following should be noted:

- On receipt of a complaint, the authority is required to conduct a preliminary review to consider whether the complaint is admissible. Complaints will be deemed inadmissible if they are frivolous, vexatious, out of time, or without substance or foundation.
- Section 58(4) of the act requires the authority to determine a complaint as inadmissible if it has been previously considered under the *Solicitors Acts 1954-2015* by the Society, the Solicitors Disciplinary Tribunal, or the High Court. The act also requires the authority to deem a complaint inadmissible if it is the same, or substantially the same, as an act or omission that was the subject of civil or criminal proceedings that has been concluded by a court in favour of the solicitor concerned.

- Complainants to the authority must confirm whether they have made a similar complaint to the Society and, if so, state the outcome. Solicitors will also be given an opportunity to advise the authority of a previous complaint. If the complaint has been the subject of civil or criminal proceedings, the authority also requires full details of these proceedings.

The Society strongly recommends that, where a solicitor is subject of a complaint made to the authority, and the solicitor knows that this complaint was previously dealt with, the solicitor indicates this history, in the clearest terms, to the authority.

LAW DIRECTORY OPT-OUT

The Law Society has responded to requests by certain members who wish to opt-out of receiving the annual *Law Directory*.

When updating your *Law Directory* entry on www.lawsociety.ie/lawdirectory, members can now opt out of receiving the directory by post.

There is now an option at the bottom of the form to 'tick to opt out of receiving the directory by post'.

Those who wish to avail of this option should make sure to click the 'Save preference' box at the end of the process.

CELEBRATING THE SOCIETY'S PSYCHOLOGICAL SUPPORT SERVICES

Solicitors deal with such an amount of emotional and psychological complexity in their day-to-day work with clients that, without robust internal scaffolding, the personal price can be huge.

Antoinette Moriarty, psychotherapist and manager of the Law School's psychological services explains: "A large part of the work of a solicitor is dealing with people in crisis of one form or another. Crucially, solicitors operate without any of the training other front-line professionals, such as social workers or indeed psychotherapists, receive."

PPC1 trainees taking part in 'Pop-up yoga' as part of Mental Health Week

The Law School has introduced a module – called 'Shrink Me' – that aims to plug this gap, emphasising psychological well-being, analysing the psychology of a lawyer, and carefully unpacking of the psychology of a law firm.

"The module is, in some ways, like a good therapy session," observes Moriarty. "It goes under the bonnet of professional life, normalising and bringing relief – and humour – to the less spoken-about side effects of being a high-achiever."

While 'Shrink Me' tackles some tough topics, there is a conscious emphasis on trainees' well-being, their leadership potential, and the importance of creating careers that generate success without jeopardising personal happiness.

Shrink Me is an integral part of the Professional Practice Course, forming a third pillar of professional education alongside core legal subjects and skills. "This positioning is both deliberate and unique," says Moriarty. "Including psychology on the core legal curriculum has been a game-changer, giving us the edge over other professions that are slow to respond to the changing values, needs and goals of this generation. Integrating psychological development within professional training is an area in which the Law School is now leading internationally."

This is just one innovative aspect of the Law School's professional training that is setting it apart from other educational bodies. Perhaps, most importantly, it is creating a sense of belonging among the future of the legal profession.

NEW JUDGES FOR COURT OF APPEAL

The Government has approved the appointment of seven new judges to the Court of Appeal. All nominations have gone to President Michael D Higgins for approval. The court will now have 15 judges.

Six of the judges are being appointed with immediate effect, while the seventh is being appointed on the retirement of Mr Justice Michael Peart on 26 October.

Four of the newly elevated judges served as High Court judges – Mr Justice Seamus Noonan, Mr Justice Robert Haughton, Ms Justice Úna Ní Raifeartaigh and Ms Justice Mary Faherty.

COMMS DAY FOR SOLE PRACTITIONERS AND SMALLER PRACTICES

The communications needs of sole practitioners and smaller practices will be the main focus of the Law Society's annual Communications Day, which takes place on Monday 25 November 2019.

As part of the Small Practice Support Project, the Society has developed a targeted media skills and messaging workshop, which is free to members. It has been specially designed to help smaller practices proactively promote:

- The unique value of smaller firms,
- Their vital role in communities and local economies all over Ireland, and
- The benefits to solicitors of living in rural Ireland and practising in smaller firms.

The event will run from 11am to 3.30pm on and will take place in the Blue Room at the Law Society of Ireland, Blackhall Place, Dublin 7. Refreshments and a late lunch will be provided.

To register, email Kathy Mc Kenna at k.mckenna@lawsociety.ie. Members can also visit the Small Practice Business Hub for information on courses and tools to help build a more successful and sustainable business.

ENDANGERED LAWYERS

DERK WIERSUM, NETHERLANDS

Derk Wiersum

Derk Wiersum (44), married with two children, was leaving his Amsterdam home early on the morning of 18 September 2019 when he was gunned down by a youth who fled on foot. He was a defence lawyer representing a drugs gangster turned state's witness, Nabil Bakkali, who is in custody.

He was a partner in a major law firm and specialised in organised crime cases. The prime suspects behind the shooting are on the Netherland's most-wanted list and are members of a cocaine-smuggling gang, with 11 of them already in custody.

Wiersum had no official protection, though his client (Bakkali's brother) was shot last year. This situation is now being remedied for officials involved in this and other gangland cases.

The murder is being regarded by many in the context of the tolerance for soft drugs in the Netherlands and the large-scale organised crime that has developed as a result. A report in August prepared for Amsterdam city council said that the city's drugs policies had allowed "drugs criminals, hustlers, parasites, middlemen and extortionists" to flourish, and that the underworld of drug-related organised crime was now influential in the city. There are estimates that the value of the drugs trade, in which the Netherlands is a European hub, is at least €20 billion annually.

The police have, likewise, been warning of the creeping influence exerted by drug-related organised crime. As reported in *The Irish Times*, a police union leader Jan Sluijs stated that this was confirmation, if any were needed, that "we are living in a narco-state" – a remark that most in the country would understand, whether they agreed or not.

As in the Netherlands, it is unusual for Irish lawyers to be physically threatened. In 2005, the home of solicitor John Hennessy (whose client was Baiba Saulite) was petrol-bombed and set on fire as he and his partner slept, and he received death threats. He had acted for Ms Saulite in seeking the return of her two young sons who had been kidnapped and moved to Lebanon by their father, and he succeeded in having them returned. He wore a bulletproof vest and received intermittent police surveillance. In the event, it was his client who was shot as she stood at her front door a year later. She had no police protection, though also feared for her life. On her death, John Hennessy was given police protection for a period.

Alma Clissmann is a member of the Human Rights Committee.

MARY LYNCH RETIRES AFTER 45 YEARS OF STERLING SERVICE

Mary Lynch, registrar of the Solicitors Disciplinary Tribunal, has retired after 45 years of service. Mary joined the Law Society in 1974, when it had just 16 staff members, all located at the Four Courts.

When the clerk to the then Disciplinary Committee was hospitalised, Mary was asked to deputise.

As her workload expanded, she worked for both the Complaints and Disciplinary Committees, and was secretary to the Arbitration Committee.

She pursued a law clerk course in Rathmines College, following it up with a BSc in Management from Trinity College Dublin. Mary served as clerk to the Disciplinary Committee until 1994, when she became registrar to the then newly established Solicitors Disciplinary Tribunal. She was centrally involved in drafting revised tribunal rules in 1998, 2003 and 2017.

Mary Lynch

We wish Mary health and happiness during her well-deserved retirement.

MCCANN FITZGERALD APPOINTS NEW CHAIR

McCann FitzGerald's new chair Catherine Deane and managing partner Barry Devereux

Top-tier firm McCann FitzGerald has created a new role of chair, appointing aviation finance expert Catherine Deane to the position.

Catherine begins her four-year term on 1 November. She has over 25 years of experience in advising on and acting for the world's largest aircraft lessors and financiers. She has been a partner in the firm since 1992.

Managing partner Barry Devereux commented that the creation of the role of chair was "an exciting development" and "one that we believe adds significant strength to the firm's leadership".

Catherine commented: "I am excited and energised by the challenges that the role presents."

McCann FitzGerald employs 650 people, including over 450 lawyers and professional staff.

FIXED-CHARGE NOTICES LEGISLATION UNCONSTITUTIONAL

In a judgment that is expected to have a widespread impact, High Court judge Ms Justice Úna Ní Raifeartaigh has ruled that a section of the *Road Traffic Act* concerning fixed-charge notices is unconstitutional.

The relevant legislation prevented a man from arguing, as a defence to a charge of holding a mobile phone while driving, that he was not served with a first fixed-charge notice.

Section 44.10 of the *Road Traffic Act 2010* (as amended by section 27 of the *Road Traffic Act 2016*) did not distinguish between those who chose not to pay a first fixed-charge notice, and those who genuinely did not receive it, Ms Justice Úna Ní Raifeartaigh said.

Initial notice not received

The *Irish Examiner* reported that the man was summoned on a charge of holding a mobile phone while driving. While he admitted the offence during a District Court hearing in March 2018, he said that he had not received the initial fixed-charge notice.

While he received the summons with the second fixed-charge notice attached, he claimed that, because he did not get the initial notice, he was denied the opportunity to pay a lower fine.

His lawyers applied to have the case dismissed, arguing that he had been prejudiced by not having had the opportunity to pay the lower fine. The case was adjourned.

In May 2018, after the State argued before the District Court that, arising from section 44.10, the District Judge was obliged to convict the man, the judge did so, handing down a €300 fine and five penalty points. The man appealed.

A number of District Court prosecutions have been on hold pending the High Court challenge.

On 8 October, Ms Justice Ní Raifeartaigh said that she would deliver her judgment on the complex case (and a similar case) on 30 October. However, because she was aware that the judgment would have a significant impact, she offered to outline her conclusion, so that the State would have time to either appeal or amend the relevant legislation. No final orders would be made before that.

The judge concluded that section 44.10 of the *Road Traffic Act 2010* (as amended by section 27 of the *Road Traffic Act 2016*) was unconstitutional.

Section 44.10 states: "Where a person is served with a summons accompanied by a section 44 notice in respect of a fixed-charge offence, it shall not be a defence for the person served with the summons to show that he or she was not served with a fixed-charge notice in respect of the alleged offence in accordance with section 35."

Ms Justice Úna Ní Raifeartaigh – the legislation fails to distinguish between those who choose not to pay, and those who don't receive the first fixed-charge notice

Section 35(2) deals with the serving, by gardaí, of fixed-charge notices. It states: "A prosecution in respect of a fixed-charge offence shall not be instituted unless a fixed-charge notice in respect of the alleged offence has been served on the person concerned under this section and the person fails to pay the fixed charge in accordance with the notice."

Outside their control

In his High Court proceedings, the man argued that section 44.10 means that defendants charged with the same offence might receive different penalties due to circumstances wholly outside their control – that is, non-receipt of the fixed-charge notice.

It was claimed that such a distinction was in breach of the fair procedure and fair trial requirements of the Constitution, and incompatible with the State's obligations under the *European Convention on Human Rights*.

Ms Justice Ní Raifeartaigh noted that the State took the position that the word 'serve' could have two different meanings within the context of one act. She considered this could not be the case, and respectfully disagreed with previous High Court judgments on the issue.

She added that section 35.2 of the 2010 act and section 44.10 of the same act (as amended by section 27 of the *Road Traffic Act 2016*) were contradictory. The legislation did not distinguish between those who chose not to pay the first fixed-charge notice, and those who genuinely did not receive it, she said.

She was thus prepared to quash the conviction and grant a declaration that the section was unconstitutional.

EMPLOYMENT LAW ADVICE CLINIC FOR WOMEN LAUNCHED

Community Law & Mediation and the National Women's Council of Ireland (NWCI) have launched a new employment law advice clinic for women, *writes Elizabeth Devine*.

The new clinic is funded by the Irish Human Rights and Equality Commission and takes place on a monthly basis. It caters for women experiencing problems at work, such as unequal pay, discrimination, and sexual harassment.

The issues raised at the clinics will feed into the development of a *Bill of Rights for Working Women*, which, when complete, aims to provide a safeguard for women and act as a check against discrimination in the workplace.

The clinic takes place at the offices of the NWCI (North King Street, Smithfield, Dublin 7). Should solicitors be interested in referring a person to the clinic, appointments can be booked through Denise Roche (legal and policy officer) at deniser@nwci.ie.

SWEET CHARITY

The charity sector has become highly regulated in a short space of time, but achieved 98% compliance in annual reporting in 2018. Charities Regulator CEO Helen Martin urges all charities to be transparent. **Mary Hallissey** reports

MARY HALLISSEY IS A JOURNALIST WITH GAZETTE.IE

ALL CHARITIES SHOULD ALWAYS GET PROFESSIONAL ADVICE, WHETHER IT'S LEGAL OR ACCOUNTING, IF THEY DON'T HAVE THAT SPECIALISM AVAILABLE TO THEM ON THEIR BOARD

Helen Martin is constantly being told that there are too many charities in Ireland and that she should shut some down. That's not her job.

The CEO of the Charities Regulator believes that charities will stand or fall by the work that they do – by that measure, it is the public that will determine whether or not they are successful. The job of the regulator is to make sure that existing charities have proper governance structures. This is what will guarantee public confidence and support and, therefore, their continued existence.

The regulator's overriding vision is for a vibrant, trusted charity sector that is valued for the public benefit that it provides. Transparency and accountability are key to achieving that vision, Martin notes.

She urges trustees to ensure that every charity's full set of accounts is published online, rather than simply an abridged version. "We have seen a growth in the number of charities filing abridged accounts. While they may be legally entitled to do it, we do not think it's the right thing to do. All charities should be publishing their full set of accounts on their websites."

The Charities Regulator has a compliance and enforcement function under the *Charities Act 2009*, but also has a role in enhancing best practice in governance. To this end, it launched the *Charities Governance Code* in November 2018. "Our mission is to regulate the charity sector in the public interest so as to ensure compliance with the law and support best practice in the governance, management and administration of charities," says Martin.

The creation of the regulator put additional administrative duties on the sector, but Martin is adamant that regulation is proportionate and that there is an overall benefit in a more transparent and accountable charity sector – which is essential for sustainability, as State funders, donors, and volunteers expect more from charities.

Fresh fields

Martin had a varied career as a lawyer before arriving in the charity sector, graduating with a BCL from UCD in the mid '90s, doing a postgrad in competition law at King's College London, as well as qualifying as a barrister, working in telecoms regulation, and also spending eight years working in the Attorney General's office as a legislative drafter.

There, she worked long hours as part of the large team drafting the complex laws that created NAMA, as well as other legislation related to the financial crisis. "When you go in at a time of financial crisis, when everyone was working late hours and long days in the national good, you get to see how committed people were to getting things done right, and working really hard."

The director of regulation job at the newly formed Charities Regulator came up in 2017. "With my regulatory and legal background, I thought it would be particularly interesting, as a new area of regulation," Martin says.

On her arrival, Martin was initially amazed at the diversity of charities. She saw massive commitment among volunteers with a true belief in their endeavours. "In the charity sector, you're dealing with fantastic people doing amazing things. We register charities, so I have direct experience of looking at the applications and seeing the interesting work that people are doing, whether it's a cancer patients' transport network or first responder groups or environmental groups. It's amazing to see the time and effort people put in to serve their communities," she says.

Passing the test

So far, relatively few applications have been turned down. Martin attributes this in part to the Charities Regulator's commitment to continually refine the step-by-step guidance on its online registration process.

"People have to really think and understand what a charity is before they apply for registration," says Martin. Charities are

ALL PICS: CIAN REDMOND

a sub-set of the wider not-for-profit sector, she points out.

The regulator's staff are trained in how to apply the 'charities test' and will rigorously assess whether an applicant meets that test in terms of having a charitable purpose and providing public benefit.

A well-run charity sector generates trust and confidence, in both money given and volunteer time offered. "In a regulated sector, there are far more supports available to potential trustees or anyone thinking about volunteering for a charity … there's a lot more information available that they can check. They can take a certain confidence from that," she said.

Having rigorous regulatory processes focuses minds in terms of charitable purpose and activities, Martin says. "The level of compliance with annual reporting requirements show that charities understand that there's

a value to them in completing their annual report on time, since the information is put online and is a window for the public into their finances and activities. It's also very important to charities that they maintain their Irish-registered charitable status."

Red flags

No charity has yet been removed from the charities register as a result of failing to comply with obligations under the *Charities* Act, as the regulator's initial focus has been to ensure that charity trustees are informed of those obligations. However, as regulation in the sector matures, there will be a greater focus on compliance and enforcement. Failure to keep proper books of account or governance lapses are the main red-flag areas. "We are currently building up our team, and will be recruiting lawyers with trust law and regulatory experience over the coming months," says Martin, "so I would urge anyone with an interest in working with the Charities Regulator to keep an eye on our website."

A total of 686 individual 'concerns' were raised with the regulator in 2018, which amounts to between 50 and 60 each month. However, not all of these are escalated, and only 44% related to registered charities – the remainder related to entities that were not registered charities.

"All charities should get professional advice, whether it's legal or accounting, if such advice is required and they don't have that specialism available to them on their board or from staff," Martin says. However, only larger more complex charities will need an in-house legal team, she believes.

And Martin urges charities to get creative about pulling in fresh blood, and looking beyond the obvious sources for new recruits. A charity's website is its shop window and should be as good as possible. "It's about telling people what you do and telling that story well," says Martin. g

> THERE IS AN OVERALL BENEFIT IN A MORE TRANSPARENT AND ACCOUNTABLE CHARITY SECTOR, WHICH IS ESSENTIAL FOR SUSTAINABILITY

FOCAL POINT

THEY SAY IT BEGINS AT HOME

- Ireland has 65,300 charity trustees, comprising board, committee members and company directors.
- The four main categories of 'charitable purpose' under the *Charities Act 2009* are the prevention or relief of poverty or economic hardship, the advancement of education, the advancement of religion, and any other purpose that is of benefit to the community, such as environmental protection, promotion of health, animal welfare, community development, community welfare, conflict resolution, integration of the disadvantaged, and advancement of the arts, culture, heritage or sciences.
- A charity may need to spend some of its funds on salaries, and it is acceptable to do so, provided that it is "reasonable in all the circumstances, ancillary and necessary to further the public benefit".
- A total of 44 new charities were added to the register during August 2019, with causes ranging from an all-Irish Steiner school in Co Kerry, the Bible Reformed Church founded by Chinese migrants, the Celestial Church of Christ Ajijola-Jesu (Providence) Parish in Dublin 15, and the Rosemount public children's playground in Moate, Co Westmeath.
- €350 million is donated annually to registered Irish charities, with an average weekly donation per household of €3.75.
- If a member of the public feels disquiet at any on-street fundraising activity, they should first raise their concerns with the particular charity.
- Collection buckets should always be sealed and full information available about the purpose for which the funds are being collected. It should also be clear whether any collector is an employee, a volunteer, or a professional fundraiser.
- Payment to professional fundraisers has to be reasonable, and the charity must get a fair proportion of any moneys raised.
- Concerns about charities can be raised with the Charities Regulator by using its online concerns form, available on its website.

THE TIME HAS COME

As PII renewal approaches, **Julie Brennan** says that, in a market with a reduced number of insurers and increased premiums almost guaranteed for many law firms, the time has come to manage risk more effectively

JULIE BRENNAN IS MANAGING DIRECTOR AT THE INSTITUTE OF LEGAL RESEARCH AND STANDARDS

THERE ARE A NUMBER OF THINGS SOLICITORS SHOULD DO IF THEY RECEIVE A COMPLAINT OR CLAIM, OR INDEED IF THEY BECOME AWARE OF CIRCUMSTANCES THAT COULD GIVE RISE TO A CLAIM

The issue of risk management is so important to insurers that they have devoted the largest part of the annual professional indemnity insurance (PII) common proposal form to this subject. As we now approach the PII renewal period, in a market with a reduced number of insurers and increased premiums almost guaranteed for many firms, firms should now consider how to effectively manage risk.

Top ten tips

1) **Good client engagement procedures.** Think before taking on a new client. Has the firm the capacity, capability and competence to accept instructions? Is the client/case too good to be true? Are there higher-than-normal risk factors? At a minimum, firms should have a detailed letter of engagement, including all relevant terms and section 150 notices. The set-up procedures should be uniformly applied in your firm to ensure quality and consistent standards.
2) **Manage your critical registers.** Firms can either operate manual or systemised registers, but they need to be used by everyone in the firm, they need to be reviewed regularly, and the overall responsibility for this must be given to a principal or a partner in your firm. The advantages of using an automated system means that there will be a firm and matter-centric view of this information, which is essential to managing risk. In relation to critical dates, there must be a system to establish that the correct date was initially entered. Solicitors should check the legislation wording if they are in any doubt.
3) **Use your case management system effectively.** This might seem obvious, but it is surprising how many firms are not maximising the use of their case-management systems. Many firms have invested significantly in advanced systems, but due to either time constraints or a reluctance to implement change, these systems are not being used either efficiently or effectively. Your case-management system will allow you to enter estimated fees and expected invoice dates, ensuring compliance with your obligations under section 150. Time recording should be kept up to date. All fee earners should time-record on every matter, regardless of the fee structure. This will enable the firm to keep track of the profitability of the case/matter.
4) **Implement a file-audit system.** It is imperative that firms have a system to audit files regularly, as early identification of issues is key to reducing the risk. As per the common proposal form guidance notes, the file is audited against specific criteria: fee earners should not audit their own files; a form is generally used; and the file should be scored.
5) **Regularly monitor your own files.** A system should be implemented to ensure that files are regularly monitored and reviewed. The common proposal form guidance notes define a file review as a "quick, frequent review of files to monitor progress, which can be done by fee earners on their own files or by a supervising partner". Files should be kept up to date and progressed promptly.
6) **Get everyone involved.** Having eyes and ears throughout this process, as well as buy-in from all staff, is crucial. From the most junior member of staff to the most senior partner in the firm, everyone should be encouraged to contribute to the management of risk within the organisation.
7) **Allocate time and sufficient resources to this process.** This will take time but, in the long run, it will reap rewards, as time spent identifying potential issues and implementing appropriate controls will save a firm multiple hours when (not 'if') something goes wrong. The best firms we have worked with have a dedicated risk-management partner or even a risk-management team, who meet regularly with a rep-

PIC: GAZETTE STUDIO/SHUTTERSTOCK

Time for another piece of the PII

resentative from each department.

8) **Review policies and procedures at least annually.** All of your firm's policies and procedures should be updated as required, but at least annually. Updated policies should be made available to all staff. Relevant and regular training should be provided to all staff, in particular in the areas of cybersecurity, GDPR, anti-money-laundering, and any other regulatory changes. If completing the full common proposal form, be mindful of the detail in the questions being asked in relation to risk-management procedures. You should not answer 'yes' to any question unless you can provide clear evidence that you have implemented the relevant policy or control. Be very wary of multi-part questions, as you must be compliant with all elements of the question. It is a regulatory offence to give a knowingly misleading answer to any question on the common proposal form.

9) **Blame-free culture.** It is so important that all members of staff in your firm are encouraged to seek assistance at the earliest opportunity if they make a mistake. No matter how big the error, early identification of the issue, along with the implementation of any remedial action, can greatly reduce a firm's exposure.

10) **Seek outside assistance.** There is no need for your firm to start reinventing the wheel when it comes to drafting relevant policies and procedures. There

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are many risk-management resources and relevant templates available to firms, without charge, in the Law Society's members' area. There are many providers offering specialist staff training in relevant fields. External advisors, such as the Institute of Legal Research and Standards, can be engaged to assist firms in managing this area, either through an annual audit or by providing staff training and template policies to deal with all potential risk areas.

Reasons to manage risk

- It increases the likelihood that you will achieve your objectives,
- It brings focus on what matters,
- You will make better-informed decisions,
- You will have fewer losses,
- It is forward looking and acts as an early warning indicator,
- The process also identifies opportunities,
- Good corporate governance demands it, and
- In short, managing risk reduces uncertainty to tolerable levels.

Gerard Joyce (chief technical officer of Cal Q Risk) concludes: "If I were to sum up the benefits of formally managing risk in two words, they would be 'improved performance'. Investment in risk management is returned in the form of better, more efficient operations, with less uncertainty and greater consistency. Consistency is fundamental to quality." g

WHAT CAN GO WRONG…

Over the past ten years, there has been a shift in the types of claims against solicitors. Following the property crash and recession, there were significant numbers of complaints and claims against solicitors and, not surprisingly, many arose on conveyancing files. A significant number related to outstanding undertakings to financial institutions and, in many cases, the solicitor was unable to comply with the undertaking given. Post-recession, the 'breach of undertaking' complaints and claims are less frequent, but they still do occur.

Complaints and claims arising from litigation files have been a constant throughout the recession and in the period since. For example, there are always claims from human error leading to a missed *Statute of Limitations* period.

However, solicitors' insurers are also seeing claims for incorrect or inadequate litigation advice. This tends to happen when a plaintiff loses his/her claim and alleges negligent advice. This is particularly relevant given the current climate, where the courts are rejecting unmeritorious and/or exaggerated claims and ordering plaintiffs to pay defendants' costs. Plaintiffs' solicitors, therefore, need to make sure that they have a proper record of all their advice to clients, including the risks of litigation and the chances of success. They need to also make sure that their client is aware that they may be ordered to pay the defendant's costs if the claim is lost.

Also, given the courts' recent willingness to accede to strike-out applications for delay, solicitors should progress their litigation files efficiently. If there is a reason why the claim is not being progressed (for example, the solicitor has not been put in funds or he/she cannot get proper instructions from the client), there should be a proper record of that – preferably in a letter to the client, setting out the concerns and advising them that the solicitor is not in a position to progress the case, which could ultimately lead to the claim being struck out.

What to do

There are a number of things solicitors should do if they receive a complaint or claim, or indeed if they become aware of circumstances that could give rise to a claim (which is also notifiable to their PI insurer):

- Remember, it's human to make a mistake – that's why you have insurance,
- Be reassured that many complaints and claims can be resolved quickly with the right help,
- Contact your broker as soon as possible to notify the complaint/circumstance/claim,
- Gather together all papers and records relating to the file, and make sure you keep them intact and available to your insurer,
- Do not prejudice your insurer's position by making concessions or admissions without the insurer's authority, and
- Cooperate fully with the claims handler or solicitor appointed by the insurer – they are on your side and will work to achieve the best possible outcome.

Sinead Ryan is director of professional indemnity and commercial litigation at DWF.

> YOU SHOULD NOT ANSWER 'YES' TO ANY QUESTION UNLESS YOU CAN CLEARLY EVIDENCE THAT YOU HAVE IMPLEMENTED THE RELEVANT POLICY OR CONTROL. BE VERY WARY OF MULTI-PART QUESTIONS, AS YOU MUST BE COMPLIANT WITH ALL ELEMENTS OF THE QUESTION

ROOM TO IMPROVE?

The Law Society's Annual Human Rights Conference examined the human rights challenges in the international protection process as well as direct provision in Ireland – and the reforms that should be made. **Michelle Lynch** reports

MICHELLE LYNCH IS SECRETARY TO THE LAW SOCIETY'S HUMAN RIGHTS AND EQUALITY COMMITTEE

OF THE TOP FIVE REFUGEE-HOSTING COUNTRIES, ONLY ONE IS AN EU COUNTRY – GERMANY

On 12 October, the 17th Annual Human Rights Conference examined the challenges in the international protection process, as well as exploring opportunities for change and future reform. It brought together lawyers, academics, policymakers, and civil society bodies to hear how the current system works, what progress has been made, and how it might be improved.

Irish response

Former High Court judge Bryan McMahon, who chaired the working group on direct provision in 2015, said that, while direct provision "may not be perfect … it's much better than it was". While there were calls to abolish the system, this was problematic, as it would have to be replaced with an alternative, and the current housing crisis meant that there was a serious shortage of accommodation.

Dr McMahon noted that what was required was "a proper, realisable alternative system". He outlined the major changes that had improved direct provision, which included a reduction in the length of time people had to wait for decisions, the introduction of the right to work, an increase in the weekly allowance, a complaints mechanism through the Ombudsman, and

(Front, l to r): Hilkka Becker (chairperson, International Protection Appeals Tribunal), Shane McCarthy (chair, Human Rights and Equality Committee), Ellie Kisyombe (founder, Our Table), Patrick Dorgan (president, Law Society), Ambassador David Donoghue (former permanent representative for Ireland to the UN), Dr Bryan McMahon (retired High Court judge), and Grainne O'Hara (director, Division of International Protection, UNHCR); *(back, l to r)*: Sandra Moloney, Alma Clissmann, Gary Lee, Sinéad Lucey (all Human Rights and Equality Committee), Rachael Hession (Law Society Professional Training) and Michelle Lynch (secretary, Human Rights and Equality Committee)

ALL PICS: CIAN REDMOND

cooking facilities on an *ad hoc* basis for residents in non-State-owned centres.

In referring to backlashes in rural Ireland, such as the recent protests in Oughterard, he emphasised the vital need for consultation with the local community. He also indicated that the size of the accommodation centre should be proportionate to the size of village/town where it would be located, and a proper review of the local social infrastructure should be undertaken before deciding where to locate centres.

International framework

One of the central negotiators in two significant international agreements (the *Agenda for Sustainable Development* in 2015; and the *New York Declaration for Refugees and Migrants*, adopted in 2016), Ambassador David Donoghue, former permanent representative of Ireland to the United Nations, gave a unique account of these processes.

The *New York Declaration* was adopted by all 193 UN member states and became the basis for a future agreement, the *Global Compact on Refugees*, affirmed in 2018. An issue that he described as "the single most contentious issue" during negotiations was the detention of unaccompanied minors. In acknowledging that such agreements are not legally binding, he emphasised that they were "politically binding, and would go so far as to say morally binding", and that governments

> POLICYMAKERS MUST SEE PEOPLE AS INDIVIDUALS, HEAR THEIR STORIES, AND RESPOND WITH MORALS AND EMPATHY

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Sarah Daly BL – Investigations
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had to determine policy within the framework of these global documents.

Leaving no one behind

Even more important than the number of people forcibly displaced in the world, is where they are located. Grainne O'Hara (director, Division of International Protection, UNHCR) spoke of the "disconnect between media representation and the reality" of where asylum seekers and refugees are hosted, noting that, of the top five refugee-hosting countries, only one is an EU country – Germany.

Further, she revealed that 80% of the world's displaced people are hosted in countries close to their country of origin, with 57% of UNCHR refugees coming from three countries – Syria, Afghanistan and South Sudan. In the situation where 37,000 people each day were forced to flee their homes due to conflict and persecution – a figure that will likely continue to increase – she said that "fewer and fewer countries are offering resettlement". In this regard, she noted the success of community sponsorship programmes, particularly Ireland's recent international award for its pilot model, proposing that this might be a preferable alternative to large-scale accommodation centres.

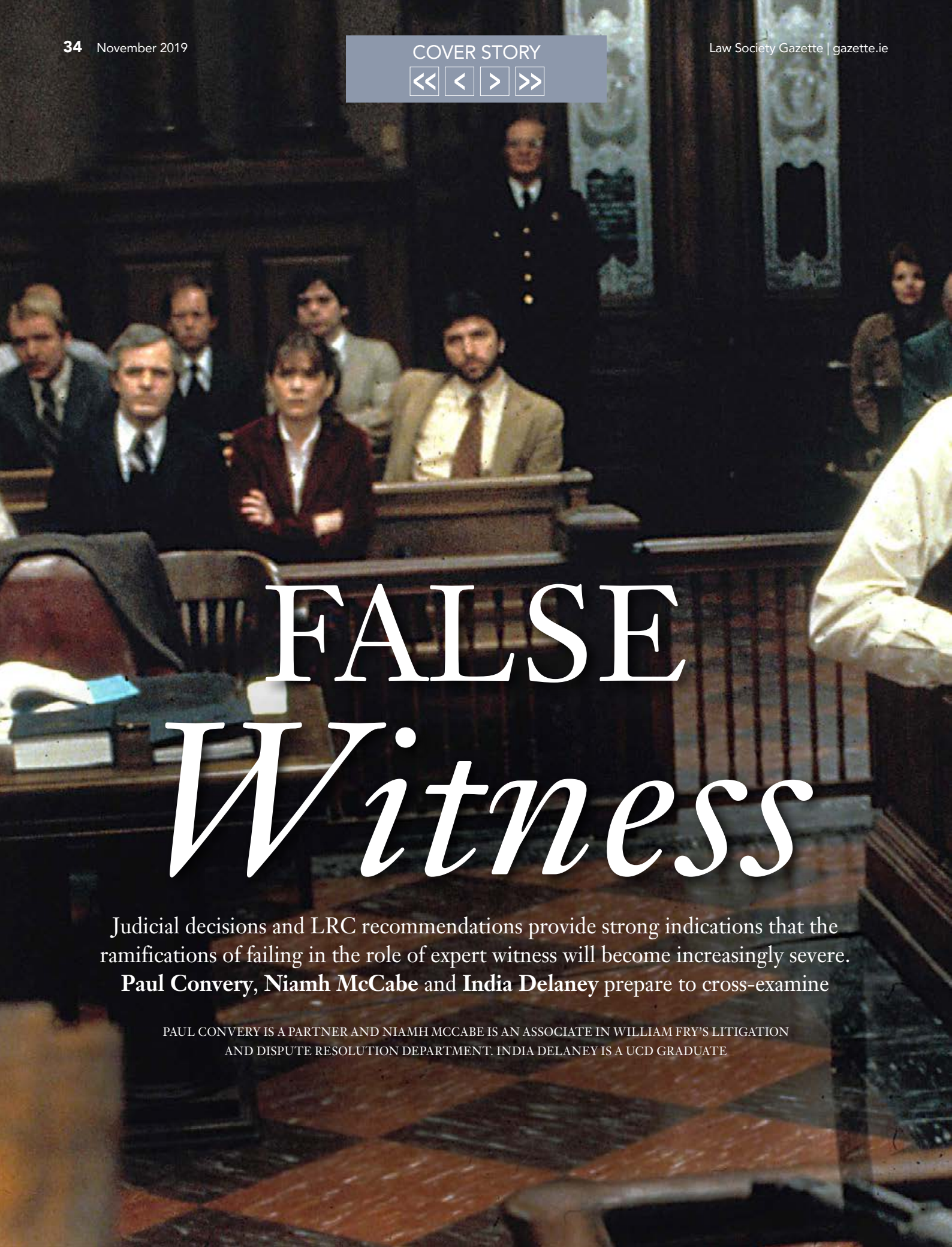
Harsh reality

Activist Ellie Kisyombe – founder of Our Table, a non-profit organisation that helps refugees and asylum seekers to gain skills and employment through the celebration of food and culture – shared the difficult experience of being a single mother and raising two children in direct provision. Granted her residency last summer, she echoed the remarks made by Dr McMahon, acknowledging that while a solution needed to be found, the current system could not simply be abolished, as it would leave thousands of asylum seekers homeless.

She emphasised the importance of parents being able to cook for their children, and how so many grew up without the experience of sitting down at a table as a family. She told of how single mothers were forced to turn to sex work to try to provide for their families, and she had seen previously strong men driven to depression and even attempted suicide. She likened direct provision to "living in an open prison, but you are not sure of the length of your sentence".

Policymakers must see people as individuals, hear their stories, and respond with morals and empathy, she urged. While there had been many changes, communities had to be part of future solutions and, at the moment, she stated that it was "private companies controlling human lives". Ultimately, asylum seekers wanted to be "treated like any other human being". g

80% OF THE WORLD'S DISPLACED PEOPLE ARE HOSTED IN COUNTRIES CLOSE TO THEIR COUNTRY OF ORIGIN, WITH 57% OF UNCHR REFUGEES COMING FROM THREE COUNTRIES – SYRIA, AFGHANISTAN AND SOUTH SUDAN



FALSE *Witness*

Judicial decisions and LRC recommendations provide strong indications that the ramifications of failing in the role of expert witness will become increasingly severe. **Paul Convery**, **Niamh McCabe** and **India Delaney** prepare to cross-examine

PAUL CONVERY IS A PARTNER AND NIAMH MCCABE IS AN ASSOCIATE IN WILLIAM FRY'S LITIGATION AND DISPUTE RESOLUTION DEPARTMENT. INDIA DELANEY IS A UCD GRADUATE

PIC: SHUTTERSTOCK

The evidence of 'expert' witnesses who are inexperienced, inexpert, and/or easily led can lead to miscarriages of justice, as well as unwelcome notoriety. If the duties of an expert are not carried out in the manner expected by the courts, the ramifications can be significant. Where evidence is wholly or partially rejected, the impact on a trial can be fatal.

A notable and, unfortunately, not infrequent example of the potentially serious ramifications can be seen in a recent British case, where an expert's failings caused the collapse of a trial involving a multi-million pound carbon-credit fraud, and the significant risk that prior trials might also be tainted. The expert's lack of academic qualification was discovered when he could not recall if he had passed any A-Levels and, in addition, admitted that he had never read a book on the subject matter of the case.

He also accepted that he had kept sensitive material obtained from the police in a cupboard under his stairs, some of which was destroyed. It was also shown that he had cut and pasted his witness statement from previous trials. The trial judge stated that the expert was "not an expert of suitable calibre. He had little or no understanding of the duties of an expert. He had received no training and attended no courses. He has no academic qualifications. His work has never been peer-reviewed."

Reefer madness

Experts are expected to provide evidence in order to assist the court in reaching an informed decision based on knowledge, expertise and experience. This is a duty addressed in this jurisdiction by order 39 of the *Rules of the Superior Courts*, which makes it clear that the duty to assist the court overrides any duty an expert might feel is owed to a party paying their fee. This is also an obligation that experts are required to acknowledge in their reports.

An expert should be able to stand by their evidence to such an extent that they can truthfully say the same opinion would be given, even if they were acting for the other side. What they clearly shouldn't do is act as a 'hired gun' with the aim of strengthening the case of the instructing principal.

This issue, however, continues to receive negative attention in court, despite various judges' efforts to highlight experts' obligations.

AT A GLANCE

- The evidence of an inexperienced, inexpert, or easily led 'expert' witness can kill a case or lead to miscarriages of justice
- The duty to assist the court overrides any duty an expert might feel to the paying party
- The *Ikarian Reefer* principles set out the duties of an expert
- These principles have been reflected in Irish judgments

In what are colloquially known as the *Ikarian Reefer* principles, the duties of an expert are described as follows:

- Evidence presented to the court should be the independent product of the expert, uninfluenced as to form or content by the exigencies of litigation.
- Evidence should provide independent assistance to the court by way of objective, unbiased opinion with regard to matters within the expert's expertise.
- Evidence should state the assumptions or facts upon which the expert's opinion is based. In addition, the expert should consider material facts that could detract from the concluded opinion.
- Evidence should make it clear whether a particular issue falls outside of the expert's area of expertise.
- If the expert's opinion is not properly researched as a result of insufficient data, then this must be stated.
- If, after an exchange of reports, an expert has a change of view on a material matter, such change must be communicated to the other side.
- Where expert evidence refers to photographs, plans, calculations, etc, these must be provided to the opposite party at the same time as the exchange of the reports.

The principles have been reflected in Irish judgments, most recently in the 2019 Supreme Court case of *O'Leary v Mercy University Hospital Cork Ltd*, where expert evidence was challenged but, ultimately, it was held that the evidence was "not sufficient to conclude … that the testimony of the expert witnesses … was affected by the exigencies of litigation".

Adopting the test in the *Ikarian Reefer* case, the court held that it had not been proved that the evidence was "anything other than independent, objective and unbiased".

Other cases in Britain also highlight the importance of the above guidelines, where a failure to comply with them can result in the downfall of an expert's evidence and possibly the claim.

In *C (interim judgment on expert evidence)*, the court held, perhaps unsurprisingly, that the expert testimony could not be given due weight where the experts involved had not read all of the relevant papers before writing their reports.

Similarly, in *Van Oord UK Ltd and another v Allseas UK Ltd*, an expert's evidence was disregarded in full and deemed "entirely worthless" as there were no independent factual checks carried out, and the assertions of the expert's principal were repeated without care. Ultimately, the evidence was deemed to have "made a mockery of the oath", and the expert was viewed as little more than a "mouthpiece" for the claimants.

In addition, in the recent *Libor* trials in Britain, the use of one expert by the Serious Fraud Office was referred to as a "debacle", with Lord Justice Gross remarking: "It's not a matter to be downplayed when the Crown in a major prosecution calls a witness who is wholly out of his depth". He also queried: "How did it come about that he was instructed when he lacked expertise? We are very concerned as to how he can have been instructed, the due diligence, and how it came to light."

Expertise

Whether or not a witness is an expert will depend on their particular expertise, qualifications and experience in the area. In *Bailey v Commissioner of An Garda Síochána*, it was made clear that the opinions of experts are only admissible in evidence on the subject areas where they are expert. The burden of establishing expertise rests with the party calling the witness, and must be shown before the witness gives evidence.

> AN EXPERT SHOULD BE ABLE TO STAND BY THEIR EVIDENCE TO SUCH AN EXTENT THAT THEY CAN TRUTHFULLY SAY THE SAME OPINION WOULD BE GIVEN, EVEN IF THEY WERE ACTING FOR THE OTHER SIDE. WHAT THEY CLEARLY SHOULDN'T DO IS ACT AS A 'HIRED GUN' WITH THE AIM OF STRENGTHENING THE CASE OF ITS INSTRUCTING PRINCIPAL

PIC: SHUTTERSTOCK

> IN IRELAND, IMMUNITY IS STILL RECOGNISED. HOWEVER, THE COURTS CONTINUE TO ENCOURAGE EXPERTS TO COMPLY WITH THEIR DUTIES BY ALTERNATIVE MEANS

It was, however, held in *Martin v Quinn* (1980) that a witness giving evidence about their qualifications is *prima facie* evidence of his or her qualification, unless rebutted.

Although an expert is dealt with under the *Criminal Procedure Act 2010* as "a person who appears to the court to possess the appropriate qualifications or experience about the matter to which the witness's evidence relates", no such civil definition is available.

As the criminal definition is not overly prescriptive, Irish and British case law provides some guidance as to our understanding of the expertise required of an expert witness. In ascertaining whether a witness can be considered an expert, a good starting point is the basic set of questions of Russell LCJ in *R v Silverlock* (1894):

- Is he *peritus* [expert]?
- Is he skilled?
- Has he adequate knowledge?

Other judicial pronouncements also assist. In *Galvin v Murray* (2001), Murphy J stated that "an expert may be defined as a person whose qualifications or expertise give an added authority to opinions or statements given or made by him within the area of expertise".

In *McFadden v Murdock* (1867), it was held that expert status can be achieved through experience, such as a shopkeeper becoming an expert in the grocery business. Further, in the case of *R v Sally Clarke* (2003), it was noted that evidence should not be allowed in court where the witness providing it was not adequately experienced or qualified to do so.

Immunity

The British Supreme Court found, in 2011, that there was no justification for expert-witness immunity from suit continuing, and it was abolished. As a result, experts can now be sued in contract and in tort for the evidence detailed within their reports and given in court in Britain.

Bear v Neighbour: "I didn't see nothin'"

In Ireland, immunity is still recognised. However, the courts continue to encourage experts to comply with their duties by alternative means. For example, in the recent case of *Waliszewski v McArthur and Company Limited*, Barton J stated that the failure of the expert witness to disclose relevant material was "reprehensible and is to be deprecated", and the court directed a copy of the judgment be forwarded to the Medical Council of Ireland.

Law reform

Given the wide-reaching consequences that can result from unsound expert evidence, a 2016 report of the Law Reform Commission (LRC) recommended the following four duties of expert witnesses be set out in legislation:

- An expert has an overriding duty to the court to provide independent, impartial and honest evidence,
- An expert has a duty to state the assumptions and facts upon which their evidence is based – in addition, the expert must fully inform themselves of any fact that could detract from their evidence,
- An expert must confine themselves to matters within their scope of expertise, and
- An expert must act with due care, skill and diligence.

The LRC also recommended abolishing expert immunity and replacing it with civil liability, limited to circumstances in which it was established that the expert had acted with gross negligence in giving evidence or preparing a report falling far short of the standard of care expected of such an expert. g

LOOK IT UP

CASES:

- *Bailey v Commissioner of An Garda Siochána* [2017] IECA 220
- *C (interim judgment on expert evidence)* [2018] EWFC B9)
- Galvin v Murray [2001] 1 IR 331
- *Jones v Kaney* [2011] UKSC 13
- *McFadden v Murdock* [1867] IR 1 CL 211
- *Martin v Quinn* [1980] IR 244
- *National Justice Compania Naveria SA v Prudential Assurance Co Ltd 'Ikarian Reefer'*) [1993] 2 Lloyd's Rep 68
- *O'Leary v Mercy University Hospital Cork Ltd* [2019] IESC 48
- *R v Sally Clarke* [2003] EWCA Crim 1020
- *R v Silverlock* [1894] 2 QB 766
- *Van Oord UK Ltd and another v Allseas UK Ltd* [2015] EWHC 3074
- *Waliszewski v McArthur and Company Limited* [2015] IEHC 264

LEGISLATION:

- *Criminal Procedure Act 2010*

LITERATURE:

- 'Libor traders report UK prosecution expert witness to police' (*Reuters.com*, 27 July 2017)
- *Report on Consolidation and Reform of Aspects of the Law of Evidence*, Law Reform Commission (LRC 117-2016, ISSN: 1393-3132)

To market, to market...

There are many reasons for obtaining a valuation of the shares in a private company. But how do you go about valuing such shares when a share transfer or share sale is required? **Nicola Corrigan** and **Gavin Phelan** go to market

NICOLA CORRIGAN ACA CTA IS A TAX ASSOCIATE AND GAVIN PHELAN IS A TAX INTERN IN WILLIAM FRY

Various events, including shareholder buy-ins or buy-outs, acquisitions of successful start-ups by large investor companies, and the gifting of shares to family members (and other estate planning) can make it necessary to obtain a valuation of the shares in a private company.

Share valuations have come under increased scrutiny from the Revenue Commissioners in recent years, and third-party valuation advice is being sought for the purposes of supporting the values that are being attributed to shares when share transfers happen.

Revenue acknowledges that valuation is not an exact science, but it is not to be inferred that any value could be defended as the market value of an asset.

Documentation of the facts and assumptions supporting the selection and application of appropriate valuation methods is paramount.

Various criteria should be considered by the valuer with regard to the selection of appropriate methods, including:

- The nature of the company being valued,
- The nuances of the industry within which the company operates,
- The life-cycle stage of the company,
- Whether the company is profitable,
- The size of the shareholding being valued,
- Whether the company is highly leveraged,
- The forecast performance of the company over an appropriate time period, and
- The jurisdictions the company is operating within.

Traditional valuation methods are not easily applied to many typical 21st century share-valuation scenarios. Take, for example, the valuation of an early-stage company in a loss-making position, with intangible assets such as intellectual property, but without any significant tangible assets; or the valuation of a company operating in the technology sector – a sector in which companies either do incredibly well or go quickly bankrupt with unreliable forecast information.

The increased complexity in valuing such companies demonstrates the importance of engaging a valuation specialist to produce an objective and robust valuation report where a share transfer event is being considered.

AT A GLANCE

- Valuation of the shares in a private company can be required for many reasons
- Irish tax considerations – calculation of market value
- Valuation methods – which are best?
- Discounts for minority shareholdings
- Contingent/unascertainable consideration

Tax obligations

In the context of this article, it is informative to consider at a high level the Irish capital gains tax (CGT) and Irish stamp-duty position with regard to the calculation of market value. Share transactions can give rise to various tax obligations, depending on the circumstances of the transaction, but CGT and stamp duty arise most frequently.

PIC: SHUTTERSTOCK

> MAINTAINABLE EARNINGS GENERALLY REFER TO NET-OF-TAX PROFITS, BUT FOR SMALL- AND MEDIUM-SIZED COMPANIES, IT IS COMMON FOR MAINTAINABLE EARNINGS TO BE CALCULATED ON A PRE-TAX BASIS

Irish CGT legislation does not prescribe the basis of valuation. The valuation rules for Irish CGT purposes are set out in sections 547-549 of the *Taxes Consolidation Act 1997* (*TCA*). Section 548 provides that the market value in relation to any assets means the price that those assets might reasonably be expected to fetch on a sale in the open market.

The valuation rules for Irish stamp duty purposes are contained in section 19 of the *Stamp Duty Consolidation Act 1999* and import the valuation method contained in section 26 of the *Capital Acquisitions Tax Consolidation Act 2003* (*CATCA*). Section 19 provides as follows: "The commissioners shall ascertain the value of property the subject of an instrument chargeable with stamp duty in the same manner, subject to any necessary modification, as is provided for in section 26 of the *Capital Acquisitions Tax Consolidation Act 2003*."

Section 26 *CATCA* provides that, when valuing shares in an unquoted company, the shares passing must be valued on the basis of a hypothetical sale in a hypothetical open market, between a hypothetical willing vendor and a hypothetical willing purchaser.

The price cannot be reduced by reason of the whole of the property being placed on the market at the same time. It must be assumed that the purchaser has all information available that a prudent purchaser might reasonably require.

On the basis that general market-value principles apply for Irish CGT and Irish stamp-duty purposes, the valuation obtained for the purposes of these taxes should be the same.

A detailed review of market-value concepts in respect of all Irish tax heads is beyond the scope of this article, but it is worth noting

that section 27 *CATCA 2003* prescribes strict rules for the purposes of valuing certain shares in private companies.

Essentially, the section outlines that, where a successor or donee, together with his/her relatives, nominees and trustees, control the company, the value of the shares received by that donee/successor must be valued as a proportionate part of the value of the company as a whole.

This section is particularly controversial in light of the fact that the principal consequence is to disallow discounts for minority shareholdings when valuing shares in a controlled private company. Accordingly, the shares being valued may be worth less from a commercial perspective than the value imposed from a CAT perspective.

Valuation approaches

There are a number of generally accepted approaches to ascertaining the fair market value of the shares of a private company. The following valuation approaches are accepted by most tax administrations, and are consistent with generally accepted accounting principles in most jurisdictions.

Prior sales/offers

One of the most defensible valuation techniques available for the purposes of valuing shares in a private company is the identification of recent arm's-length sales of shares or offers to purchase shares in (a) the company being valued or (b) in a comparable company. In this regard, it is important to bear in mind that Revenue is unlikely to accept a valuation that is lower than the value that a willing buyer has demonstrated they will pay for the same or similar shares in the absence of significant evidence of different/updated circumstances.

In practice, previous arm's-length share sales are likely to be uncommon in the context of an unquoted company. Additionally, information may not be readily available concerning sales of shares in comparable unquoted companies, or it may not be possible to identify appropriate comparable companies.

At a high level, the following characteristics are often considered when establishing whether one company is comparable to another company:

- Industry sector,
- Market position,
- Geography,
- Stage in life cycle of the business,
- Growth rate,
- Size,
- Profitability, and
- Capital structure.

Where prior sales/offers information is available, the background circumstances pertaining to such previous offer/share sale will be important in order to determine the significance of that information in the context of the current valuation being undertaken – for example, whether a minority/majority holding was being sold at the time, what class of shares were being sold, what rights were attached to the shares being sold, etc.

Earnings-based approach

In general, an earnings-based approach is most appropriate for the valuation of a majority shareholding in a company that is a going concern (that is, a business that is expected to continue to operate for the foreseeable future).

The earnings-based method is recognised by the Irish tax authorities as the method normally used to value trading and manufacturing companies. This approach involves identifying the 'maintainable earnings' of the company, and the maintainable earnings are then capitalised using an appropriate multiple in order to produce a valuation.

The most recent set of audited accounts is a common starting point for the calculation of the maintainable-earnings figure, but where profits are erratic, it may be more representative to use a weighted average of, say, the past five years of audited results.

In order to calculate a representative and normalised maintainable-earnings figure, the valuer will often use earnings before interest, tax, depreciation and amortisation (EBITDA) as a starting point. The EBITDA is then adjusted to remove the effect of non-recurring items, and the valuer must consider whether each income stream is expected to continue into the future.

Similarly, costs should be reviewed to establish whether they are expected to be incurred at the same level in the future, and whether there are any additional costs that are likely to arise on an ongoing basis.

It is also worth noting that maintainable earnings generally refer to net-of-tax profits, as adjusted for the items that have just been mentioned, but for small- and medium-sized companies, it is common for maintainable earnings to be calculated on a pre-tax basis.

The price/earnings (PE) ratio is the most common multiple used for the purposes of applying the earnings-based approach. At a basic level, the valuer should undertake market research to identify a quoted company/companies with similar underlying characteristics to the company being valued.

When a suitable quoted company has been selected, the normal practice is to multiply the price earnings ratio appropriate to the quoted company (or average price earnings ratio applicable to the comparable companies), less a discount to compensate for the lack of marketability of the shares of a private company, by the future maintainable earnings of the company being valued.

Des Peelo, a well-known author in the area of share valuations in Ireland, suggests the following PE multiples as a rough guide for valuing Irish companies in his book, *The Valuation of Businesses and Shares*:

MAINTAINABLE EARNINGS
Maintainable earnings of €500k PE multiple: five or less
Maintainable earnings between €500k and €2m PE multiple: between five and eight
Maintainable earnings in excess of €2m PE multiple: between eight and twelve

Income-based approach

The income approach is predicated on the idea that the value of the equity of a company is the present value of the future distributable reserves of that company. The discounted cash-flow (DCF) method is the most popular application of the income approach.

The DCF method involves estimating the amount and timing of the future cash flows of the company over an appropriate period. An appropriate discount rate must then be applied to the cash flows that are identified, reflecting a rate of return on investments

> IT IS WORTH NOTING THAT SECTION 27 *CATCA 2003* PRESCRIBES STRICT RULES FOR THE PURPOSES OF VALUING CERTAIN SHARES IN PRIVATE COMPANIES

appropriate to (a) the company being valued and (b) the relevant market conditions. The total of the discounted cash flows is the value of the company.

The DCF method should involve a rigorous review of projected performance, and is often preferred as a valuation method where *credible financial data* is available. It is often the case that management teams are not in a position to forecast with any degree of reliability, due to the unpredictable nature of the industry in which they operate (for example, in the case of a technology company).

In such circumstances, the DCF method is unlikely to be appropriate. In particular, the calculation of some of the components of the DCF calculation (for example, the 'weighted average cost of capital', if applied as the discount factor) can appear mathematically complex, which may provide unmerited comfort with regard to the accuracy of the valuation. As such, it is important to bear in mind that the valuation obtained using this technique is only as reliable as the information used to calculate it.

Asset-based approach

The asset-based method involves adjusting all assets and liabilities (including off balance-sheet, intangible, and contingent assets and liabilities) to their fair market, current values. This method is not normally satisfactory when applied in isolation in the context of a company that is a going concern. However, in our experience, this method can provide indicative valuations in the following situations:

- Companies operating in capital intensive industries (for example, real estate companies),
- No earnings history, and
- No consistent, predictable customer base.

Minority shareholdings

In most cases where a minority shareholder wishes to sell their shareholding in a company, a discount will be applied to reflect the fact that the shareholding does not represent a majority (and, therefore, does not enable the owner to control the company). In general, the following table, as identified by Peelo (p64 of the aforementioned book), represents the appropriate discount rates to apply when valuing minority shareholdings:

SHAREHOLDING
Single percentage shareholdings Discount: up to 90%
25% or less Discount: 50%-70%
25% plus one share or higher Discount: 30%-40%
50% Discount: 20%-30%
50% plus one share or higher Discount: 10-15%
75% or higher No discount, but sometimes 5% if less than 80%.

However, there are certain circumstances where the valuer must exercise judgement as to the appropriate discount to apply in respect of a minority shareholding. For example, a minority shareholding may be part of a possible combined majority shareholding with a spread of 40%:40%:20%. Other factors that may increase or decrease the discount include circumstances where there are additional rights attaching to the shares.

Established discounts

In a recent determination (specifically in paragraph 42, 12TACD2017), the Tax Appeals Commissioner (TAC) outlined how he was persuaded by the coherent analysis put forward by the expert witness on behalf of the respondent in selecting an appropriate minority shareholding discount, by reference to the table listed above and another similar table contained in a book called *Valuation of Shares in Unlisted Companies for Tax Purposes*, by Denis Cremins.

In this regard, the TAC acknowledged that these tables represent "an established range of discounts for lack of control and marketability in minority shareholdings". This is significant because, while determinations by the TAC are not binding on other courts, they have considerable persuasive effect.

Another issue, related to company share sales (which generally requires a valuation exercise to be undertaken), is the existence of contingent or unascertainable consideration in the form of an earn-out. We will address this topic in a follow-up article.

LOOK IT UP

CASES:

- Tax Appeals Commission case 12TACD2017

LEGISLATION:

- *Capital Acquisitions Tax Consolidation Act 2003*
- *Stamp Duty Consolidation Act 1999*
- *Taxes Consolidation Act 1997*

LITERATURE:

- Denis Cremins, *Valuation of Shares in Unlisted Companies for Tax Purposes*, published by the Irish Taxation Institute (2006)
- Des Peelo, *The Valuation of Businesses and Shares* (2nd edition), published by Chartered Accountants Ireland (2016)
- *Valuation of Unquoted Shares – Capital Acquisitions Tax Part 21* (Revenue Commissioners, November 2018)

Too many hats?

Should in-house solicitors take on the role of their organisation's data protection officer, given the potential for a conflict of interest between that role and their duties as in-house counsel? **Tanya Moeller** digs through the data

TANYA MOELLER IS AN ASSOCIATE SOLICITOR AT LK SHIELDS SOLICITORS

as the GDPR become old news? While some contributors in the public space (falsely) equated it with 'Y2K', experienced privacy practitioners knew that, unlike the Millennium Bug, this was a definite event, a permanent legislative innovation.

Moreover, regulatory actions – such as fines – take their time to gain traction. The GDPR's first 'soft' year of being effective is not an indication of how sharp its teeth will ultimately be as it matures.

Now that the initial hype has passed, we may well reach the pivotal moment when enforcement truly begins. In Britain, for example, the Information Commissioner's Office made headlines in July 2019 with its intent to fine British Airways and Marriott International Stg £183 million and Stg £99 million, respectively, for breaches of data protection law.

It pays to remain alert and, primarily, the data protection officer (DPO) will have to drive against GDPR fatigue inside an organisation.

The GDPR acknowledges, at article 38(6), that the DPO does not need to be a full-time officer, but may carry out "other tasks and duties" as well, as long as these "do not result in a conflict of interest".

Conflicting roles?

Primarily, interpretations of this legal provision have focused on how a leadership role in an organisation might fetter the independence of the DPO. For example, the Article 29 Working Party argued that this restricted a DPO from also taking decisions as to the processing of personal data. Equally, a Bavarian court ruled that an IT manager is conflicted when assuming the role of DPO on a part-time basis.

As recently as May 2019, the Belgian supervisory authority held that, under article 38(6), the DPO may not delete personal data. Instead, any decisions regarding processing has to be taken by the controller (in other words, another person in the organisation).

This approach is logical, given that people in positions such as IT management would determine the purpose, extent, and aspects of processing personal data, but would be conflicted if they were also the DPO. Similar types of conflict may also arise, for example, if the head of human resources, the head of

AT A GLANCE

- DPOs could be conflicted by the tasks and duties of an in-house counsel – the latter is a legal professional and an officer of the court, and the role entails certain legal work, as well as his or her duties to the client/employer
- For example, an in-house counsel may be conflicted if, as DPO, they uncovered facts that contradicted the instructions of an organisation
- Only when an in-house counsel is satisfied that conflicts can be managed within their organisation should they seriously contemplate taking on the DPO mantle

The author wishes to thank Jeanne Kelly and Peter Bolger (partners) for their input to the article

PIC: SHUTTERSTOCK

> THE DPO MUST 'LOOK UNDER THE CARPET', GO DOWN TO THE CELLAR, AND RUMMAGE IN THE DUSTY CABINET

marketing, or the head of customer services were to act as DPO.

By contrast, a solicitor is not conflicted in quite the same manner. In-house counsel provide legal advice to the organisations they work for. As such, they are well-acquainted with the challenge of retaining independence in their work. So, how could a conflict of interest arise between the tasks and duties of a DPO and an in-house counsel?

Such conflicts become apparent when examining each role in greater detail. Firstly, the DPO could be conflicted by the tasks and duties of an in-house counsel. The latter is a legal professional and an officer of the court, and the role entails certain legal work, as well as his or her duties to the client (the employer).

Freedom to act

By contrast, the DPO does not have to be a lawyer, and owes 'only' the common law duty to perform the role in a professional manner and in accordance with the law. Further, he or she may need a set of non-legal skills. According to the Data Protection Commission, these include, for example, an understanding of information technologies and data security, as well as an expert level of knowledge in certain specific IT functions.

It is worth considering whether the duties of the practising solicitor may be extraneous duties, from which, according to the Bavarian court, the DPO should be free.

Secondly, and possibly more importantly for our legal professional colleagues, the practising solicitor could be conflicted by the tasks and duties of the DPO. Article 38(3) of the GDPR requires the controller and processor to ensure that the DPO does "not receive any instructions regarding the exercise of those tasks" outlined in article 39 of the GDPR. This legal provision must be read together with article 39(1)(b), which requires the DPO to "monitor compliance"

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> THE DPO IS A COLLECTOR AND EVALUATOR OF FACTS, ON THE BASIS OF WHICH AN ASSESSMENT CONCERNING THE ORGANISATION'S LEVELS OF COMPLIANCE CAN BE MADE

and carry out "related audits". Arguably, the duty to audit poses the biggest challenge to fulfilling both roles on a part-time basis.

By carrying out audits, the DPO is a collector and evaluator of facts, on the basis of which an assessment concerning the organisation's levels of compliance can be made – and it is not up to the organisation to instruct the DPO as to these facts.

Finding trouble

For example, an organisation may operate on the basis that personal data is deleted. It is the duty of the DPO to question and test this assertion. The DPO must check systems, verify if data was removed from back-up systems, search for lingering shadow data, examine whether anonymisation techniques are robust, and assess if the organisation inadvertently pseudonymised data.

The DPO must, so to speak, look under the carpet, go down to the cellar, and rummage in the dusty cabinet for its contents. In a noteworthy recent 'throwaway' comment by an acting DPO, this role requires the appointee to "go forth and find trouble".

By contrast, the in-house counsel wears the mantle of a practising solicitor, who is instructed. Such instructions may be challenged if not credible, but a practising solicitor would never have to audit the factual instructions from a client on his or her own initiative. To put it dramatically, a solicitor would never have to check an alibi for truthfulness or discover a true motive.

As a result, the in-house counsel may be conflicted if, as DPO, they uncovered facts that contradicted the instructions of an organisation. For example, an organisation might instruct an in-house counsel that a batch of documents constituted all of the material that had to be provided to a data subject on foot of a subject access request, and *prima facie*, this instruction could form the basis of subsequent legal advice.

By contrast, the DPO would have to audit how the search was carried out by the company at system level, and make recommendations as to which type of further and additional searches might be necessary or desirable.

Switching hats

Due to the DPO role being a *sui generis* one, any audit reports would not ordinarily enjoy the protection of legal privilege. This might, in turn, force the DPO to become a witness in a court case involving his organisation, if compelled to produce the report in evidence. Such a situation would pose difficulties for the in-house counsel who was acting as a DPO on a part-time basis.

Equally, the in-house counsel might have written to a party, negotiated an agreement, or provided advice to the organisation in question, based on a set of instructions. If then, as DPO, the same person discovered facts that contradicted these instructions, he or she would have to switch back to being an in-house counsel in order to revise the letter of correspondence, the agreement, or the advice given thus far.

Switching such hats would have to be done carefully, and the business would have to be aware as to when the individual was taking instructions and giving advice as an in-house counsel – which might be legally privileged – and when the individual was acting as a DPO in the performance of these duties.

Considering the possible pitfalls, great practical care needs to be taken to spot those situations where conflicts may arise. The question is: how do you prepare in advance? Do you build yourself a play book? Do you create a manual that describes your own role? Can you prove to the regulator that you have considered your own methodology of recognising and dealing with conflicts? Can you prove your own alertness? Can you prove that a reported lack of conflict situations is not an indication that you were unable to identify and cater for these?

Only when an in-house counsel is satisfied that these conflicts can be managed within their organisation should they seriously contemplate taking on the DPO mantle.

It may be useful to take a step back and review your current set-up. Do not feel alone: article 38(6) explicitly places the obligation on the controller or processor (and not on the individual) to prevent a conflict of interest. As such, it is not just a matter of professional ethics and conscientious behaviour on the part of the in-house counsel and the DPO to wear both hats responsibly.

Instead, the organisation should proactively place this issue into a broader operational framework, ideally relying on an external advisor to provide objective and neutral input, when appropriate. When done well, the result could be a practical 'how-to' guide, which assists and protects both the individual and the organisation. g

LOOK IT UP

CASES:

- Decision of the Belgian supervisory authority, 28 May 2019 (French only)

LEGISLATION:

- *Data Protection Acts 1988-2018*
- *General Data Protection Regulation* (2016/679)

LITERATURE:

- Article 29 Working Party, *Guidelines on Data Protection Officers* [16/EN/WP243 rev.01]
- Bayerisches Landesamt für Datenschutzaufsicht press release (German only)
- Data Protection Commission, *Annual Report* (25 May - 31 December 2018)

Giving up the ghost

Reliance on family testimony – without independent verification – to establish information about the devolution of an estate is a path that can lead to errors and omissions. 'Who you gonna call?' asks **Danny Curran**

DANNY CURRAN FOUNDED FINDERS INTERNATIONAL IN 1997 AND THE COMPANY NOW HAS OFFICES IN DUBLIN, LONDON AND EDINBURGH

In Ireland, perhaps more than in most countries, we know our family – or at least we think we do. Numerous cases of intestacy are being wrongly distributed every year through failure to independently check and verify who the next of kin to the deceased really are and, as a trusting nation, we often take the word of family members on this point.

However, these days, while we are assiduously checking the identities of clients and permanently on the lookout for fraud and money-laundering, we are still routinely handing out shares of sometimes extremely high-value estates to (alleged) next of kin because they tell us they are "the only next of kin" or that "nobody else is entitled to share".

Bring up the bodies

My firm has seen thousands of avoidable errors in distribution in the last 21 years; the consequences are complicated and far-reaching – and incredibly straightforward to avoid.

We have seen undocumented next of kin coming forward, without the traditional proof of birth certificates showing their parents' names, but using DNA evidence, facial-recognition reports, scrawled notes from orphanages and, recently, we experienced, first-hand, a case where we assisted our client in obtaining an exhumation order, as we were convinced by his story that he was the deceased's son, but had no proof.

We had to wait for the summer, as apparently exhumation in inclement weather can cause some serious issues from land slippage and for DNA sampling, but the result came back that our client is "53 million times more likely to be the deceased's son than not". Recovery of the estate – of nearly €1 million in value – is currently underway.

Other claims arise from the branches or members of families who emigrated, and the known family have forgotten (or deliberately 'forgotten' perhaps) or not considered that these persons may have a claim to a share of the estate, and so have not declared this information to the solicitor. Ireland and emigration are two words that often are heard in the same sentence. The estimated 'real'

AT A GLANCE

- Checking the entitlements to, and distribution of, estates are complex tasks that should be handled as professionally as all other aspects of a solicitors' work
- Numerous cases of intestacy are being wrongly distributed every year through failure to independently check and verify who the next of kin to the deceased really are
- The consequences of errors in estate distribution are complicated and far-reaching – but incredibly straightforward to avoid

PIC: SHUTTERSTOCK

> EXHUMATION IN INCLEMENT WEATHER CAN CAUSE SOME SERIOUS ISSUES FROM LAND SLIPPAGE AND FOR DNA SAMPLING, BUT THE RESULT CAME BACK THAT OUR CLIENT IS '53 MILLION TIMES MORE LIKELY TO BE THE DECEASED'S SON THAN NOT'

population of Irish descendants in the US alone is over 70 million.

Finally, we have the problems caused by the 'family historian' who, with all good intentions, enjoys looking at the family tree. However, their information must not be relied upon, and a simple check of their work (for a modest fee) by a professional firm of probate genealogists should be carried out in order to either verify their work or identify grey areas of the family tree to be investigated.

In France and Germany, probate research and verification of intestate estates using professional firms is considered a vital role, on a par with the legal profession, and often an essential part of the estate administration process – so why is it in Ireland that we seem to find it harder to place the probate genealogists' role fairly and squarely in the estate administration process?

> IT SEEMS THAT THE LADY IN QUESTION HAD SIMPLY DISOWNED HER NEPHEW MANY YEARS EARLIER AND DIDN'T RECOGNISE HIM AS PART OF HER FAMILY

The fact that an industry is unregulated is not necessarily a problem. We have enquired several times about various Government initiatives to see if certain bodies would include the probate-research industry in their regulatory regime, but, as with many other industries with a relatively low combined turnover, the Government is reluctant to get involved.

So, we are left with self-regulation and, in many cases, this can be very useful as a guide to instructing a firm. However, self-regulation and memberships of associations also come with caveats and conditions.

Looking at the positive side, any firm that subjects itself to any form of third-party scrutiny or self-regulation must feel a degree of confidence that it is 'doing the right thing', and my own firm has numerous forms of compliance that hopefully will ease the minds of instructing solicitors and members of the public alike – the latter, remember, must feel reassured that the probate-research firm are genuine and not operating a complex scam.

Word of mouth and reputation are always good starting points, but make sure you are dealing with a professional company.

Firms can appear to list 'offices' around the world just by placing keywords on their website –'Paris, Rome, Athens, New York' – and can of course use an impressive serviced office address in a large city. This is not unique to the world of probate research, of course.

The mirror and the light

The reliance on family testimony, without independent verification, to establish information about the devolution of an estate is clearly a path that leads to errors and omissions. There is still a degree of alarming naivety in this practice, which we see happening frequently.

I recall an intestate estate of around €400,000 I worked on many years ago, where the solicitor wanted a 'simple verification' that his client was the sole heir to the estate. The client was an elderly lady who nobody had any reason to doubt when she claimed to be her late brother's sole surviving next of kin. However, in yet another extraordinary tale (we have many), it seems that the lady in question had simply disowned her nephew many years earlier and didn't recognise him as part of her family. His 'crime' in her eyes was to drop out of society, grow a beard to his waist, and wander around his housing estate shouting and swearing at everyone ('bringing shame on the family'). In fact, once we had identified and located him, it was established he had, for many years, suffered from a mental illness. When found, he was one of the gentlest and kindest middle-aged men you could imagine. In this case, half the estate rightly passed to the nephew we had traced.

I have simply lost count of the number of children, siblings, and half-blood siblings that have been overlooked or forgotten by clients when referring cases to us. It's not always deliberate, I should add; families do lose touch, large families forget how many relatives they have, children are born out of wedlock and to single parents, and legal adoption has allowed the adoptive family to legally inherit.

A change of climate

I have been emphasising and endlessly stressing the importance of a 'comfort' policy against missing or unknown beneficiary claims for many years.

A report from a recognised professional firm of probate researchers is required, as insurance companies may not accept anything else as evidence. Using a recognised firm will often mean that an insurance policy is instantly approved, saving many hours of practitioners' time having to get the required evidence together to satisfy the insurance company, or shopping around to find the right terms within the policy at the right cost.

Of course, the basic professional indemnity insurance is a must, and things may go wrong from time to time – that's life – but the important thing is to be covered.

There are four basic fee models available from most professional probate-research firms, and all are perfectly acceptable. Choice is imperative in order to cover a variety of situations.

Again, using an established, reliable, and trustworthy company is probably more important than the charging method.

The four main options are:

- Contingency fees (where a beneficiary signs a percentage-based agreement with

FOCAL POINT

A LARGER FAMILY ALMOST OVERLOOKED

A Dublin solicitor referred an estate of €350k to us for checking, pre-distribution. Their client said that they had two siblings and that their uncles and aunts had either never married, or had married but had no children.

It turned out that the client had nine siblings rather than two, and all of their aunts and uncles had married and had children. Therefore, there were 26 beneficiaries rather than the three that had been mentioned initially.

When quizzed about this, the client said that the other family had not visited the deceased in the nursing home and, as a result, should not inherit.

PIC: SHUTTERSTOCK

Giving up the goats

the probate-research firm),
- An estate/trust contingency fee, where the executor agrees a percentage-based fee from a named beneficiary's entitlement,
- A budget fee paid by the estate, and
- A fixed fee paid by the estate.

Contingency fees are the most popular, as they are seen as fairer in many circumstances, being payable only on a successful distribution, and only from shares due to unknown heirs (existing clients pay nothing); but an agreed budget or a fixed fee at the expense of the estate may be more appropriate, depending on circumstances.

Contingency fees are often the only option when working on an estate where there are no known next of kin at all, as there is nobody authorised to pay a research fee or make advance arrangements about the probate-research firm's fee from the estate. If a solicitor has no instructions, they cannot agree the fee based on the possibility they may receive instructions once next of kin are found.

Remember: checking the entitlements to, and distribution of, estates are complex tasks that should be handled as professionally as all other aspects of a solicitors' work.

Finders International can be contacted on +353 (0) 1 567 6940 or via www.findersinternational.ie.

FOCAL POINT

FAMILY NOT RELATED IN THE WAY THEY THOUGHT

The client visited a solicitor in Kerry with a view to becoming administrator for her "uncle's estate", but when we gathered the relevant birth, death and marriage records, it turned out that the deceased was her grand-uncle and not her uncle.

The client and her siblings thought that their father was the deceased's brother, but he was, in fact, his nephew.

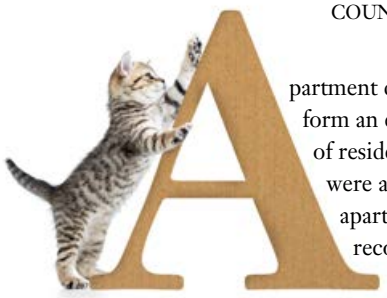
Their father was, in fact, the son of the eldest sibling to the deceased; a daughter, who had in turn been reared as the youngest child of the grandmother's family.

The solicitor had to revert to his client and explain that she could no longer be administrator and, in fact, she would not be entitled at all under Irish intestacy law.

Muddy waters

Apartments, owners' management companies, and how they interact with the law is an area that has been fraught with difficulties. **Patricia Murphy** and **David Rouse** deliver a timely review of the lay of the land

PATRICIA MURPHY IS A SENIOR EXECUTIVE SOLICITOR WITH THE COUNTY SOLICITOR'S OFFICE OF CORK COUNTY COUNCIL. DAVID ROUSE FCA IS AN ADVISOR WITH THE HOUSING AGENCY



Apartment developments and managed estates form an expanding part of Ireland's stock of residential real estate. In 2016, there were approximately 205,000 occupied apartments in the country. With the recovery in residential construction, the number of planning applications for apartments is rising. Compact urban growth and increased residential densities are key planks of Government policy, in the context of a growing population and decarbonisation.

Feel like going home

The *Multi-Unit Developments (MUD) Act 2011* introduced a limited statutory regime for the governance of owners' management companies (OMCs). The *MUD Act* deals with the transfer of estate common areas, setting of service charges, and related matters for managed estates. Running to 34 sections, it was formulated to accommodate the unique challenges, rights and responsibilities that come with home ownership in a MUD.

The act enables apartment owners to take control of common areas and the management of a development, for the benefit of all residents, through the vehicle of the OMC. The OMC, usually a body corporate, looks after shared services, such as cleaning, lighting, landscaping, waste management and insurance. Each unit owner, upon closing their sale, automatically becomes a member of the OMC.

The act primarily covers four key areas:

- Conditions and obligations relating to the compulsory transfer of the common areas from the developer to the OMC,
- Obligations of the developer upon completion of the development stage,
- New remedial mechanisms for dealing with disputes, and
- New rules, rights and obligations of OMCs in relation to directorships and voting rights; reporting and information; the calculation, apportionment and recovery of service charges; the provision of a sinking fund; and other related matters.

Under section 3, where units have not yet been sold, a developer may not transfer an interest in a residential unit unless:

AT A GLANCE

- The *MUD Act* was intended to be a reforming piece of legislation, to deliver improved protection and dispute resolution
- Practitioners should be cognisant of the framework in which OMCs operate, in particular the interactions between the *MUD Act* and the *Companies Act*
- With the expansion in the number of apartments and managed developments throughout the country, further maturing of the law affecting the sector may be expected

The views expressed are those of the authors

PIC: GAZETTE STUDIO

> THE COMMON AREA OWNERSHIP IN ALL THEN-EXISTING, PARTIALLY AND SUBSTANTIALLY SOLD DEVELOPMENTS SHOULD, BY NOW, HAVE BEEN TRANSFERRED. IN PRACTICE, THIS TRANSFER HAS OFTEN NOT OCCURRED

- The OMC has been established by the developer at the developer's expense,
- Ownership of the common areas has been transferred to the OMC,
- Certification from an appropriately qualified person has been delivered confirming the MUD has been constructed in compliance with the Fire Safety Certificate,
- A contract has been entered into between the OMC and the developer outlining the obligations of each party, and

- An independent legal representative has been appointed (at the developer's expense) to advise the OMC.

Key to the highway

Under section 4, developers were required to transfer ownership of the common areas in existing MUDs to the OMC within six months of the commencement of that section – that is, by 30 September 2011. Accordingly, the common area ownership in all then-existing, partially and substantially sold developments should, by now, have been transferred. In practice, this transfer has often not occurred. Developer insolvency aside, delays can be attributed to the absence of effective sanction. The Conveyancing Committee of the Law Society advised in a practice note in June 2013 that the failure to transfer common areas in a pre-2011 development does not constitute a 'blot' on the title at the date of the certificate of title.

Where a development is unfinished, a transfer of the common areas does not relieve the developer of its obligations to complete. Of course, given the financial climate of recent years, many instances arose where MUDs were left unfinished. Attempts have been made to utilise provisions of the *MUD Act* to compel liquidators to complete unfinished developments. However, in the recent case of *Re Lance Homes Ltd*, the High Court (Baker J) held that the *MUD Act* did not, of itself, impose an obligation on a liquidator to take positive steps to carry out works of construction and development.

The court further held that the obligations to complete a development in accordance with planning permission and under the building regulations are enforceable as a matter of statute by virtue of section 24 of the *MUD Act*; however, like any action in specific performance, it may be one that is enforceable only as a claim in damages, and may not give rise to mandatory orders being made.

My home is in the delta

On the sale of a residential unit in a MUD, membership of the OMC transfers to a purchaser automatically. The *MUD Act* waives requirements in relation to formal stock transfer forms and director approvals of transfers; however, a register of members must be kept.

One vote of equal value is assigned to each unit. Provision is also made for voting rights in mixed use developments – that is, estates with residential and commercial units. The governance of mixed-use schemes complies with the act where there is a "fair and equitable apportionment of the costs and expenses", and where voting rights are "apportioned in a manner which is fair and equitable".

While the act offers stronger arrangements, terms, and greater rights and protections for homeowners in MUDs, it also imposes additional obligations on directors of OMCs, over and above their responsibilities in company law. Requirements are introduced in relation to the holding of AGMs, and the determination and agreement of budgets, service charges, and sinking funds.

You shook me

The act stipulates that every member of an OMC must pay service charges. The developer is deemed to be the owner of a unit the sale of which has not completed from when the first unit of a sale was closed. This means that the developer is responsible for service charges for unsold units. Service charges may not be used to defray expenses that are properly the responsibility of the builder or developer, unless authorised by 75% of the OMC's members.

All MUDs must establish a building investment or 'sinking fund' to pay for refurbishment, improvement, or maintenance of a non-recurring nature. The act states that the annual contribution to the sinking fund is to be €200 per unit, or such sum as is agreed at a general meeting of owners. In theory, this allows for the varying financial needs of developments of differing sizes and specifications. However, the advisory nature of the provision can mean a failure to build up funding for future capital expenditure.

On a related point, attention is drawn to the March 2018 *Design Standards for New Apartments – Guidelines for Planning Authorities*. Chapter 6 requires that a 'building life-cycle' report, intended to inform sinking-fund calculations, be included with all apartment planning-permission applications.

FOCAL POINT

NO ESCAPE FROM THE BLUES

The largest of the country's OMCs issue annual service charges in multi-millions of euro. Estimates are that there are about 8,000 OMCs in the country. CRO records indicate that, over the last five years, on average three new OMCs were registered each week.

A recent independent report, *Owners' Management Companies – Sustainable Apartment Living for Ireland*, jointly commissioned by the Housing Agency, and Clúid Housing, considers the position of OMCs and reviews the limited effectiveness of the *MUD Act*. The inadequacy of service-charge levels, failure to provide for sinking funds, and the persistent problem of mounting debtors are some of the topics addressed.

The report makes recommendations for change across a range of relevant regulatory systems. Of interest to the legal profession will be the recommendations for regulation of OMCs, non-judicial mechanisms for the enforcement of lease covenants, and supports for OMC directors.

Regulation, over and above the usual CRO filings, and enforcement of company law by the ODCE, is recommended. Dispute resolution via a non-judicial tribunal is advocated, as are more effective avenues for the recovery of service-charge debt, moving away from the courts. In this context, it is worth noting that OMC service-charge debt is 'excludable' from a personal insolvency arrangement under the *Personal Insolvency Act 2012*. Service-charge debt may be written off in a PIA only with the consent of the creditor – that is, the OMC.

Other recommendations of the report include mandatory training for OMC directors, the standardisation of financial accounts to a format prescribed for OMCs, and enhanced insurance cover and reporting. Removal of the audit exemption is also recommended.

> DIRECTORS AND ADVISORS WOULD DO WELL TO REFLECT ON THE PRINCIPAL DUTIES, ENUMERATED IN PART 5 OF THE *COMPANIES ACT*, IN PARTICULAR THE REQUIREMENT TO ACT IN THE BEST INTERESTS OF THE COMPANY

Sinking-fund moneys must be held in a bank account, and funds due to the OMC may be recoverable as a simple contract debt.

Can't be satisfied

An OMC has the right to alter, amend or add to the house rules of the development, so long as any changes are consistent, fair and reasonable, and have been circulated and agreed to at a general meeting of the owners. Although the *MUD Act* does not offer any specific sanctions for a breach of house rules, it does allow for the recovery by the OMC of the costs of remedying a breach.

Landlords who sublet their properties are obliged to ensure that their tenants adhere to the house rules. In *Kennedy v Sweepstakes Owners Management Company CLG*, the High Court (Barrett J) granted leave to a tenant to bring proceedings under section 24 of the *MUD Act* in connection with the implementation of house rules under section 23. Section 25 lists parties that may apply for, or appear and be heard at, an application under section 24. A tenant of a landlord (owner) in a MUD is not listed. In this case, the court exercised the discretion afforded under paragraph (f) of subsection 1 of section 25 to grant permission to "such other persons as the court sees fit".

My dog can't bark

Exclusive jurisdiction for the *MUD Act* lies with the Circuit Court. Dispute resolution by means of mediation is encouraged in the first instance. Mediation is an important feature, as it may prove beneficial to the consumer in terms of time and costs saved.

The abridged company restoration procedure under the *Companies Act 2014*, whereby application may be made to the Companies Office within 12 months of being struck off, is extended to a period of six years for OMCs.

The *MUD Act* was intended to be a reforming piece of legislation, to deliver improved protection and dispute resolution. It provides for the transfer of control and power from the developer to the OMC and the owners. OMC members benefit from fair and equal voting rights, as well as transparency around the calculation of annual service charges. Owners of apartments may influence the way in which their developments are being run. Developers may be pursued in court to hand over control and transfer the common areas to the OMC, if they have not already done so.

Got my mojo working

Having considered the principal provisions of the *MUD Act*, it should be remembered that while, in the main, OMCs are not-for-profit companies, by virtue of their corporate personality they are governed by the *Companies Act 2014*. In view of the centrality of the OMC to secure title and property values, the importance of good governance and corporate compliance cannot be understated.

Of the sections of the *Companies Act* relevant to OMCs, perhaps the most frequently invoked in practice are those governing company membership, directors' duties, and the particular provisions dealing with companies limited by guarantee (CLGs).

Under section 169 of the *Companies Act*, a company must keep a register of its members – also a requirement of the *MUD Act*. The register becomes relevant where, for example, members seek to coalesce to elect directors, pass budget items, or fix new house rules. The necessity for an up-to-date register is obvious, and responsibility rests with the directors.

OMC directors, albeit usually unpaid, are bound by the same duties as attach to directors of other bodies corporate. Directors and advisors would do well to refresh themselves on the principal duties, enumerated in part 5 of the *Companies Act*, in particular the requirement to act in the best interests of the company. The exercise of independent judgement and the disclosure of conflicts of interests are key to the running of a successful OMC board.

As noted, most OMCs are CLGs. The *Companies Act* provides an audit exemption for CLGs. However, under sections 334 and 1,218, any one member may require that an audit be carried out. In the context of assurance, transparency, and governance, an audit can afford comfort and value to members.

Rollin' and tumblin'

Practitioners should be cognisant of the framework in which OMCs operate, in particular the interactions between the *Multi-Unit Developments Act 2011*, and *Companies Act 2014*.

The widening of the scope of the *Property Services (Regulation) Act 2011*, regulating property management agents, is delivering enhanced service standards in the sector.

With the expansion in the number of apartment and managed developments throughout the country, including those owned by institutional landlords, further maturing of the law affecting the sector may be expected. g

LOOK IT UP

CASES:

- *Kennedy v Sweepstakes Owners Management Company CLG* [2019] IEHC 552
- *Re Lance Homes Ltd* [2018] IEHC 444

LEGISLATION:

- *Companies Act 2014*
- *Multi-Unit Developments Act 2011*
- *Property Services (Regulation) Act 2011*

Qu'est-ce que c'est?

Stressed out? Need help? There are many professions that care for people's mental health, including psychiatry, psychology, psychotherapy, and counselling. **Anne Colgan** has psychotherapy and counselling on the couch

ANNE COLGAN IS CLINICAL DIRECTOR WITH THE HAVEN GROUP

We are living in stressful times. We are surrounded by uncertainty, which can affect our personal lives and our workplace environment. Some of us have been personally affected by recent austerity measures, or we are managing clients and customers who have been affected. Businesses are experiencing uncertainty as we approach a no-deal Brexit and there are concerns about the impact on the future for their employees. Added to this, the overwhelming responsibility of the looming crisis of climate change affects every rational, caring, and responsible human being.

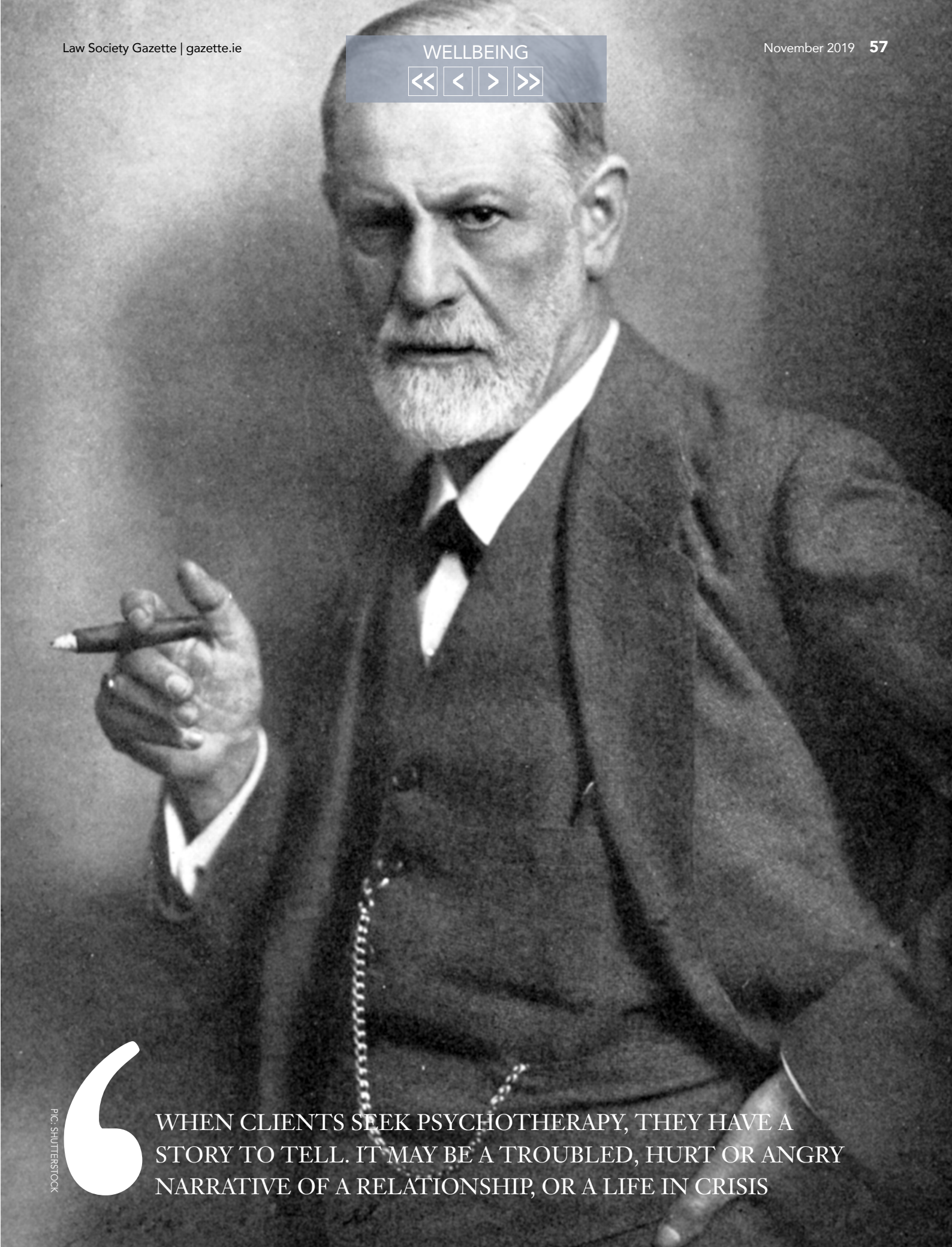
Alongside these external factors, we may be experiencing challenges such as ill health that has an impact on our family or friends. Sometimes, however, we appear to be physically well, but instead are experiencing other stresses – for example, in the workplace, which is all consuming. We can feel exhausted by the unrelenting hours and never-ending deadlines, where even a two-week holiday is either impossible to achieve or offers no reprieve. A more serious concern is when a workplace culture can allow bullying and inappropriate behaviour to go unchecked. It appears that you are spending too much time in the 'coping zone', the most dangerous place to be for your wellbeing.

When work and personal stress are present, it can be helpful to explore these stresses in a place where you feel safe, and where you are being listened to in a non-judgemental manner. Speaking to a psychotherapist or counsellor provides such a space. You can self-refer and find a therapist near you on www.psychotherapycouncil.ie. The therapeutic relationship is one of confidentiality and anonymity.

There are many professions that care for the mental health of society. Disciplines include psychiatry, psychology, psychotherapy, and counselling. Each profession has its place (medical and non-medical), and it is up to you to identify the help you require. You can make this

AT A GLANCE

- Psychotherapy is an independent discipline, practised at an advanced, qualified and scientific level
- It covers a range of approaches and methods based on a well-established body of theory, methodology and research
- Counselling differs from psychotherapy at training level and scope of practice
- It focuses on specific issues and is often designed to help a person with a specific problem



PIC: SHUTTERSTOCK

WHEN CLIENTS SEEK PSYCHOTHERAPY, THEY HAVE A STORY TO TELL. IT MAY BE A TROUBLED, HURT OR ANGRY NARRATIVE OF A RELATIONSHIP, OR A LIFE IN CRISIS

FINDING THE RIGHT HELP FOR **YOU**

- **Are you finding it hard to cope and worried about yourself?**
- **Are you looking to access professional help?**

Self-refer to a therapeutic* support near you. If you are unsure about self-referring, speak to your GP about your options.

COUNSELLING

Counselling usually focuses on specific issues and is helpful in bringing relief to life events, such as bereavement. It is often designed to help with a specific problem. Counselling usually works with the 'here and now' and is a short-term process.

See Irish Council for Counselling and Psychotherapy:

www.iacp.ie

PSYCHOTHERAPY

Psychotherapy is a therapeutic modality for individuals and groups. It works at a range of levels – psychological, emotional and cognitive. It is effective in uncovering the deeper and less conscious aspects of behaviour and our relationships. While psychotherapy is particularly helpful in addressing long-term issues and trauma, it is also a helpful medium through which clients can learn more about themselves and their lives, and increase self-awareness and wellbeing. There are different types, approaches and methods in psychotherapy. Psychotherapy tends to be, but is not always, a medium to long-term process.

See Irish Council for Psychotherapy:

www.psychotherapycouncil.ie

PSYCHOLOGY

Psychology is the study of the mind and behaviour. Clinical and counselling psychologists are professionals who draw on scientific knowledge and professional practice to investigate, assess and support their clients to address their psychological and emotional difficulties, including any significant mental-health problems they are experiencing.

See the Psychological Society of Ireland:

www.psychologicalsociety.ie

PSYCHIATRY

Psychiatry is a branch of medicine that is concerned with the understanding, assessment, diagnosis and treatment of mental disorders. Psychiatrists are medical professionals. They will often work hand-in-hand with psychologists in hospital/clinical settings in the treatment of patients and can prescribe medication. It is not possible for an individual to self-refer to a psychiatrist; a GP referral is required to make an appointment.

See the College of Psychiatrists of Ireland:

www.irishpsychiatry.ie

SOURCE: LAW SOCIETY OF IRELAND

* Please note that, in many respects, there are no absolute meaningful distinctions between the therapeutic supports – psychologists (counselling and clinical), psychotherapists and counsellors – listed here. These professionals can help with many different types of issues and problems and should discuss suitability of approach and problem type with clients in the early stages of support. The descriptions provided here are to be used as an initial frame only, to support you explore what the right option is for you.

> IT ENDEAVOURS TO FACILITATE AN UNDERSTANDING OF THE UNDERLYING, OFTEN UNCONSCIOUS, SOURCES OF A PERSON'S DISTRESS OR DISTURBANCE BY INCREASING AWARENESS OF THEIR INNER WORLD AND ITS INFLUENCE OVER RELATIONSHIPS

decision with the help and support of your family, friends or GP. This article discusses psychotherapy and counselling, providing you with details of each.

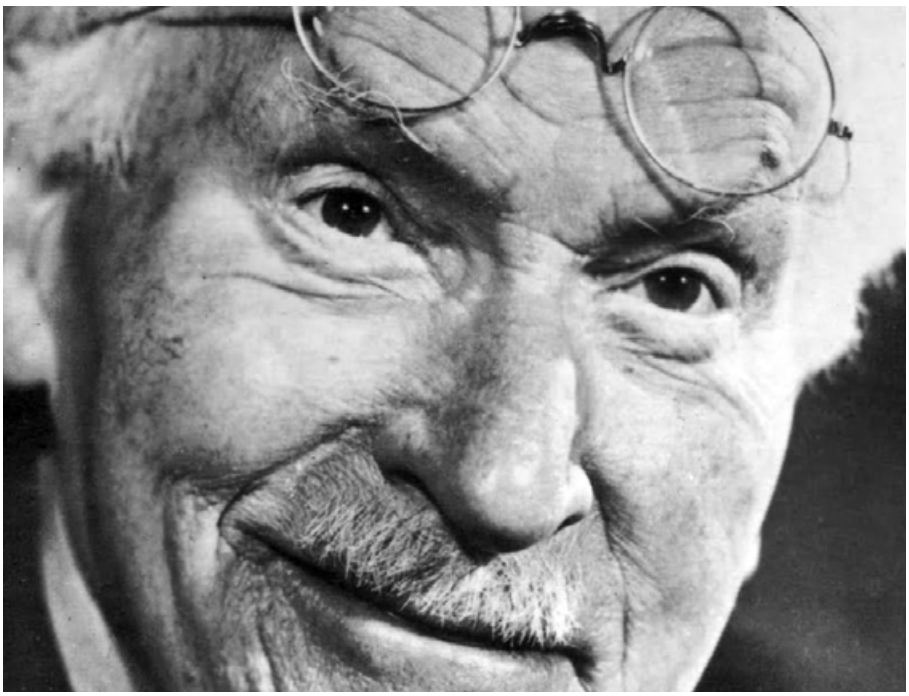
What is psychotherapy?

Psychotherapy supports people in developing awareness about what may be preventing them from accessing their 'true self'. This awareness can bring about an insight into integrating mind and body, aiming at the person as a whole: body, emotions, and psyche. It looks at resilience, as well as the person's own resources and capacity for self-determination and ability to improve their lives.

Psychotherapy is an independent discipline, practised at an advanced, qualified and scientific level. It covers a range of approaches and methods based on a well-established body of theory, methodology and research.

Psychotherapy may be short term to long term. You may wish to address a current situation or seek help because of more general underlying feelings of depression and anxiety, difficulties in concentrating, dissatisfaction in work, or inability to form satisfactory relationships.

Psychotherapy can provide an effective treatment for people who may seek help for more specific reasons, such as early childhood trauma, eating disorders, psychosomatic conditions, suicidal ideation, post-traumatic stress disorder, obsessional behaviour, or phobic anxieties. It can also address the needs of people who experience feelings of emptiness or meaninglessness in their lives. It can provide support when dealing with death and marriage breakup. Psychotherapy can benefit adults, adolescents, children and families. Psychotherapy covers a range of approaches and methods: they all involve a psychological (as distinct from medical or pharmacological) treatment for a range of psychological, emotional and relationship difficulties and disorders.



Jung man, there's no need to feel down

Client relationship

The relationship between the client and psychotherapist is an essential element of psychotherapy. Confidentiality in a private setting is provided where difficult experiences may be explored and worked through. This relationship (otherwise known as the 'therapeutic alliance') is probably the most analysed within psychotherapy research. Theoretical and empirical research findings indicate that the therapeutic alliance, especially as experienced by the client, is a significant indicator in the success of the work of psychotherapy.

The process of psychotherapy is collaborative. This bond depends on the psychotherapist's capacity to be empathetic and the extent to which the client feels listened to, understood, and supported.

Qualifications and training

The total duration of psychotherapy training is not less than 3,200 hours, spread over a minimum of seven years, including a relevant university degree. The latter four years is spent in the therapeutic space, in training that is specific to psychotherapy, with a minimum requirement of QQI Level 9.

Psychotherapy training involves a minimum commitment of 250 hours of personal psychotherapy or equivalent reflective practice throughout training to address the dynamic forces and processes in relation to the therapeutic alliance. This commitment by psychotherapists

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DATE	EVENT	CPD HOURS	DISCOUNTED FEE*	FULL FEE
7/8 Nov	**Connaught Solicitors' Symposium 2019 Part I & II** Breaffy House Resort, Castlebar, Co Mayo	7 November - 4 Hours & 8 November - 6 Hours Total 10 Hours (by Group Study)*	7 November - €100 8 November - €135 7 & 8 November - €190 *Hot lunch and networking drinks included in price*	
14 Nov	**Annual Business Law Conference**	1 Regulatory Matters & 3 General (by Group Study)	€160	€186
15 Nov	**Practitioner Update 2019** Kingsley Hotel Cork	6 Hours (by Group Study) *	€135 *Hot lunch and networking drinks included in price*	
21 Nov	**EU & International Affairs Committee Conference** Regulation of the Internet: Are existing rules working	2 General (by Group Study)	€135	
22 Nov	**Annual Family and Child Law Conference**	4.5 General (by Group Study)	€160	€186
22 Nov	**General Practice Update** Hotel Kilkenny, Kilkenny	6 Hours (by Group Study) *	€135 *Hot lunch and networking drinks included in price*	
28 Nov	**Annual Criminal Law Conference**	3 General (by Group Study)	€160	€186
29/30 Nov	**Property Transactions Masterclass** Module 1 – Fundamentals of Property Transactions Module 2 - Complex Property Transactions Module 3 – Commercial Property Transactions Attend 1, 2 or all 3 modules	8 General and 2 M & PD Skills (by Group Study) per Module **iPad included in fee*	€570* Per module	€595* Per module
2 Dec or 9 Dec	**Negotiation Skills for Lawyers**	3.5 M & PD Skills (by Group Study)	€160	€186
4 Dec	**The In-house and Public Sector Panel 2019** The Meyrick Hotel, Galway	3 M & PD Skills (by Group Study)	€65	
4 Dec & 11 Dec	**Time Management for Lawyers**	3 M & PD Skills (by Group Study)	€160	€186
5 Dec	**Will Drafting Masterclass**	6 General (by Group Study)	€210	€255
10 Dec	**Practice and Regulation Symposium,** The Shelbourne Hotel, Dublin	3.5 M & PD Skills 3.5 Regulatory Matters (Incl 1 accounting and AML Compliance) Total 7 Hours (by Group Study)	€135 *Hot lunch and networking drinks included in price*	
Starts 20 Jan	**LLM in International Financial Services Law** in collaboration with UCD Sutherland School of Law	Full general CPD requirement for 2020	€3,800	
Starts 19 Feb	**Certificate Professional Education** 19 Feb, 4 & 14 Mar, 8 & 18 April and 6 & 16 May	Full general and management CPD requirement for 2020	€1,450	€1,550
Starts 28 Feb	**Coaching Skills for Solicitors & Practice Managers** 28 & 29 Feb, 20 Mar & 3 Apr	Full general and management CPD requirement for 2020	€1,200	€1,440
13 Feb & 27 Feb	**Practical Legal Research for the Practitioner**	2 General and 4 M & PD Skills (by Group Study)	€572	€636
19/20 Mar	**Certificate in English & Welsh Property Law**	9 General (by Group Study)	€411	€588
24/25 April	**Planning & Environmental Law Masterclass**	8 General and 2 M & PD Skills (by Group Study)	€350	€425

*Please note our Finuas Skillnet Cluster Events are a combination of General, Management & Professional Development Skills and Regulatory Matters CPD Hours (by Group Study).

For a complete listing of upcoming events including online GDPR and Social Media Courses,
visit **www.lawsociety.ie/CPD** or contact a member of the Law Society Professional Training team on

P 01 881 5727 **E** Lspt@lawsociety.ie **F** 01 672 4890 **Applicable to Law Society Finuas Skillnet members*

is to understand and know themselves. It begins during their extensive training and continues throughout their ongoing professional life, with a minimum requirement of 50 hours of CPD annually. The awarding body is the Irish Council for Psychotherapy.

Psychotherapists are required to attend supervision a minimum of once a month. The purpose of this is to bring another perspective to the work, with a clinical supervisor, and to ensure that best practice prevails. This work is confidential and anonymous. Supervision is compulsory for psychotherapists and counsellors.

How is counselling different?

Counselling differs from psychotherapy at training level and scope of practice. The minimum standard required is QQI Level 8, and the amount of personal therapy hours is 50 throughout training. The CPD requirement is also less, at 30 hours per annum. Counselling training is between three and four years. Counselling focuses on specific issues and is often designed to help a person with a specific problem. Counselling usually works with the here and now, and can be short term. Many psychotherapists have also undertaken training in counselling. The awarding body is the Irish Association of Counselling and Psychotherapy.

Types of psychotherapy

- **Cognitive behavioural psychotherapy:** the philosophy underpinning this approach is that a person learns to act and think in certain ways as a result of their lifetime experiences and how they perceive those experiences. This learning is a lifelong process. Clients seek help for a variety of reasons. Cognitive behaviour psychotherapists postulate that people can achieve change by working directly on their own patterns of thinking and behaviour. In therapy, they need to learn more helpful and functional thought patterns.
- **Family therapy:** this is a term used to describe a range of psychotherapeutic approaches that seek to bring about change in close relationships. Family therapy, (also called 'systemic psychotherapy') addresses the problems people present within the context of their lives and their social networks. Systemic psychotherapists are trained to work with individuals, couples, children, or other network groups, and to move between one setting and another as the needs of the therapeutic relationship demand.
- **Constructivist psychotherapy:** the clearest hallmark of constructivist and related schools of therapy is an invitational mode of enquiry, which assists clients in making sense of their experiences. George Kelly, the founder of personal construct psychology, articulated a fundamental belief of therapists who work from a constructivist perspective: "No one needs to be a victim of their biography." When clients seek psychotherapy, they have a story to tell. It may be a troubled, hurt or angry narrative of a relationship, or a life in crisis. Constructivist therapists work in a variety of settings with individuals, couples, families, and in organisations.
- **Psychoanalytic theory:** psychoanalytic theory and practice is essentially an enquiry into the human condition from psychopathology to the broader philosophical, social and cultural context. It endeavours to facilitate an understanding of the underlying, often unconscious, sources of a person's distress or disturbance by increasing awareness of their inner world and its influence over relationships, both past and present. Psychoanalysis as a clinical activity is essentially a special form of dialogue. It is a method for experiencing and observing the unconscious processes going on in the mind.
- **Humanistic and integrative psychotherapy:** this approach emphasises that people are self-regulating, self-actualising and self-transcendent beings, who are responsible for themselves. While recognising the tragic dimensions of human existence, it emphasises peoples' ability to grow and change and realise their true nature more fully. Based on a phenomenological view of reality, the emphasis is on experience, and the therapeutic relationship is seen as a meaningful contact between equals.

What to expect?

The process of psychotherapy begins when you commit to helping yourself and to look for a therapist. When you make contact, the psychotherapist will arrange an appointment for you.

The next step is to turn up for the appointment. There is no need for an agenda, although you can bring a list of topics if you so wish. You will be met in an empathetic, non-judgemental manner. This is your time. You are well on your journey to improving your mental health and overall wellbeing.

You and the psychotherapist will decide how many sessions you may need as you engage in the process. The importance is that you are getting support and you are giving yourself the time. You can expect empathy and confidentiality as you begin and continue your journey.

COPYRIGHT LAW AND FUNDAMENTAL RIGHTS

The CJEU's preliminary ruling last year in the *Bastei Lübbe* case – concerning online infringement of a copyright-protected audiobook – is significant for a number of reasons, writes **Mark Hyland**

DR MARK HYLAND IS IMRO ADJUNCT PROFESSOR OF INTELLECTUAL PROPERTY LAW AT THE LAW SOCIETY OF IRELAND AND LECTURER IN INTERNATIONAL INTELLECTUAL PROPERTY LAW AT BANGOR UNIVERSITY LAW SCHOOL

TWO FUNDAMENTAL RIGHTS WERE CONCERNED. FIRST, THE RIGHT TO AN EFFECTIVE REMEDY AND THE RIGHT TO INTELLECTUAL PROPERTY AND, SECOND, THE RIGHT TO RESPECT FOR PRIVATE AND FAMILY LIFE

News from the EU and International Affairs Committee. Edited by TP Kennedy, director of education, Law Society of Ireland

The ruling in Case C-149/17 *Bastei Lübbe v Michael Strotzer* is the most recent addition to a series of CJEU judgments that address the balancing of fundamental rights in the context of the enforcement of intellectual property rights (IPRs).

The EU's most senior court expressed serious doubt about a provision in domestic German law that constituted an exemption from copyright liability.

The CJEU also took the opportunity to re-emphasise the need to reconcile the requirements of the protection of several fundamental rights contained in the *Charter of Fundamental Rights of the EU*. More specifically, the CJEU stated that, when transposing directives, member states must "take care to rely on an interpretation of them that allows a fair balance to be struck between the various fundamental rights protected by the EU legal order" (paragraph 45).

Third, *Bastei Lübbe* adds to the corpus of case law on the balancing of fundamental rights in the context of the enforcement of IPRs.

Lastly, the judgment also demonstrates that the rights within the *Charter* have limitations and – on this occasion – the right protecting intellectual property was given greater weight by the CJEU than the right to a private life.

Press rewind

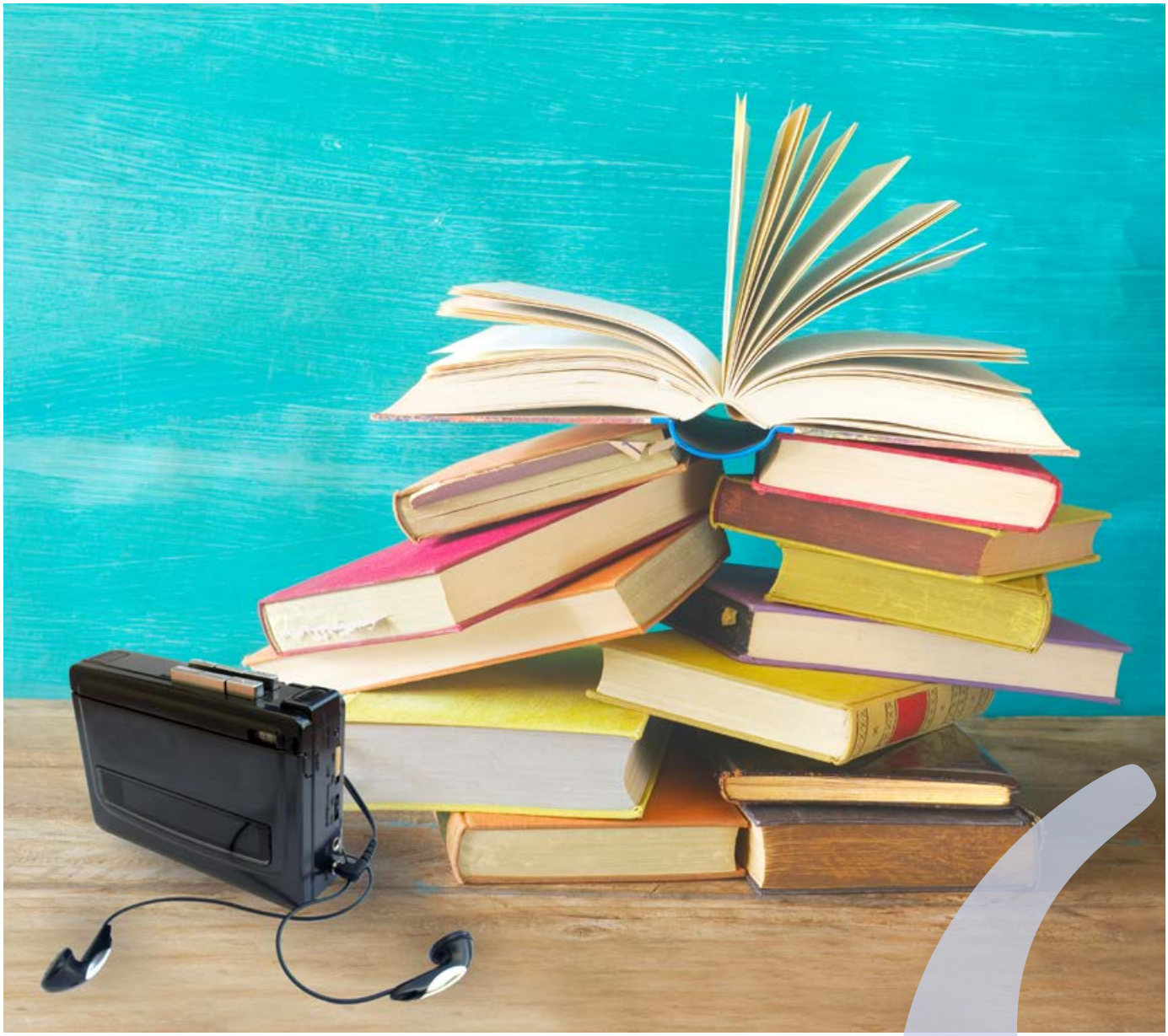
The judgment was delivered by the CJEU on 18 October 2018. The referral to the CJEU was made by the Landgericht München (the Regional Court, Munich). In essence, the preliminary ruling concerned the interpretation of certain provisions in two important EU directives that are relevant to copyright law – the *Information Society Directive* (2001/29/EC) and the *Directive on the Enforcement of Intellectual Property Rights* (2004/48/EC).

The main proceedings (in Germany) concerned an action for damages as a result of alleged copyright infringement through file-sharing. The claimant, Bastei Lübbe (a German media company/trade book publisher), is the holder, as a phonogram producer, of the copyright and related rights in the audio version of a book. The defendant, Mr Strotzer, is the owner of an internet connection through which, in 2010, the audio book was shared illegally with an unlimited number of users of a peer-to-peer internet exchange. An IT expert correctly attributed the IP address in question to the defendant.

In essence, the defendant relied on paragraph 97 of the 1965 German *Law on Copyright and Related Rights*. That particular provision, as amended in 2013 and interpreted by the Federal Court of Justice, is capable of providing an exemption from liability to a defendant owner of an internet connection where the relevant internet connection is not sufficiently secure, or was knowingly made available to other persons. Pertinently, a family member of Strotzer had access to the defendant's internet connection. Having regard to the fundamental right to the protection of family life, Strotzer could escape liability by merely naming a family member, without being required to provide further details as to when and how the internet was used by that family member.

Pause

The CJEU considered whether the German copyright exemption was compatible with article 8(1) of the *Information Society Directive*, which refers to "appropriate remedies" and "effective and dissuasive sanctions against perpetrators" in the context of copyright infringements. In addition, the CJEU also


PIC: SHUTTERSTOCK

asked whether it was compatible with article 3(1) and (2) of the *Enforcement Directive*, which refer to "effective and dissuasive measures, procedures and remedies for the purposes of ensuring enforcement of the IPRs".

The catalyst in the judgment, for the CJEU's statements on the need to balance or reconcile several fundamental rights, was the issue of evidence or, more specifically, evidence within the control of the defendant. Strotzer was invoking the fundamental right to the protection of family life to prevent the claimant from obtaining the evidence necessary to support its claims. But the CJEU was quick to refer to article 6(1) of the *Enforcement Directive*. This provision relates to evidence lying in the control of the defendant. It permits the adjudicating court to "order that such evidence be presented by the defendant, subject to the protection of confidential information". The court also referred to recital 20 of the same directive. This recital states that evidence is "an element of paramount importance for establishing the infringement of IPRs and that it is appropriate to ensure that effective means of presenting, obtaining and preserving evidence are available".

Fast forward

This 'clash' between the fundamental right to the protection of family life and article 6(1) gave the CJEU a compelling reason to consider more broadly

> THE RIGHT PROTECTING INTELLECTUAL PROPERTY WAS GIVEN GREATER WEIGHT BY THE CJEU THAN THE RIGHT TO A PRIVATE LIFE

> AN OWNER OF AN INTERNET CONNECTION USED FOR COPYRIGHT INFRINGEMENTS CANNOT INVOKE HIS FUNDAMENTAL RIGHT TO PRIVATE LIFE SO AS TO BLOCK OR IMPEDE EVIDENCE-GATHERING IN A CASE OF ALLEGED COPYRIGHT INFRINGEMENT INVOLVING FILE-SHARING

the whole notion of balancing (or reconciling) various *Charter* fundamental rights.

The CJEU's statements on the importance of balancing different *Charter* rights constitutes one of the most compelling parts of this judgment (paragraphs 43 to 47).

Two fundamental rights were concerned. First, the right to an effective remedy and the right to intellectual property (article 17(2) of the *Charter*) and, second, the right to respect for private and family life (article 7).

When analysing the reconciliation of various fundamental rights in the context of evidence and evidence-gathering, the CJEU referred to article 6(1) and recital 20 of the *Enforcement Directive*. According to the CJEU, article 6(1) requires member states, in an effective manner, to enable the injured party to obtain the evidence within the control of the opposing party (the alleged defendant) that is necessary for supporting its claims. This is subject to confidential information being protected in the process. The CJEU went on to observe that the fundamental right to the protection of family life is, in the context of the national legislation at issue, an obstacle preventing the injured party (the rights holder) from obtaining the evidence necessary for supporting its claims from the opposing party.

Referring to its own ruling in C-580/13 *Coty Germany*, the CJEU stated that EU law requires that, when transposing directives, member states must take care to rely on an interpretation of them that allows a fair balance to be struck between the various fundamental rights protected by the EU legal order. Subsequent to the transposition and when implementing the measures transposing the directives, the authorities and courts of member states must interpret their national law in a manner consistent with those directives. In addition, they must also ensure that they do not rely on an interpretation of them that would be in conflict with those fundamental rights or with the other general principles of EU law.

The CJEU then went on to address any limitation on the exercise of the rights recognised by the *Charter*. Referring to article 52(1) of the *Charter*, the court stated that the provision provides that "any limitation on the exercise of the rights and freedoms recognised by the *Charter* must respect the essence of those rights and freedoms". The court went on to say that CJEU case law demonstrated that a measure that results in serious infringement of one of the *Charter* rights is to be regarded as not respecting the requirement that such a fair balance be struck between the fundamental rights that must be reconciled.

It is incumbent on the court to assess the various elements of the national legislation at issue in the main proceedings in the light of that requirement of a fair balance.

Eject

Given that the relevant domestic law in Germany guaranteed an "almost absolute protection for the family members of the owner of the internet connection through which copyright infringements were committed by file-sharing", the CJEU considered that that law could not be considered to be "sufficiently effective and capable of leading to effective and dissuasive sanctions against the perpetrators of the infringement", as required by article 8(1) of the *Information Society Directive*. Moreover, the CJEU was of the view that the procedure initiated in respect of the remedy at issue in the main proceedings was not capable of ensuring the enforcement of IPRs required by article 3 (1) of the *Enforcement Directive*.

In conclusion, and considering the domestic German law in the light of the relevant provisions of the directives, the CJEU's view was that the domestic German law should be deemed invalid. The language of the judgment is a bit ambiguous, but the CJEU, referring to the relevant provisions of the directives, stated that they "must be interpreted as precluding national legislation such as that in the main proceedings".

Record

The *Bastei Lübbe* ruling is the most recent addition to a series of CJEU judgments that address the balancing of fundamental rights in the context of the enforcement of IPRs. This series of rulings also includes cases C-275/06 *Promusicae* (2008), C-70/10 *Scarlet Extended* (2011), C-314/12 *UPC Telekabel* (2014), C-580/13 *Coty Germany* (2015), and C-484/14 *McFadden* (2016).

Bastei Lübbe is authority for the proposition that there are limitations to the rights contained in the *Charter*. For example, an owner of an internet connection used for copyright infringements cannot invoke his fundamental right to private life so as to block or impede evidence-gathering in a case of alleged copyright infringement involving file-sharing. In the clash between the protection of IP (article 17(2) of the *Charter*) and the right to a private life (article 7 of the *Charter*), the court in *Bastei Lübbe* comes down in favour of the former. g

REPORT OF LAW SOCIETY COUNCIL MEETING

13 SEPTEMBER 2019

Past-president Simon Murphy

On behalf of the Council, the president paid tribute to past-president Simon Murphy, who was leaving the Council after 21 years of service.

IBA report entitled '*Us Too?*'

The Council considered a report issued by the IBA's Working Group on Bullying and Sexual Harassment in the Legal Profession, entitled '*Us Too?*', which had been circulated to all Council members in advance. The director general, who was a member of the IBA working group, outlined the methodology, the findings and the recommendations. The Council agreed that the author of the report should be invited to Dublin to make a presentation on its contents, and to consider the recommendations for action. It was noted that some of the elements of the Society's Professional Wellbeing Programme addressed the issue of the statutory obligation on solicitors' firms to provide a psychologically safe place of work, free of bullying and sexual harassment, and also the economic benefits of a happy, healthy and safe workforce.

Draft rules of procedure

The chair of the Complaints and Client Relations Committee, Paul Egan, outlined draft rules in respect of section 8 and 9 complaints and draft rules in respect of conduct complaints, which had been circulated in advance of the meeting. Mr Egan noted that the draft rules would guide and support the committee while the committee's caseload was 'run off', and afford clear and appropriate fair procedures to all solicitors who were the subject of complaints. The rules would apply to the Society's complaints-handling function until that was transferred to the LSRA on 7 October 2019.

James Cahill welcomed the draft rules, which he felt would give solicitors valuable guidelines without having to phone a colleague for informal guidance. Mr Cahill raised concerns in relation to a number of the draft provisions, which were responded to by the director of regulation. The Council approved the draft rules, and it was noted that the next steps would require them to be approved by the President of the High Court and then placed before both Houses of the Oireachtas.

Vacant-site levy

The chairman of the Finance Committee, Christopher Callan, reported that the Society had successfully appealed to An Bord Pleanála against a vacant-site levy demand notice for €260,000 for 2018 and an estimated levy of €660,000 for 2019 on the Law Society's site at Benburb Street. The primary reasons given for the decision was that it no longer had adverse effects on the character of the area, through the erection of hoarding, the provision of sports facilities, and lack of visibility of the site from the public realm.

Property purchase

Following a presentation from the chair of the Finance Committee, the Council approved the purchase of a property close to the Society's boundary for which there were a number of potential uses, both immediately and in the longer-term.

Legal Services Regulation Act

The Council approved the reappointment of Geraldine Clarke as one of the Society's nominees to the board of the LSRA for a further three years. Paul Keane reported that 7 October 2019 was now a confirmed date for commencement of part 6 of the act relating to complaints-handling, section 150 relating to legal costs, and the introduction of statutory instruments relating to legal partnerships and LLPs. In addition, the authority was hosting a seminar on legal education and training in Croke Park on 20 September 2019, at which the Society would be represented. The director general said that the staff transfer under section 26 of the act, which had been logistically and legally complex, had been completed, with 11 staff members signing their consents and the minister signing their redesignation as public servants.

Admissions and education

The chair of the Education Committee, Carol Plunkett, reported that there were 456 trainees attending the current PPC1. In addition, 25 trainees had registered for the Hybrid PPC, which was to commence in December. Ms Plunkett noted that 1,732 solicitors had been admitted to the Roll thus far this year, of which 1,550 were British applicants. Finally, 1,355 students had registered to sit the FE1 in October, which was the largest number since 2001. It was hoped that the FE1 sittings in March 2020 would be held both in Dublin and in Cork. The introduction of the single PPC from 2020 had also been reformulated so that there would be no overlap with the final PPC2 course. It was hoped to commence the consultation process as to course content before the year-end by way of a questionnaire issuing to all firms.

Practising certificates

Christopher Callan noted that the year-end estimate for practising certificates was 11,800 – or 900 more than in 2018. The increase was primarily driven by an additional 500 Brexit practising certificates, to a total of 748. Solicitors on the Roll now stood at over 20,500.

Transition-year students

The chair of the Guidance and Ethics Committee, Valerie Peart, reported that the guides for transition-year students working in solicitors' practices had been greeted with very positive feedback from the members. g

PROFESSIONAL INDEMNITY INSURANCE COMMITTEE

PROFESSIONAL INDEMNITY INSURANCE RENEWAL

The mandatory professional indemnity insurance (PII) renewal date for all firms is 1 December 2019. This date is not negotiable. All cover under the current indemnity period will expire on 30 November 2019.

Confirmation of cover

All firms must ensure that confirmation of their PII cover is provided to the Society within three working days of 1 December 2019, including those firms with variable renewal dates. Therefore, confirmation of cover in the designated form must be provided to the Society on or before close of business on Wednesday 4 December 2019.

Confirmation of cover should be provided by your broker through the Society's online PII confirmation system. Such confirmation must include your policy number, and confirmation of cover cannot be provided until the policy is actually in place. As your firm has a statutory obligation to ensure such confirmation of cover is provided to the Society on or before Wednesday 4 December 2019, you are responsible for ensuring that your broker provides the Society with confirmation of cover by that date. You should also ensure that your broker has familiarised themselves with the online confirmation system, and has the necessary information to confirm cover online (such as their login and password) in advance of 1 December 2019.

It is noted that some firms who have confirmed PII cover to the Society during 2019 have a coverage period that extends past 30 November 2019. Such firms are still required to reconfirm cover for 2019/2020 with the Society by 4 December 2019.

Please note that your firm will not be reflected as having PII in place on the Society's 'Find a firm' online search facility until such time as the Society has received the required online confirmation of cover.

Renewal resources

The guide to renewal for the 2019/2020 indemnity period will be published on the Society's website on 4 November 2019 to assist the profession with renewal. The guide includes information such as tips for renewal, important points to note, and a guide to insurers and brokers. This guide will be updated frequently with new information received by the Society, in particular with regard to what insurers will be in the market in the next indemnity period.

Renewal resources for the 2019/2020 indemnity period are available to download from the Society website at www.lawsociety.ie/PII and include the common proposal form, PII regulations and minimum terms and conditions, the *Participating Insurers Agreement*, and relevant PII practice notes. The information available is frequently updated as more documentation becomes available.

Financial strength rating

There is a minimum financial-strength requirement from a recognised rating agency for all participating insurers of an A rating (S&P, Fitch) or equivalent. The recognised rating agencies are Standard & Poor's, Fitch, AM Best, and Moody's. The Society also has the power to waive the minimum financial rating requirement for participating insurers, subject to such terms and conditions as the Society deems fit, such as provision of a suitable parental guarantee from a rated parent company.

It should be noted that all participating insurers in the market are permitted to write insurance in this jurisdiction under the supervision of the Central Bank. The Society is not responsible for policing the financial stability of any insurer. The Society does not vet, approve, or regulate insurers.

Notification of claims

All claims made against solicitors' firms and circumstances that may give rise to such a claim should be notified to the firm's insurer as soon as possible. In particular, claims made between 1 December 2018 and 30 November 2019 (both dates inclusive) should be notified by the firm to their insurer by 30 November 2019.

It is proper practice for firms to notify insurers of claims or circumstances during the year as they arise, not at the end of the indemnity period. Notifying all claims and circumstances at the end of the indemnity period is referred to as 'laundry listing' by insurers, and is not looked on favourably. Firms should also ensure that their claims and circumstances notifications meet the notifications requirements set out in the insurance policy terms and conditions.

The minimum terms and conditions for PII permit firms to report claims or circumstances of which they are aware prior to expiry of cover to their insurer within three working days immediately following the end of the coverage period. Therefore, a three-working-day grace period from 30 November 2019 is in place with regard to notification of claims and circumstances to your insurer.

Quotes

Insurers are required to leave quotes to firms open for a period of not less than ten working days.

Amendments to cover

The following amendments have been introduced in the *PII Regulations 2019* (SI 465 of 2019):

- The definition of 'firm' has been amended to include limited liability partnerships, and a definition of 'limited liability partnerships' has been introduced.
- The definition of 'insured' has been amended to explicitly provide that the definition includes trustee and other companies owned by any one or more of the individual principals, rather than necessarily all of the principals. A similar amendment has been made to the definition of 'legal services'.
- The definition of 'misconduct' has been amended to provide for the commencement of the new definition under the *Legal Services Regulation Act 2015*.
- A definition of 'self-insured excess' has been introduced.
- Clause 6.10 of the minimum terms and conditions was amended to deal with issues raised by Brexit.
- Other tidy-up amendments have been made to the regula-

tions to update and improve clarity, and ensure consistency.

Run-off Fund

The Run-off Fund provides run-off cover for firms ceasing practice that have renewed their PII for the current indemnity period, and subject to meeting eligibility criteria, including that there is no succeeding practice in respect of the firm.

Any firm intending to cease practice after 30 November 2019 is required to renew cover for the 2019/2020 indemnity period.

Any applications to the Run-off Fund for cover must be made directly to the Special Purpose Fund Manager, not the Society. Further information on run-off cover and succeeding practices, including the contact details of the Special Purpose Fund Manager, can be found at www.lawsociety.ie/PII.

Run-off compliance status

Provisions are in place with the Special Purpose Fund Manager to ensure the required level of compliance of firms in the Run-off Fund with regard to claims and membership of the Run-off Fund.

Under these provisions, three levels of run-off cover exist, depending on the compliance of run-off firms:

- Compliant run-off firms have cover in the Run-off Fund with the same minimum terms and conditions as those that exist in the market,
- Non-compliant run-off firms have reduced cover in the Run-off Fund with the same minimum terms and conditions as those that exist in the market, with the exception that there is no cover for claims by financial institutions,
- ARP run-off firms continue to have cover in the Run-off Fund at the same level that exist in the ARP, with aggregate cover and no cover for claims by financial institutions.

Further information on changes to run-off cover provisions can be found at www.lawsociety.ie/PII.

PII helpline

The Society continues to operate the PII Helpline to assist firms in dealing with PII queries. The helpline is available Monday to Friday, 10am to 4pm, at tel: 01 879 8707 or email: piihelpline@lawsociety.ie.

CONVEYANCING COMMITTEE

NPPR ON NEW BUILDS

The Conveyancing Committee has been asked to provide guidance on what should be provided by a builder/developer on the sale of a 'residential property' (as defined in the *Local Government (Charges) Act 2009*), the construction of which was completed or even started after 31 March 2013, being the last liability date for the NPPR charge. Section 2 of the act defines a residential property as a building used or suitable for use as a dwelling. Clearly, a residential property that did not exist or was not suitable for use as a dwelling by reason of being in the course of construction on a liability date to which the act applied cannot be liable to the NPPR charge. The problem – from a practical point of view for a vendor, on a subsequent sale of the property – is establishing that the property was not liable to the NPPR charge.

It is the view of the committee that the original builder/developer should provide, on closing, a statutory declaration confirming that the property is not a 'residential property', confirming as appropriate:

- That the building was not a relevant residential property because construction of the building was completed or indeed, if appropriate, commenced after 31 March 2013, or
- If the property was completed by 31 March 2013, that the building formed part of the trading stock of a business from which, since its construction, no income has been derived, and which has not at any time since its construction been used as a dwelling.

The declaration should be placed with the title documents to avoid having to trawl through documents at the time of future sales to provide evidence that the NPPR charge does/did not apply.

SOLICITORS DISCIPLINARY TRIBUNAL

REPORTS OF THE OUTCOMES OF SOLICITORS DISCIPLINARY TRIBUNAL INQUIRIES ARE PUBLISHED BY THE LAW SOCIETY OF IRELAND AS PROVIDED FOR IN SECTION 23 (AS AMENDED BY SECTION 17 OF THE *SOLICITORS (AMENDMENT) ACT 2002*) OF THE *SOLICITORS (AMENDMENT) ACT 1994*

In the matter of David Doyle, a solicitor previously practising as a partner in Doyle Associates at 56 Main Street, Rathfarnham, Dublin 14, and in the matter of the *Solicitors Acts 1954-2015* [2018/DT91]
Law Society of Ireland (applicant)
David Doyle (respondent solicitor)

On 27 June 2019, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of professional misconduct in that he:

1) Failed to comply with an undertaking dated 18 May 2004 furnished to Bank of Ireland Mortgages in respect of his named clients and borrowers and property at Mountbellew, Co Galway, in respect of a named mortgage account in a timely manner or at all,
2) Failed to comply with an undertaking dated 29 January 2008 furnished to Bank of Ireland Mortgages in respect of his named clients and borrowers and property at Mountbellew, Co Galway, in respect of a named mortgage account in a timely manner or at all.

The tribunal ordered that the respondent solicitor:

1) Stand censured,
2) Pay a sum of €1,512 as a contribution towards the whole of the costs of the Society.

In the matter of Aine Kilfeather, a solicitor practising as a partner in Kilfeather Keyes Solicitors at 12 Market Street, Sligo, and in the matter of the *Solicitors Acts 1954-2015* [2017/DT106]
Law Society of Ireland (applicant)
Aine Kilfeather (respondent solicitor)

On 16 July 2019, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of professional misconduct in her practice as a solicitor in that she misled her client by leading her to believe that court proceedings had been instituted and a settlement had been reached, when this was untrue and no proceedings had been instituted.

The tribunal ordered that the respondent solicitor:

1) Stand censured,
2) Pay a sum of €1,000 to the compensation fund,
3) Pay a sum of €1,000 as a contribution towards the whole of the costs of the applicant.

WILLS

Delahunty, Thomas (deceased), late of Barnacole, Mooncoin, Co Kilkenny. Would any persons having knowledge of the whereabouts of the original will executed by the above-named deceased on 20 May 1980, who died on 2 March 2015, please contact T Kiersey & Co, Solicitors, 17 Catherine Street, Waterford; tel: 051 874366, fax: 051 870390, email: gkiersey@gmail.com

Dobson, George (deceased), late of 'Tranquil', Mountrath Road, Portlaoise, Co Laois. Would any solicitor holding or having knowledge of a will made by the above-named deceased, who died on 21 November 2018, please contact Rollestons, Solicitors, 4 Wesley Terrace, Portlaoise, Co Laois; tel: 057 862 1329, email: info@rollestons.ie

Fleming, Patrick Anthony (deceased), late of Curraghprevin, Rathcormac, Fermoy, Co Cork, who died on 21 July 2019. 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 Healy Crowley & Co, Solicitors, West Street, Tallow, Co Waterford; tel: 058 56457, email: info@healycrowleysolrs.com

Hegarty, Ciaran Columcille (deceased), late of 7 Brook Road, Rhebogue, Limerick for the past 25 years and, prior to that, 6 Ballinveiltig, Curraheen, Cork, who died on 23 May 2019 and whose date of birth was 13 May 1954. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please reply to **box no 01/09/2019**

Keane, Sheila (deceased), late of 43 Mount Pleasant Drive, Clontarf, Dublin 3, who died in or about 17 March 2019. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Keith Walsh, Solicitors, 8 St Agnes Road, Crumlin, Dublin 12; tel: 01 455 4723, email: moira@kwsols.ie

Kelleher, Neil (deceased), late of 49 Seabury, Sydney Parade Avenue, Sandymount, Dublin 4, who died on 10 September 2019. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Anne-Marie Linehan, solicitor, JW O'Donovan, 53 South Mall, Cork; tel: 021 730 0200, email: alinehan@jwod.ie

Kenna, Paul (deceased), late of 11 Hazelbury Park, Clonee, Dublin 15. Would any person having knowledge of a will made by the above-named deceased please contact Rochford Gibbons, Solicitors, 16/17 Upper Ormond Quay, Dublin 7; DX 1015; tel: 01 872 1499, email: info@johnrochford.ie

McKenna, Stephen (deceased), late of Dromskin Village, Dundalk, Co Louth, and formerly of 139 Glenwood Estate, Dundalk, Co Louth, who died on 15 April 2019. Would any solicitor or person having knowledge of the whereabouts of any will made or purported to have been made by the above-named deceased please contact Thorpe & Taaffe Solicitors, 1 Main Street, Finglas, Dublin 11; DX 8005; tel: 01 834 4959, email: david@thorpetaaffe.ie

Munir, Samie (deceased), late of 51 Rosehaven, Carpenterstown Road, Castleknock, Dublin 15, and previously of 97 Foxlodge Manor, Ratoath, Co Meath, who died suddenly on 30 September 2019. Date of birth: 19 December 1979. Would any solicitor or person having knowledge of the whereabouts of a will, which was made and may have been amended on numerous occasions, or if anybody knows who may have executed the will for the above-named deceased, please contact Robert Kiernan, tel: 086 060 4782, email: robgkiernan@gmail.com

Shanahan, John (deceased), late of 10 St John Paul's Terrace, Broadford, Co Limerick, who died on 17 December 2017, a retired FÁS supervisor. Would any person having knowledge of a will made by the above-named deceased please contact Marie Ford Solicitors, Avondale House, Clanchy Terrace, Charleville, Co Cork; tel: 063 23952, email: marie@mariefordsolicitors.com

Weldon, Kenneth Joseph (deceased), late of 3 Richmond Park, Wexford Town; 120 Charlemont, Griffith Avenue, Dublin;

RATES

PROFESSIONAL NOTICE RATES

RATES IN THE PROFESSIONAL NOTICES SECTION ARE AS FOLLOWS:

- **Wills** – €150 (incl VAT at 23%)
- **Title deeds** – €300 per deed (incl VAT at 23%)
- **Employment/miscellaneous** – €150 (incl VAT at 23%)

HIGHLIGHT YOUR NOTICE BY PUTTING A BOX AROUND IT – €30 EXTRA

ALL NOTICES MUST BE PAID FOR PRIOR TO PUBLICATION. CHEQUES SHOULD BE MADE PAYABLE TO **LAW SOCIETY OF IRELAND.** Send your small advert details, with payment, to: *Gazette* Office, Blackhall Place, Dublin 7, tel: 01 672 4828, or email: catherine.kearney@lawsociety.ie. **Deadline for December 2019 *Gazette*: 4 November 2019.** For further information, contact the *Gazette* office on tel: 01 672 4828.

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

and 1 Boland's Cottages, East Wall, Dublin 3. Ken was a good and decent man, and we want to make sure that his last wishes are fulfilled. Sadly, Ken passed away suddenly on 15 June 2018. He made an updated will with a Dublin solicitor in 2009 and then again in 2016. Please contact Peggy Weldon, 14715 Yearling Terrace, Rockville, Maryland 20850, USA; tel: +1 240 506 5534, email: pweldon@holychild.org

TITLE DEEDS

In the matter of the *Landlord and Tenant (Ground Rents) Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of an application by Philip Colgan and Dorothy Colgan, both of Growtown, Dunshaughlin, Co Meath, and in the matter of the property known as 381 North Circular Road, Dublin 7

Take notice any person having an interest in the freehold estate of the property known as 381 North Circular Road, Dublin 7, held under an indenture of lease dated 2 May 1860 and made between Robert Fowler (acting as trustee for the Earl of Blessington) on the one part and Samuel Farlow on the other part for the term of 193 years from 29 September 1858, subject to an initial annual rent of £12.18.

Take notice that Philip Colgan and Dorothy Colgan intend to submit an application to the county registrar for the county and city of Dublin for the acquisition of the freehold interest in the aforementioned property and that any party asserting a superior interest in the aforementioned property is called upon to furnish evidence of such title to the aforementioned property to the undermentioned solicitors within 21 days from the date of this notice.

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

Date: 1 November 2019

Signed: Seamus Maguire & Company (solicitors for the applicants), 10 Main Street Blanchardstown, Dublin 15

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of the premises known as The Carraig Inn, Killincarrig, Delgany, Co Wicklow, and in the matter of an application by Hollybrough Limited

Any person having a freehold interest or any intermediate interest in all that and those the property known as The Carraig Inn, Killincarrig, Delgany, Co Wicklow, formerly known as the Orchard Inn (hereinafter called 'the property'), held by the applicant under a lease dated 27 March 1906 made between Mary La Touche, Frances Cecilia Archer and Charlotte Isabella Studdert of the one part and John Healy of the other part for the term of 200 years from 29 September 1905 at a rent of £15 per annum, and under a lease dated 9 April 1917 made between Frances Cecilia Archer of the one part and Patrick Joseph O'Connor of the other part for the term of 200 years from 25 March 1916 at a rent of £7 per annum.

Take note that Hollybrough Limited, of 1 Terenure Place, Terenure, Dublin 6W, being the party now entitled to the lessee's interest in the property, intends to submit an application to the county registrar for the county of Wicklow for acquisition of the freehold interest in the property, and any party asserting that they have a superior interest in the property are called upon to furnish evidence of the title to the property to the below named within 21 days from the date of this notice.

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

Date: 1 November 2019

Signed: O'Callaghan Legal (solicitors for the applicant), Mounttown House, 62-63 Mounttown Road Lower, Dun Laoghaire, Co Dublin

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of the premises known as 7B Lanesville, Monkstown, Co Dublin, and in the matter of an application by Victor Boyhan

Any person having a freehold interest or any intermediate interest in all that and those the property known as 7B Lanesville, Monkstown, Co Dublin (hereinafter called 'the property'), held by the applicant under a lease dated 8 April 1938 made between Bridget Myhan of the one part and Charles MacDonald of the other part for the term of 500 years from 1 September 1937 at a rent of £5 per annum.

Take note that Victor Boyhan of 7B Lanesville, Monkstown, Co Dublin, being the party now entitled to the lessee's interest in the property, intends to submit an application to the county registrar for the county of Dublin for acquisition of the freehold interest in the property, and any party asserting that they have a superior interest in the property are called upon to furnish evidence of the title to the property to the below named within 21 days from the date of this notice.

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

Date: 1 November 2019

Signed: O'Callaghan Legal (solicitors for the applicant), Mounttown House, 62-63 Mounttown Road Lower, Dun Laoghaire, Co Dublin

In the matter of the *Landlord and Tenant Acts 1967-2008* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of the lands adjoining 29 Dale View, Ballybrack, Co Dublin: an application by Green Label Property Investments Limited of Reuben House, Reuben Street, Dublin 8

Any person having a freehold estate or any intermediate interest in all that and those the lands adjoining 29 Dale View, Ballybrack, Co Dublin ('the lands') being currently held by Claude Fettes, Annette Cooper and Green Label Property Investments Limited ('the applicants') under a lease dated 30 December 1911 between George Packenham Stewart, Amy Louise Charlotte Callwell, Gertrude Emma Callwell, Helen Lindsay May Callwell and Ida Eleanor Callwell of the one part and James Mulligan of the other part, for a term of 150 years from 25 March 1911 at a rent of £23 per annum ('the lease'); the lands being that part of the lands demised by the lease and subsequently assigned by, and more particularly delineated and described in an assignment dated 12 February 1976, between John Donnellan and Mary Donnellan of the one part and Brendan O'Connor of the other part.

Take notice that the applicant, as lessee under the lease, intends to apply to the county registrar for the city of Dublin for the acquisition of the freehold interest and all intermediate interests in the lands, and any party asserting that they hold a superior interest in the lands 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, 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 Dublin 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 lands are unknown or unascertained.

Date: 1 November 2019

Signed: Gaffney Halligan & Co (solicitors for the applicant), 413 Howth Road, Raheny, Dublin 5

In the matter of the *Landlord and Tenants (Ground Rents) Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* (as amended) and in the matter of an application by Alexander MacDonald in respect of the premises known as 1A Orwell Road, Rathgar, Dublin 6

Take notice that any person having any superior interest (whether by way of freehold estate or superior interest or otherwise) in the following property: all that and those 1A Orwell Road, Rathgar, Dublin 6, being part of the property demised by indenture of lease dated 28 April 1862 made between Gerald Osbre of the first part, Charles Quinlan of the second part, Elizabeth Osbre of the third part and John Conroy of the fourth part for a term of 200 years from 1 November 1861, subject to the yearly rent of £37 and being part of the property subdemised by a sublease dated 1 July 1886 between Martin Cashin of the one part and Walter Gilbey and Henry Parry Gilbey of the other part, for the term of 150 years from 29 September 1886, subject to the yearly rent of £50.

Take notice that Alexander MacDonald, as owner of the lessee's interests in the said lease and sublease, intends to submit an application to the county registrar for the city of Dublin for the acquisition of the freehold interest and/or any superior interest in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid property are called upon to furnish evidence of their title to the aforementioned property to the below named within 21 days from the date of this notice.

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

Date: 1 November 2019

Signed: Daly Lynch Crowe & Morris Solicitors (solicitors for the applicant), The Corn Exchange, Burgh Quay, Dublin 2

DE MINIMIS NON CURAT LEX

ADVOCAT TO THE RESCUE!

Brazil's legal regulator has hired a cat, *Legal Cheek* reports. Proper order, says the *Gazette*.

Dr Leon Pussifer Paws – the advocat – originally took shelter from a storm in the Order of Attorneys of Brazil building (the equivalent of the Law Society) last February.

However, some people complained about the cat's presence in the reception area. In response, the body hired Leon as a 'lawyer'. The little furry beast now welcomes visitors and has his own Instagram page.

His representatives say that it's possible he'll get his own office, and they're looking to set up an animal rights institute in his name. The rationale for this is that, as a stray, he sustained injuries to his vocal cords that mean "he hardly meows".

But for the time being, Leon's favourite spot is President Auriney's sofa, and he has been known to scowl at the CEO.

THIS JOURNALISM LARK IS … OH, IT'S LUNCHTIME

A journalist and blogger has told the BBC that someone created a Gmail account in his name and withdrew his job application.

Nicholas Fearn said that he had applied for a job and was selected for a written assessment at the publisher's office.

When there was no reply, he assumed he was unsuccessful. However, after emailing his contact there, it turned out someone had created a Gmail account in his name and asked the company to withdraw his application.

When Fearn completed his written assessment, he said he had to save the Word document under his full name to a particular folder. In that folder, he could see the names and assessments of other candidates. On his Twitter account, he had tweeted the company to say he had applied for the role.

Could it have been another candidate? Or was it someone else who saw his tweet? Or was it ghosts?

"Are you sure this email isn't fake?"

NO HALLOWEEN BONUS THIS YEAR, STACEY…

A City banker has won a gender discrimination case after alleging she was paid hundreds of thousands of pounds less than a male colleague and was the victim of a drunken prank that included leaving a witch's hat on her desk, the *Guardian* reports.

Stacey Macken sued the London office of BNP Paribas for £4m on the basis of unequal pay, claiming she was discriminated against due to her gender and paid significantly less than a male co-worker with the same job title. She also claimed she faced harassment.

An employment tribunal heard that Macken was often rudely dismissed by one of her bosses, who would brush off her questions by saying "not now, Stacey". The phrase was used so frequently that her colleagues started to use the phrase sarcastically. Macken told colleagues she was uncomfortable working with her male colleagues shortly after joining the bank in 2013, when they left a Halloween-style witch's hat on her desk after a drinking session.

An employment tribunal upheld her complaints over unequal pay and discrimination, but dismissed the harassment claims.

THE DOGS OF WAR

Police in the US have said that a dog shot a woman while the car they shared was at a train crossing.

Responding officers found 44-year-old Tina Springer in the passenger seat of the truck with a gunshot wound. The male driver told police that he had left his pistol on the centre console when his dog jumped on it, causing it to fire a round into Springer's thigh.

Officers found a burn mark under the centre console, consistent with the driver's story. g

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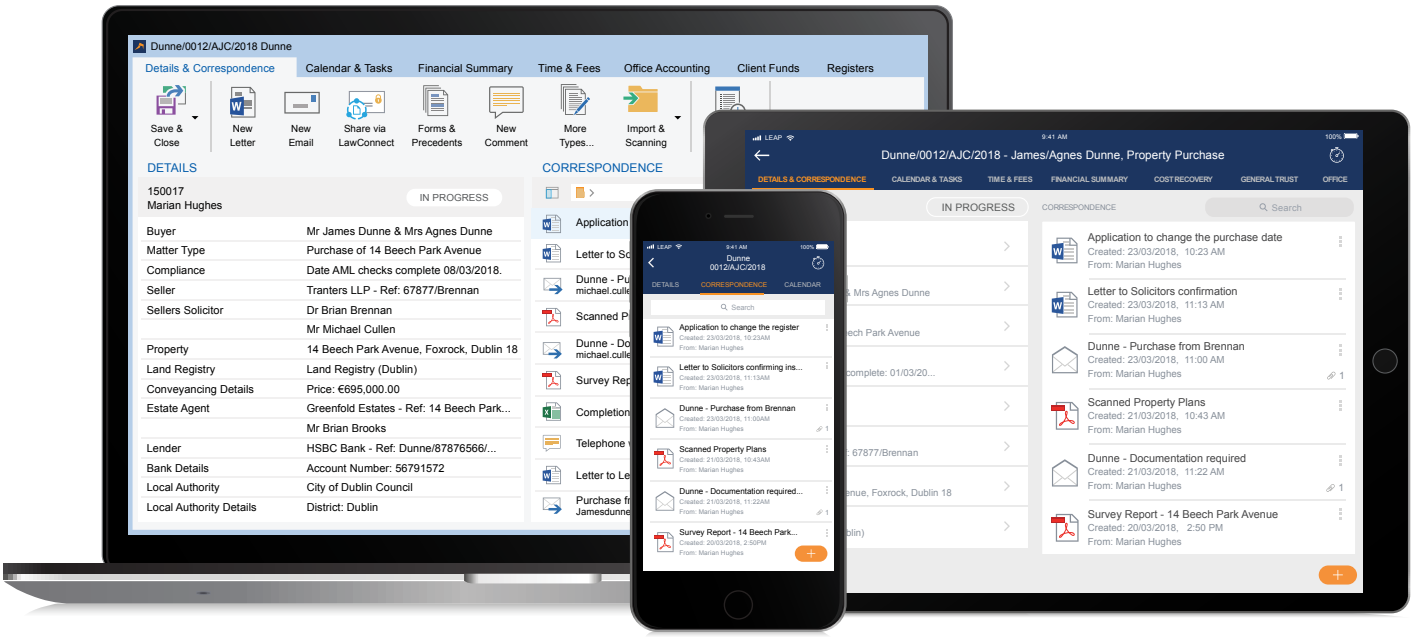

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