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Law and order
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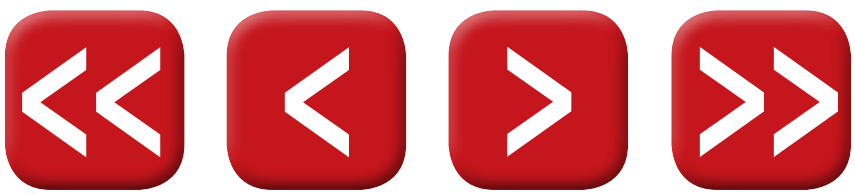

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CHECKING THE WEATHERVANE

Perhaps some might consider the holding of a conference (and all it entails) an extravagance – a sort of presidential-ego folly, where one might question the number of hours that go into making it happen.

I take a different view, and all the more so having just returned from our own conference in Fermanagh. This well-organised event allowed colleagues to experience positivity and to enjoy collegiality, a high quality of education through continuing professional development, as well as the general warmth and bonhomie engendered by such occasions.

Obviously, the 131 colleagues who attended make up a mere fraction of the profession, but the annual conference brings many advantages, not least the opportunity to check the weathervane on how members view certain issues of the day. It offers a tremendous opportunity for the Society to hear from colleagues first-hand, listen to their concerns, and see how we might be able to help.

I'm so grateful to the many colleagues who travelled to Lough Erne for our 2015 conference. We were sold out some weeks beforehand, and I was sorry that we were unable to accommodate those who left it late. Teri Kelly and her team at the Law Society, as well as Ali Murphy from MCI, deserve all the credit, and I am most grateful to them.

Bar association visits

Since the conference, I have had the great pleasure of continuing my visits to bar associations around the country. To date, with the director general, I have visited colleagues in Wexford, Wicklow, Kildare, Laois and Offaly and, more recently, Limerick, Kerry and West Cork. I'm determined to get to each and every bar association before the year is out – visits to Donegal, Sligo, Leitrim and Roscommon are in the pipeline. I draw great inspiration from such meetings and, while the director general and I have a message to tell, just as valuable for us is the feedback we receive from you.

In the meantime, real progress is being made in our discussions with the Minister for Justice and her officials regarding the *Legal Services Regulation Bill*. It is clear that the minister will now take a more hands-on approach and is determined to have all outstanding issues resolved within the next month so that the bill can be passed in the autumn. I very much welcome and look forward to the passage of this legislation. The Law Society has been monitoring the bill's progress on a weekly basis since the autumn of 2011.

In conclusion, I wish to commend a number of committees. Firstly, the Business Law Committee under the chairmanship of Paul Keane for the groundbreaking work done in seeking to bring the profession up to speed on the *Companies Act 2014*. This has been complemented by nationwide CPD 'cluster' events, together with guidance notes and a suite of precedents sent as e-bulletins to the profession. The committee's work will assist the non-specialist colleague immensely. This epitomises brilliantly what the Law Society is doing to make things easier for its members through the excellent work of its committees.

Likewise with the complete overhauling of the requisitions on title by the Conveyancing Committee, led by Suzanne Bainton. From this point onwards, conveyancers will benefit hugely from being able to use a model that is fit for purpose. The *Gazette* will deal with this topic in more detail in the July issue.

Finally, over 1,200 runners took part in the recent Calcutta Run to raise much-needed funds for two great charities – Goal and the Peter McVerry Trust (see this *Gazette*, page 18). Now in its 17th year, the event has already raised €3 million and great credit is due to the hard-working committee and to the 50-plus firms that encouraged colleagues to get involved. Last year, those taking part raised €180,000, and the hope is that that target will be beaten this year. Again, it's an example of collective corporate and social responsibility in abundance – without shouting about it from the rooftops.

Kevin O'Higgins
President

> **Conveyancers will benefit hugely from being able to use a model that is fit for purpose**

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nationwide

News from around the country

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

LOUTH

Hands across the border

An ADR seminar with a difference will be held by the County Louth Solicitors' Bar Association in conjunction with the Northern Ireland chapter of the Chartered Institute of Arbitrators, the Irish branch of the Chartered Institute of Arbitrators (CIArb) and the Newry & Banbridge Solicitors' Association.

The cross-border seminar will mark the centenary of CIArb and will take place on Saturday 27 June at the Canal Court Hotel, Newry, Co Down.

Speakers will address:

- The effect of EU policy and legislative measures on improving consumer access to ADR for cross-border disputes with traders,
- Effective advocacy in arbitration and mediation, and
- Being an effective expert witness.

Among those attending will be Mr Justice O'Hara (High Court of Northern Ireland) and Ms Monye Anyadike-Danes QC.

The event is being coordinated with the newly elected chairperson of the Irish branch of the Chartered Institute of Arbitrators, Anne-Marie Blaney. For further information and booking, email ciarb@arbitration.ie.

CLARE AND LIMERICK

Lest ye be judged intern...

PIC: ARTHUR ELLIS PHOTOGRAPHY

(From l to r): Dan O'Gorman (president, Limerick Solicitors' Bar Association), Judge Carroll Moran, Judge Marie Keane, Judge Eugene O'Kelly, Ms Justice Isobel Kennedy, Judge Tom O'Donnell and Sinead Kenny (president, Clare Bar Association

Members of the Clare Bar Association and the Limerick Solicitors' Bar Association attended a dinner on 24 April at Dromoland Castle, Co Clare, to mark the retirement of Mr Justice Carroll Moran, the appointment of Ms Justice Isobel Kennedy to the High Court, the elevation of Judges Tom O'Donnell and Eugene O'Kelly to the Circuit Court, and the appointment of Judge Marie Keane to the District Court. Special guests included Judge Gerald Keys, Judge Patrick Durcan, Judge Marian O'Leary and Judge Mary Larkin. Over 130 members of both associations attended. Tributes and presentations were paid to the guests of honour.

KILDARE

Huge turnout for Lilywhites

Helen Coughlan of Patrick J Farrell & Co solicitors tells 'Nationwide' that the Kildare Bar Association (KBA) held a very well-attended meeting on 8 April, featuring five speakers on diverse topics. The gathering heard from Law Society President Kevin O'Higgins and Ken Murphy (director general), who discussed issues of interest to the profession, including the difficulties solicitors are encountering with taxation of costs and current lengthy delays.

Kevin (formerly of this page) continues to draw the crowds on his, ahem, nationwide tour, combining his unique knowledge of sole practitioner issues with his experience of a lifetime representing colleagues to great effect.

Local solicitor and KBA treasurer Mark Stafford (the father of twins with his wife and Kildare colleague Marian Thynne) managed to find the time to give an informative talk of particular interest to conveyancers on the topic of housing estates that have been taken in charge by the local authority.

DUBLIN

Anyone for Independence Day tennis?

'Spanner' O'Malley is seeking recruits for the sixth annual DSBA tennis tournament, in partnership with Law Society Skillnet, which this year will be held on Saturday 4 July at Donnybrook Lawn Tennis Club. DSBA members, friends and guests are welcome to book their places for the mixed-doubles tournament. Further details can be had by emailing spanneromalley@eircom.net.

Network-building for the in-house solicitor

The In-house and Public Sector Committee, in partnership with Law Society Professional Training, held a panel discussion on 21 May 2015, entitled 'Connecting the in-house lawyer – how to build your network'. Topics included:

- The importance of your internal and external network for your professional and personal development,
- When and how to review and evaluate your network,
- How you can develop and improve your network.

The discussion was facilitated by a select panel of senior practitioners who shared observations and insights on internal and external networking based on their personal career paths and experiences. Smaller breakout discussion groups provided an ideal opportunity to learn and explore the issues raised by the panel.

PIC: LENSMEN

The In-house and Public Sector Committee organised a panel discussion on 21 May 2015 on the topic 'Connecting the In-house Lawyer -- How to build your network'. The panel members and committee organisers included: *(front, l to r)*: Louise Campbell, Sylvia McNeece, Maureen Synnott, Jeanne Kelly, Rachael Hession and Peter O'Neill; *(back, l to r)*: Brian Connolly, Mark Cockerill and Deirdre O'Sullivan

Law Society to launch garda station solicitor search facility

The Law Society's 'Find a garda station solicitor' facility has gone live, *writes Emma-Jane Williams* (Criminal Law Committee secretary).

The facility is a service designed to help someone to find a solicitor's contact details when detained in garda custody. It will enable gardaí to search, by division, for a solicitor available to attend their local garda station in order to provide legal advices and attend interviews.

To view and use the search facility, visit www.lawsociety.ie/gss.

Practising solicitors can add their contact details to this new search facility by registering as follows:

1) Login to www.lawsociety.ie with your solicitor number and password, click on your 'Profile' in the top right-hand corner of the site, then select 'garda station search' from the left-hand menu.
2) Tick the 'register' option on the 'profile' page to complete and submit the registration form. You will be able to include after-hours telephone numbers and select the divisions where you are available to attend.
3) A confirmation email will be sent to you informing you that your details have been registered.

If you don't know your solicitor number, please check your practising certificate or contact records@lawsociety.ie.

For assistance with your password or the registration form, email webmaster@lawsociety.ie.

Once the 'garda station solicitor search' has been populated with the names and contact details of a significant number of solicitors, it will be officially launched to An Garda Síochána.

Calling all younger members

Following a successful motion at the Law Society's AGM in November 2014, the Younger Members Committee of the Society has been re-established.

The committee will represent the views and promote the interests of younger members who are in the early and developmental stages of their careers. The committee will focus on members of the profession who have been qualified for less than 15 years.

Younger members represent a significant proportion of the Society's membership – approximately 44% are aged between 20 and 39, according to the 2013/14 annual report.

Membership of the committee is drawn from a wide range of firms and locations, with varying levels of qualification. This ensures a significant breadth of opinion and a voice for all constituencies.

The committee can be contacted through its secretary Sinead Travers at s.travers@lawsociety.ie.

The Younger Members Committee is comprised of Carol Eager (chair), Emer O'Connor, Jennifer Dorgan, Ciara O'Callaghan, John Costello, Aoife Hennessy, Donal Hamilton and Frank Halley.

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CPD clusters coming to a venue near you in June

Since 2012, the Law Society Skillnet has developed regional clusters throughout Ireland in partnership with local bar associations and with the support of Skillnet grant funding from Skillnets Ltd and the Department of Education and Skills.

A cluster is formed when a number of bar associations come together to identify the training they require for their members and the content and speakers whom they believe are most suitable to meet this requirement.

The bar associations identify their location of choice, the most suitable date, and the format for the day, which usually includes a networking lunch and drinks reception. The clusters are about education, networking and collegiality. The networking lunch and evening reception is just as important as the educational sessions, as it provides a forum for sharing and solving problems and relaxing away from the office.

At the first regional cluster event of 2015, held in Carrick-on-Shannon on 17 April, more than 230 practitioners attended, among them *(front, l to r)*: Mary Rose McNally, Katherine Kane, Maurice Galvin, Kevin O'Higgins, Valerie Peart, Kieran Ryan and Christopher Callan; *(back, l to r)*: Richard Hammond, Gwen Bowen, Colette Reid, Mary Jackson, Attracta O'Regan, Lorcan Gearty, Suzanne Bainton, Edward Tynan, Aisling Penrose, Aoife McDermott and Padraic Courtney

Your voice, your choice

As part of the implementation of the Future of the Law Society Task Force recommendations, it was agreed that the Law Society would subsidise CPD through the cluster structure. This sponsorship enabled Law Society Skillnet to reduce the fee for these events to an affordable level for all solicitors.

The cluster structure was also used to implement a second task force recommendation: to share information about the work of the Council and the Law Society's committees.

'Your voice, your choice' panel sessions were introduced, where the president and Council members could share information about the work being carried out for and on behalf of members. More importantly, solicitors throughout Ireland could raise practical issues of concern to them in their daily practice and seek solutions wherever possible.

The use of clusters to achieve these two important outcomes – subsidisation of CPD and a forum to meet the Council and committee members – has been a fantastic success. Members' comments from feedback forms included "excellent day, exceeded my expectations, value for money" and "the attitude shown to the difficulties of general practitioners in small firms by the Law Society speakers was the most useful element of the seminar".

An elderly solicitor said he had never been to a Law Society CPD event before but came to the Mansion House cluster because it was cheap. In hindsight, he said, the term 'cheap' was insulting, as the event had represented "value for money, with an excellent quality of topics and speakers", adding that he would be back.

Cluster bomb

Three new clusters will be formed this year. This means that every county in Ireland will now benefit from low-cost, relevant, and quality CPD events. Members will have access to a forum where they can raise issues of concern at the 'your voice, your choice' panel session.

The success of the clusters depends on many factors – the support and participation of solicitors, the dedication and hard work of bar associations, and the work of the Law Society Skillnet Steering Committee.

As an example of what can be achieved, the Carrick-on-Shannon cluster in April this year welcomed 230 solicitors from across the country. This cluster was held in collaboration with bar associations from Leitrim, Longford, Roscommon, Sligo and the Midlands. In 2014, over 1,100 solicitors attended cluster events, involving almost every bar association in the country.

The next events will take place at the Temple Gate Hotel in Ennis on 19 June and at Lough Eske Solis, Donegal, on 26 June. Further clusters will be delivered from September through November in Castlebar, Castleblayney, Dublin, Cork and Kilkenny.

Full details can be obtained from www.lawsociety.ie/lspt.

FOCUS ON MEMBER SERVICES

LawCare is there for you

Coming at the start of Trinity term and prior to the August vacation, many solicitors find that June is one of the busiest months in their calendar. It is well recognised that the pressure of a heavy workload can have an impact on health and emotional well-being. If you are feeling the strain, LawCare can help.

LawCare is funded by the Law Society as a member service. It is a free and completely confidential advisory service for lawyers, trainee lawyers, their immediate family and staff to help deal with health issues and related emotional problems that can result from a stressful career in law. These issues may include stress, depression, drug or alcohol misuse and dependency, eating disorders, bullying, bereavement and gambling.

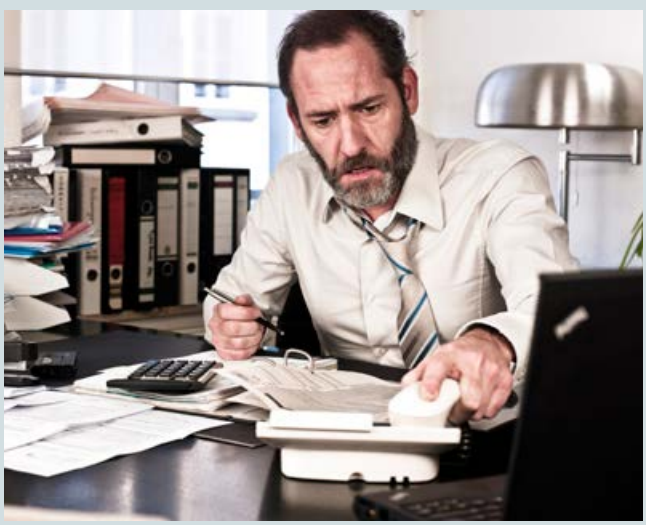
LawCare will refer you to a professional for medical or counselling help, if appropriate. You may also be offered the support of a lawyer volunteer.

You can avail of LawCare's service by telephoning its free helpline (1800 991 801). The helpline is open 365 days a year, Monday to Friday, 9am to 7.30pm, and on weekends and public holidays from 10am to 4pm. Out-of-hours calls will be returned within 24 hours if you leave a message and contact details. LawCare can also be contacted by email at help@lawcare.ie.

It also provides informative preventative education presentations to lawyers. These presentations are free, but you will have to fund expenses. Most of the presentations carry CPD points. Full details of the presentation service and how to book are available at www.lawcare.ie.

A range of information materials on emotional and medical issues is available on LawCare's website. Firms, in particular, are encouraged to make these available to staff.

Finally, LawCare welcomes lawyers who wish to join its network of volunteers. Contact LawCare at 0044 1268 771 333 or email admin@lawcare.ie. LawCare is particularly interested in hearing from younger members who are interested in volunteering.



Lights, camera, action!

Given that we live in such a visual world, *LinkedIn* profile photos can play a key role in building people's personal brand.

Because of this, students who attended the Law School's *LinkedIn* careers seminar were given the opportunity to have their profile pictures taken by a professional portrait photographer from DAK Photography.

Almost 70 trainees took up the offer at Blackhall Place on 30 April 2015.

To ensure that they looked polished and professional, make-up artists and stylists (recent graduates from the LA College of Creative Arts) were on hand to apply make-up and give styling tips. The feedback has been very positive. It'll be interesting to see what the reaction will be once students start updating their photo profiles.

Consolidate your knowledge

With more than five pages of practice notes and yet another feature on the *Companies Act 2014* in this *Gazette*, we thought we'd mention the new offering from KnowledgeBase – again.

It's a comprehensive interactive online guide to the act (see last issue, p8, for details) and it's available for a one-off cost of €350 in the first year and an annual management fee of €50 thereafter. See www.knowledgebase.ie.

Cleaning up at the Irish law awards

Barry St John Galvin was the winner of the 'Lifetime achievement award'

The winner of the 'Human rights award' was Br Kevin Crowley (Capuchin Day Centre, Smithfield) with David Barniville (chairman, Bar Council)

One of Dublin's largest law firms, Eversheds, was the big winner at this year's AIB Private Banking Irish Law Awards on 30 April 2015. Eversheds took the gongs for the 'Law firm of the year', 'Irish international law firm of the year' and 'Alternative dispute resolution law team of the year'. The awards were presented by Minister for Justice Frances Fitzgerald.

The 'Lifetime achievement award' went to Barry St John Galvin, in part for his distinguished 30-year career as state solicitor for Cork city. But primarily it was for his inspirational leadership, legal skill and heroic physical courage as the promoter, designer and first legal officer of the Criminal Assets Bureau.

The 'Pro bono and public-interest team/lawyer of the year' title was awarded to David Langwallner for his work on the Irish Innocence Project at Griffith College, Dublin.

The 'Young lawyer of the year (under 35)' award was presented to Aoife Corridan of Michael J Staines & Company for her work on the Anglo trial.

Jacci Fox of Holmes O'Malley Sexton was presented with the 'Legal executive of the year' award for her leadership on the firm's debt-collection unit.

Ernest J Cantillon Solicitors won 'Litigation case of the year' award for their work on *Russell v HSE*.

Bord Gáis Energy's legal team picked up the 'In-house legal team of the year' award.

The Criminal Asset Section at the State Solicitor's Office took the 'Public sector team of the year' award for its advice to the Criminal Assets Bureau.

Daniel Spring & Co was the recipient of a new category, 'Dublin law firm of the year', while Rochford Brady Group was the recipient of another new category award, 'Service provider to the legal profession'.

Barry Rafferty was named 'Sole practitioner of the year', while the Bar Council's human rights award was presented to Brother Kevin Crowley of the Capuchin Day Centre.

A special merit award was presented to Dr Thomas B Courtney of Arthur Cox for his impressive, lengthy work on the *Companies Act 2014*.

Dr Eamonn G Hall, chairman of the judging panel, said that the judges had greatly admired the many achievements of the winning lawyers. Tracey Carney, event director, said that the standard and number of nominations in 2015 had been exceptional, with a 50% increase in nominations over 2014.

Charity partners for the awards are the Solicitors' Benevolent Association, the Barristers' Benevolent Society, the Capuchin Day Centre and the Peter McVerry Trust.

The Norsemen cometh! To a warm welcome home

In an unprecedented international exercise in researching, comparing and contrasting the two legal professional bodies, the entire membership of the ruling board of the Norwegian Bar Association spent 17 April 2015 in the headquarters of the Law Society of Ireland, *writes Ken Murphy*.

Ireland and Norway have similar populations and numbers of lawyers. It is almost a cliché among legal professional bodies throughout the world, but true nonetheless, that the challenges that legal professions and legal professional bodies face everywhere are remarkably similar. Accordingly, we can and should learn from each other's experiences. It was interesting to review the things we do the same – although sometimes even more interesting to identify the things we do differently. For example, the elected ruling body of the Norwegian Bar Association, the board, has just 12 members. The Council of the Law Society of Ireland has no less than 43.

The Norwegians were so greatly impressed by our educational facilities and by all that the Law Society of Ireland does in both pre and post-qualification legal education that they are returning again shortly to study all of this more deeply. They were particularly impressed by our diplomas programme. The Irish, by contrast, could only hear with envy of the immense oil-fuelled financial strength of the Norwegian economy and the prudent way in which this wealth is managed.

Ken Murphy, president of the Norwegian Bar Association Erik Keiserud, Kevin O'Higgins and secretary general of the Norwegian Bar Association Merete Smith

Founders of Dublin

After a day's meetings, president Kevin O'Higgins and the members of the Coordination Committee hosted a dinner for Norwegian Bar Association president Erik Keiserud, secretary general Merete Smith, and their colleagues.

In his speech, Kevin noted that the earliest Viking raiders – the founders in or around 840 AD of what is now the great city of Dublin – came from the western and southern shores of Norway. Following the Battle of Clontarf in 1014, the Vikings (who called themselves 'ostmen') moved their settlement to the north bank of the River Liffey. The area, including and surrounding Blackhall Place, is to this day known as Oxmantown. "Accordingly", Kevin O'Higgins announced, "to our very good Norwegian friends and colleagues I say 'welcome home'!"

Setanta High Court test case

The Law Society has agreed to act as claimant (by order of the court), with the Motor Insurers' Bureau as respondent, in High Court proceedings designed to determine whether the MIBI has a liability to pay out in respect of claims against persons who were insured with the Maltese-registered insurance company, Setanta, which went into liquidation in April 2014.

The President of the High Court has ordered that these proceedings be heard by Mr Justice Hedigan on 13 and 14 July 2015.

OGP engages with profession on legal procurement

The public sector spent in the region of €110 million on legal services in the three years from 2011-13, *writes Cormac Ó Culáin, Law Society public affairs executive*. The figure was revealed by Sean Bresnan of the Office of Government Procurement (OGP) at a seminar organised by the Law Society on 22 April. The estimate of the State's current spend on legal services is across a range of Government sectors and amounts to €36.6 million annually.

Of the €110 million – which includes services provided by both barristers and solicitors – €47 million was spent on legal services provided by solicitors. This does not include the spend on legal aid. This figure represents an annual public-sector procurement spend on solicitor services of approximately €15.5 million.

The figures came to light during a 'listen-and-learn' session attended by 130 solicitors at Blackhall Place, where the OGP presented its proposals for reform in the area of legal services procurement. The seminar was facilitated by the Society's professional training section.

The principal State purchasers of solicitor services are the HSE (60% of total spend) and local authorities (32%). Based on the OGP's expenditure data, the State depends heavily on smaller firms (45% of spend going to firms of between one to ten solicitors), but it has a significant dependency also on larger firms of 100 solicitors or more.

Reformed operating model

Mr Bresnan outlined that, currently, the visibility of legal spending is fragmented and deficient and, as a consequence, the OGP aims to move towards a more centralised and standardised approach to procurement.

Put simply, the OGP is seeking to position itself at the core of legal services expenditure – ensuring that common policies, processes and standards are applied across the public service.

Five separate frameworks are proposed and, within each, a number of lots and sub-lots that reflect the characteristics of the particular framework.

Sean Bresnan of the OGP: the principal State purchasers of solicitor services are the HSE (60% of total spend) and local authorities (32%)

The five frameworks are:
- Major and complex projects,
- Local authorities,
- Educational training boards,
- Regulatory, and
- Whole of Government.

In the context of the local authority book of business, lots will be broken down geographically and thereafter within each region into four sub-lots based on the most common services supplied:
- Core local authority services,
- Code enforcement,
- Property and conveyance,
- Commercial and corporate.

A similar approach is being adopted for many of the other frameworks. It is intended that major and complex projects and local authority frameworks will issue by the end of year.

Challenges and opportunities

A key and welcome consideration voiced repeatedly by the OGP is how to ensure that each framework has a representative membership – namely, that it reflects the capacity of the market.

Other challenges that arise in the reformulation of the procurement model include balancing the importance of institutional knowledge that a firm may have of a public body with the equality of opportunity for other firms – either as members within the framework or in respect of lowering the barriers to entry. Drawdown and access reforms will be closely watched.

In that regard, the OGP's current thinking will be informed by the feedback received from members at the seminar and via the response document issued to attendees. Issues such as the suitability of turnover thresholds, minimum professional indemnity cover, and how actual services should be billed/costed are all being considered.

A change in culture and structure presents opportunities for both incumbents and new entrants to recast their offering. A focus on quality and performance is undoubtedly mutually beneficial and should give rise to an opening up of the wider client base. This will be maximised where reporting requirements are least burdensome, consistently applied, and understood by the public-sector purchaser.

FOCAL POINT

sustainable and viable regional market

In its feedback to OGP, the Law Society emphasised that, whatever final model is agreed, it must:
- **Engender mutual confidence between the client and provider,**
- **Ensure that prices reflect the fair and reasonable costs undertaken by firms, and**
- **Promote the sustainability of legal services and practices, particularly outside the main urban centres.**

One mechanism proposed by the Society is to establish a working group between the Society and the OGP, mirroring each of the framework areas. This would facilitate feedback into the system in an efficient and effective way, on issues not only relating to the capacity of the market, but also regarding the performance of public-sector purchasers.

The seminar represented a constructive meeting between the members and State. Many practitioners spoke from the floor, and an invitation was provided to those present to make more substantive remarks directly to the OGP. The proposals are currently being reviewed on foot of feedback received. Further updates and discussions are anticipated.

Credit must be given to Mr Bresnan and his team for their engagement on the issue. The proof of the pudding, however, will be in the final outcomes: how the frameworks will be ultimately implemented and the facility for continuous improvement.

New chair of Solicitors Disciplinary Tribunal named

Niall Farrell, of Patrick J Farrell & Co, Newbridge, Co Kildare, has been appointed by the President of the High Court, Mr Justice Nicholas Kearns, as the new chairman of the Solicitors Disciplinary Tribunal with effect from 21 May 2015.

He succeeds Ward McEllin, of Claremorris, Co Mayo, who had completed the statutory maximum period of ten years as a member of the tribunal on the previous day.

Four other members of the tribunal had also completed statutory maximum terms on that date: Mary Cantrell (Dublin), Caroline Devlin (Dublin), Anthony Ensor (Wexford) and Hugh O'Neill (Dublin).

The five new members of the tribunal are Barbara Cotter (Dublin), Helen Doyle (Wexford), Geraldine Kelly (Dublin), Joseph Mannix (Kerry) and Justin McKenna (Dublin).

"The work of members of the Solicitors Disciplinary Tribunal is difficult and time consuming," commented Law Society director general Ken Murphy. "In effect, they enforce, on a case-by-case and quasi-judicial basis, the standards of conduct required of members of the profession.

"By law, the Solicitors Disciplinary Tribunal operates independently of the Society and does its vitally important work in the public interest. It is generally an onerous role to be a member, and the warm thanks of the public and of the profession are due to all who serve on it," he continued.

It may well be wondered, in the light of the provisions of the *Legal Services Regulation Bill*, what the future of the Solicitors Disciplinary Tribunal, in fact, will be. It is ultimately planned to be replaced by a new tribunal, that will have responsibility for disciplinary matters in relation to both branches of the legal profession.

New tribunal chairman Niall Farrell

However, meetings with officials of the Department of Justice and Equality in relation to this bill indicate that the expectation is, on the advice of the Attorney General, that the caseload on hand in the Solicitors Disciplinary Tribunal, when the *Legal Services Regulation Bill* is enacted, will have to be 'run off' by the existing tribunal – something which the Society expects would probably take a number of years to complete.

DSBA Law Book Awards

Justice Minister Frances Fitzgerald will present the DSBA Law Book of the Year Awards at a gala dinner in the Hilton Doubletree on Friday 26 June. Tickets sold within two weeks last year, so the advice is to get booking. DSBA president Aaron McKenna is grateful to the sponsors, Byrne Wallace, Peter Fitzpatrick & Co (legal cost accountants) and Law Society Skillnets.

Nominees for this year's shortlist include Prof Wylie, Frances Meenan, Paul Lambert, the Arthur Cox employment team, Karl Dowling, Garnet Orange and several other familiar faces. Last year's special achievement award winner, Bill Holohan, is a surprising absentee but has vowed to return next year to reclaim one of the prizes. Tickets from maura@dsba.ie or visit www.dsba.ie for more details.

Bill is 'a charter for managed and regulated change'

"You are the best placed generation of lawyers to shape the future of your profession and to further enhance the legal system in response to exponential change," Minister for Justice and Equality Frances Fitzgerald told newly qualified solicitors at their parchment ceremony on 14 May 2015.

Referring to the significant opportunities in the offing for the legal profession, she added: "We are living in a time of great change, which is shaping the career path of lawyers and other professionals in a very different way to that which prevailed even just a decade ago.

"As you will be aware, part of the Government's response to this new and challenging legal services environment is to be found in the *Legal Services Regulation Bill*. Having completed its Dáil stages on 22 April, the bill, just yesterday, completed second stage in the Seanad, where I will be bringing forward further amendments."

She described the bill as "a charter for managed and regulated change". It maintained the independence and professional principles of both legal professions, while balancing this with the wider interests of their clients and of a sustainable, competitive economy.

Recent amendments introduced to the bill while it was before the Dáil include a series of new provisions to make prudential provision for the future participation of solicitors and barristers in new legal business models. These include legal partnerships between solicitors and barristers or between barristers themselves. They also include multidisciplinary practices under which barristers or solicitors may choose to provide their services in tandem with non-legal service providers.

"I have no doubt that there are legal practitioners who will wish to avail of these new opportunities," Minister Fitzgerald said. "In so doing, they will also offer new areas of employment and specialisation."

PICS: LENSMEN

At the parchment ceremony on 14 May were *(l to r)*: Ken Murphy, junior vice-president Patrick Dorgan, Minister for Justice and Equality Frances Fitzgerald and President of the High Court Nicholas Kearns

Law Society President Kevin O'Higgins and director general Ken Murphy welcomed Minister for Justice and Equality Frances Fitzgerald, who was the guest speaker at the parchment ceremony

Update on the *Legal Services Regulation Bill*

Law Society President Kevin O'Higgins, director general Ken Murphy, and director of regulation John Elliot were present in the public gallery on 13 May 2015 when the *Legal Services Regulation Bill* commenced its passage through the Seanad.

The bill completed second stage in the Seanad that day. It will return for committee stage in the autumn, when it is expected that a great many amendments – most of them not as yet drafted – will be made to the bill as passed by the Dáil earlier this year.

Among many other remarks, Justice Minister Frances Fitzgerald said: "I look forward to further discussions with the Law Society on the interface between its retained compensation fund functions and the independent operation of the new professional conduct regime that will cover solicitors and barristers. I also intend to bring forward provisions to allow limited liability partnerships, as well as provisions to allow barristers to sue for their fees.

"I will continue to negotiate the staffing of the new regulatory authority with the Minister for Public Expenditure and Reform, with the firm intention of resolving the issue of those existing staff of legal professional bodies who deal with public complaints."

Put on your red shoes and dance the blues

CAVAN AND MONAGHAN

PIC: ADRIAN DONOHOE

A retirement dinner dance was held in honour of Judge Sean MacBride at the Hotel Kilmore, Cavan, on 14 March 2015. The event was hosted by the County Cavan Solicitors' Association and the Monaghan Bar Association. *(Front, l to r)*: Kevin Hickey (president, Monaghan Bar Association), Paul Kelly (president, County Cavan Solicitors' Association, Judge Sean MacBride, Gretta MacBride, Eirinn McKiernan (secretary, County Cavan Solicitors' Association), Rita Martin and Linda Smyth. *(Middle, l to r)*: Jackie Maloney, Michelle Flanagan, Emer Holohan, Edel O'Neill, Catherine McGuigan, Mary Brady, Denise Cassidy, Aine Mc Guigan, Eilis McCabe, Mary B Duffy, Aisling Hayes, Mary McAveety, Angela Dolan, Emily Sherlock, Paul McCormack, Siobhan McNialis, Brid Mimnagh and Gerry Jones. *(Back, l to r)*: Denis Mc Dwyer, Adrian Kelly, Brian Morgan, Michael Keane, Martin Cosgrove, Damien Glancy, Oliver Costello, Alan Wilkie, Tony Dunnagher and Pauline Brady

KERRY

PIC JOE HANLEY

Law Society President Kevin O'Higgins and director general Ken Murphy were guests at the Kerry Law Society's AGM at the Ashe Hotel, Tralee, on 11 May 2015, where they met with a large group of practitioners to discuss many matters of relevance to members of the profession

The hitchhiker's guide to marketing and growing a business

Solicitor and author Flor McCarthy with Minister for Justice Frances Fitzgerald, family members, and friends at the book launch

Clonakilty-based solicitor Flor McCarthy is no stranger to marketing, but it was something of a coup to persuade the Minister for Justice Frances Fitzgerald to launch his new book *The Solicitor's Guide to Marketing and Growing a Business.*

The launch took place at Solomon Fine Art in the Westbury Hotel, Dublin, where Flor was joined by many guests and friends. The minister was glowing in her praise of the book, saying: "This book gives you a shorthand for running a modern legal practice so you don't have to go out and invent the concepts yourself. Flor has captured all of them in this book. It's beautifully written, is very attractive in terms of its concepts, and is extremely practical. It will be very helpful to people in the business of law."

Speaking at the launch, Flor said: "The book is aimed at small firms with five partners or less. These firms make up 92% of the profession in Ireland. However, they have been hardest hit by the recession of the last seven years, and many have struggled.

"The people who need most help with legal services, the ordinary citizens and small businesses of Ireland, depend on small firms. But if those firms are to have a future and continue to be viable for long term, they need sustainable modern business models. That is why I wrote the book."

The Solicitor's Guide to Marketing and Growing a Business **retails for €24.97 plus postage, and can be purchased at www.thesolicitorsguide.com.**

New Dublin offices for RDJ

At the RDJ launch were *(from l to r)*: Billy Glynn, Conor McCarthy and Padraic Brennan

Ronan Daly Jermyn officially opened its new Dublin office on 15 May. The firm already boasts offices in Galway, Cork and London and, in the past year, has added 43 new staff to its ranks.

The firm celebrated the opening at the Mansion House, where the guest speaker was the head coach of the Irish rugby team, Joe Schmidt.

Former president of the IRFU Billy Glynn conducted a question-and-answer session with Mr Schmidt. It was a momentous occasion for Billy also, as he was the founding partner of William B Glynn Solicitors in Galway, which merged over eight years ago with Ronan Daly Jermyn.

Lincoln Recruitment Specialists has appointed Paul Flynn as its new business development manager. Paul, Dublin GAA's first consecutive four all-star award winner, is seen here with Shay Dalton (managing director, Lincoln Recruitment Specialists)

Haven provides a lifeline for Haiti's most vulnerable

On 24 April, I travelled to Haiti to take part in a Haven volunteer week, along with 29 other volunteers from Ireland, Canada and the US, *writes Íde O'Neill*. Haven is an Irish NGO working solely in Haiti to facilitate the provision of adequate water, sanitation, shelter and educational solutions for vulnerable Haitians.

LK Shields (where I am an associate solicitor) is the official corporate partner to the Haven partnership. The firm's involvement includes a pledge to send a volunteer to Haiti to take part in the NGO's volunteer week in 2015, 2016 and 2017. I was lucky enough to be chosen to travel this year.

We landed in Port-au-Prince, which, with its extreme pollution, poverty and overcrowding, was a shock to the system. From there, guarded by security, we started our journey by bus and boat to one of Haiti's satellite islands, Île-à-Vache, where we would be working for the week.

Looking out at the slums and chaos that surrounded us as we left Port-au-Prince, I became more and more grateful for the life that I have in Ireland. Witnessing such dire conditions made my usual everyday moaning about having to get up for work, or being too busy, seem trivial and selfish.

On arrival at Île-à-Vache, the volunteer group was divided into five teams:

- Carpentry, to make shelving and doors for the orphanage in the village of Madame Bernard,
- DIY, to fix the leaking roof of the orphanage and carry out other repairs,
- Painting,
- Path-building (to lay a concrete path on the steep mud-track from the orphanage to the village, which is all but impassable in wet weather, and
- Tree-planting.

Assigned to the tree-planting team, I took part in a programme that aims to plant 3,000 cherry trees in homes across Île-à-Vache. These cherries will provide the locals with a healthy fruit diet and a valuable cash crop.

Each day, guided by locals, we walked the island in groups of two volunteers from 8am to 4pm planting trees. In heat of more than 30 degrees, with high humidity, the work was tough but very rewarding. It gave us a first-hand insight into Haitian life and an opportunity to meet many of the locals, from fishermen to farmers, grandmothers to school children.

Leaving Île-à-Vache was bitter-sweet. While I wasn't going to miss the rats, tarantulas and poor sanitation, it was hard to turn your back on the children in the orphanage and the community that had adopted us for the week. I have, however, returned home with a renewed gratitude for the life I have – and the hope that I have made a difference, however small, in the lives of those living on Île-à-Vache.

If you would like to support Haven to continue with its work in Haiti, visit www.mycharity.ie/event/ideoneill. Thanks to all those who have donated almost €4,000 so far.

Stars in their eyes

The Stanhope Street Primary and Secondary School Star Awards, supported by the North West Inner City Network, were hosted recently in the Presidents' Hall, Blackhall Place, under the Law Society's corporate and social responsibility programme. The Stars were nominated in ten different categories and competition was fierce. The awards were presented by John Lonergan. Also pictured, Aoife Ní Bhreacháin (Stanhope Street Primary School) and the brilliant stars!

DUFF THE MAGIC DRAGON STOKES THE FIRE WITHIN

Wannabe entrepreneurs are used to the fear and trepidation of entering the *Dragon's Den*, only to hear the fatal words, "I'm out!", as their hopes of becoming a millionaire by the age of 30 are dashed.

Calcutta Run participants had nothing to fear, however, when dragon Gavin Duffy stepped onto the podium to launch the start of the famous charity run on 16 May. He stoked the fire in the bellies of this year's charity entrepreneurs – runners, walkers, strollers, cyclists and, er, tennis players.

Such was their subsequent enthusiasm that many of the 1,070 participants could have been a spent force by the time they'd reached the top of Arbour Hill. There was plenty of time for recovery, though, and just in case the stalwart athletes had suffered disorientation due to dehydration, the rumbling sound of the Ma Samba drummers drew them, Siren-like, to the finishing line at Blackhall Place.

Shane Collins retained the 10k title with a personal best of 34.08 minutes. He was followed closely by David O'Connor and Hugh Hunt. The women's winner, Caroline Crowley, completed the 10k route in 36.37 minutes. Hot on her heels were Deirdre Byrne and Annette Kealy.

Over 75 firms from across the country were represented at this year's event, as well as a large group of runners from the Bar Council and from various companies across Dublin.

The DX 5k Firm Challenge was won by 'Distinctively Dechert' of Dechert Solicitors, while the 10k trophy was taken by the A&L Goodbody team 'Pain

PICS: KILLIAN BRODERICK/DAN BUTLER

is temporary, PBs last forever'. The tennis tournament attracted 13 teams, who battled it out at various tennis clubs throughout Dublin. Mason, Hayes & Curran claimed the winners' shield.

With donations still rolling in, the organisers are hopeful of achieving the 2015 target of €200,000. Firms should send their sponsorship cards and donations to Calcutta Run, c/o Law Society of Ireland, Blackhall Place, Dublin 7; or Calcutta Run, DX 79; or alternatively make a donation at www.idonate.ie/calcuttarun.

The Calcutta Run committee congratulates the firms, participants and supporters who assisted the run's charity partners, GOAL and the Peter McVerry Trust. It also extends its thanks to all sponsors and supporters, including Bank of Ireland, DX, The Panel, the Institute of Legal Cost Accountants, One Escape Health Club, Kefron Filestores, Pearl AV, Gwen Malone Stenography, Legal & General Software, Base2Digital, Sunway Travel Agency, Office Depot, Glenpatrick Water, Lucozade Sport, Musgraves, Noonan Facility Management, PartyCentral.ie, H&J Martin Integrated Services, Synergy Security Solutions and Bizquip.

Finally, a big shout-out to all the volunteers and staff who helped out this year. See you next year!

news in depth

GETTING TO GRIPS WITH THE RULE OF LAW

This year's annual conference at the Lough Erne Resort addressed the hot topic of 'The rule of law – luxury or necessity?' Mark McDermott reports

Mark McDermott is editor of the Law Society Gazette

This year's annual conference had it all. If you were to describe it in female terms, it was like Nigella Lawson meets Carol Vorderman; or, in male terms, Matt LeBlanc meets Kit Harington. Then again, the mere presence of the Donegal football team, who were sharing the venue while on a training camp, ticked the 'scrummy' box for the majority of our female practitioners.

The real beauty of this year's conference was the stunning venue – it would be hard to beat the serene surroundings of the Lough Erne Resort outside Enniskillen. We had Law Society President Kevin O'Higgins to thank for that. He had battled hard to move the conference outside the jurisdiction – okay, it was 'a stone's throw' – but the sterling in our pockets and the red postboxes were enough to fool us into thinking that we were 'somewhere else'.

The brains of the operation were, of course, the speakers. There was something for everyone: renowned practitioner Frank Buttimer, Gerard F O'Donnell (solicitor to the Halappanavar family), Dr Geoffrey Shannon (special rapporteur for children) and Sarah Lennon (in-house legal counsel for Google). And that was just day one!

Day 2 introduced even bigger guns – Supreme Court judge Frank Clarke and European Ombudsman Emily O'Reilly.

All of the speakers addressed the theme of 'The rule of law at home and abroad – a luxury or necessity?'.

Frank Clarke took a very basic and practical standpoint on the matter, asking us to consider what was meant by 'the rule of law'. As he said: "Everyone says they are in favour of it, but it is perhaps not easily defined."

> **'The rule of law – everyone says they are in favour of it, but it is perhaps not easily defined'**

Broadly speaking, most people had a common understanding of what it meant, he said, but aspects of the definition were "open to some debate" and he believed that it was important to try to be "precise about what we're actually talking about".

Focusing on the *Magna Carta*, which is said to be the genesis of the ideal of the rule of law, he commented that it was "necessary to remind ourselves that, when King John signed the *Magna Carta* on 15 June 1215, he in effect tore up the document. There were lots of copies, so he didn't get to tear them all up and that's why we still have it, but in effect, King John said he wasn't going to be bound by it within four or five weeks. So it was a great document in theory but it, in fact, didn't do very much in practice.

"The rule of law is not just about constitutions or documents that confer rights," he added. "It has to have teeth. It has to work in practice or it's a very nice debating point, but not of any great practical use to anyone, and I think that brings into focus the need for effectiveness of enforcement."

On the issue of enforcement, Mr Justice Clarke referred to the significant cutbacks to the Courts Service budget, which had been in the order of €12 million during the period 2008-2013. "€12 million would be a significant sum in that context and it does, interestingly, pose the question: why was it that the Courts Service ended up suffering a much bigger cut than the average public service cuts?"

The impact of cutting so deeply into court budgets led him to the conclusion that, "if there aren't enough judges, if there aren't enough court staff to enable

A reflective moment for Mr Justice Frank Clarke and Law Society President Kevin O'Higgins

ALL PICS: THOMAS GALLAGHER

Guest speaker Geoffrey Shannon spoke about 'Cherishing our children – the shame of institutional abuse in Ireland'

Solicitor Frank Buttimer spoke on solicitor/client privacy

Mr Justice Frank Clarke (Supreme Court) was a keynote speaker

Speakers included *(l to r)*: Sarah Lennon (in-house counsel, Google), Dr Geoffrey Shannon (special rapporteur for children), Gerard O'Donnell (solicitor to the Halappanavar family), Frank Buttimer (solicitor), Kevin O'Higgins (Law Society president) with Teri Kelly (director of representation and member services), Attracta O'Regan (head of Law Society Skillnet) and Michelle Nolan (professional training manager, Law Society)

Engaging experience – Bill Holohan pictured during the Q&A

Paul Keane had the floor during the open-forum Q&A on day 2

Denise and Christopher Callan, Hugh Sheridan, Ken Murphy (director general), Yvonne Chapman and Mr Justice Donald Binchy (High Court)

cases to be properly assessed, that in itself may convert a theoretically sound system into one that doesn't work in practice".

European Ombudsman Emily O'Reilly addressed the issue of the current rule of law challenges within the EU. She focused on the recent events in the Mediterranean, where thousands trying to flee the Middle East and North Africa have been drowned at sea.

"The political machinery spurred on by images of death set against a jarring backdrop of beauty and of sunshine has provided some immediate responses to this tragedy," she said.

"While immediate rescue efforts are dramatic and necessary, there are human rights challenges, and potential human tragedies, relating to how those refugees who make it to our shores are treated."

She proceeded to ask a series of questions: "How are they treated while their applications to remain in Europe are processed? How are they treated if it is decided to return them to their home countries? Does the rule of law in the EU protect these most vulnerable people in these situations?"

And these questions begat still other questions.

For instance: "What of the rule of law in the EU, in particular as it relates to the protection of fundamental rights? As regards substantive fundamental rights, we comfort ourselves that it all looks rosy," she said. "The EU has enshrined into law the *Charter of Fundamental Rights*, though has not yet acceded to the *European Convention on Human Rights* as required under the *Lisbon Treaty*.

"We declare in the charter that rights such as the right to human dignity are inviolable and must be respected and protected. We declare that everyone has the right to life. We declare, in the preambles to the charter, that enjoyment of the rights entails responsibilities and duties with regard to other persons, to the human community.

"One would expect that, given those substantive rules, we would also have in place effective measures to ensure that the tragedies such as the ones occurring in the Mediterranean are, to the best of our ability, dealt with in accordance with fundamental rights.

"But the reality is often otherwise. Why?"

Who has competence?

One reason, the ombudsman responded, was that it was often not entirely clear who had competence to deal with a particular issue. An EU institution or agency? If so, which one? A member state? Various member

FOCAL POINT

he said, she said

ON THE POWER OF THE MEDIA: "With regard to the media, I'd like to thank them for their support in the reporting of this [Savita Halappanavar] case, which in my opinion throughout was fairly balanced. Journalists have a job to do and that is report matters of public interest. I was not long into the case when I was being contacted by the media on an almost hourly basis. That's when I realised how important it was to deal with every [journalist] that made contact … I could have anything up to 50 calls a day from the media outlets, not just locally and nationally but throughout the entire world, all looking for a comment on the case, all looking for an interview and all looking to speak to Praveen" ***(Gerard F O'Donnell, solicitor to the Halappanavar family).***

ON SILENT VOICES: "We need to remind ourselves that the industrial and reformatory school system, the Magdalene Laundries, the incarceration of young people in adult prisons and the placement of young people with mental-health difficulties in adult wards of mental health hospitals, with their voices silent, all happened in our lifetimes and we are still endeavouring to put that right" ***(Dr Geoffrey Shannon, State Special Rapporteur for Children).***

ON PRIVILEGE: "A solicitor cannot be compelled to disclose communications – either oral or written – which qualify as privileged communications, which contain legal advice. This privilege applies to any legal advice, not only to communications made prior to, and during the course of legal proceedings. Privilege does not extend to communications made for the purposes of being repeated to the other party to a dispute" ***(Frank Buttimer, principal of Frank Buttimer & Co).***

ON THE 'RIGHT TO BE FORGOTTEN': "We believe that it is very important to be transparent about how much information we are actually putting in the search results, while also obviously being respectful to the individuals who have made the removal requests. By releasing this information to the public, we believe that this helps hold us accountable for our processes and our decisions, and it shows the world the implementation we are putting in place in relation to the court's decision. To date, Google has received removal requests for over 900,000 URLs, and we have delisted about 41% of these. If you consider it, this is quite a lot of work when you think that each URL is individually considered by a human at Google" ***(Sarah Lennon, in-house legal counsel at Google).***

Davnet O'Driscoll *(left)* from Dublin and guest speaker Sarah Lennon (Google)

Chris Callan (Boyle), Gary Clarke and Jane Lanigan (Letterkenny) and Kevin Downey (Derry)

states? A combination of them all?

"It is in that context, sometimes, far too easy to fudge the issue of who has the moral and legal responsibility to act. It's as if a hundred people are watching a man drown, each one expecting that another will jump in to save him. In the end, no one jumps, and the man drowns."

Concluding, she said: "Many EU office walls, including my own, are bedecked with framed copies of the *Charter of Fundamental Rights* and, in these years, when we remember the war dead and those murdered in the Holocaust, maybe we convince ourselves that all of those horrors, at least in Europe, are behind us. But if you swap the images of the death camps for the images of blue skies and sunshine and young bodies drowning inches from the warm sand of Mediterranean beaches, and consider the 21st century horrors from which they are fleeing, we can see that, for this generation, the human rights challenges of an, at times, indifferent world remain with us still."

(In the coming months, the Gazette *will take an in-depth look at the papers presented at the annual conference.)*

Philomena McRory (Ballybofey), Margaret Mulrine (Letterkenny) and Patricia Twomey

Aoife Byrne (Cork) and Nicola Daveron (Goatstown) at the Lough Erne Resort

Claire Loftus (Director of Public Prosecutions), Mary Keane (deputy director general, Law Society), Geraldine Kelly (principal, Geraldine Kelly & Co, Solicitors) and Arleen Elliott (president, Law Society of Northern Ireland)

news in depth

LAW SOCIETY TO CONSIDER SPECIALIST ACCREDITATION

There are proposals that the Society should introduce a scheme whereby solicitors can be accredited as specialists in particular areas of law or practice. Yvonne Keating explains

Yvonne Keating is a solicitor and secretary of the Practitioners' Accreditation Subcommittee. She wishes to thank Valerie Peart (chair, Education Committee) and Michael V O'Mahony (consultant to the Education Committee) for reviewing this article

Recommendation 13 of the *Report and Recommendations of the Future of the Law Society Task Force*, published in April 2013, was: "The Society should pursue the provision of specialist accreditation as a member service offering."

In response, the Society's Education Committee has been asked to give consideration to a proposal that the Society would provide for a scheme whereby a solicitor practitioner would be accredited as such by the Society in respect of a particular prescribed area of law or practice. The solicitor could then advertise that fact, even if such an advertisement would or might imply that such a solicitor had knowledge in that area that was "superior to that of other solicitors".

This is not something new. It is now commonplace in a number of other jurisdictions for legal practitioners with demonstrated knowledge in a particular area of law or practice to seek accreditation of that expertise. In general terms, in those jurisdictions, applications for 'specialist' accreditation are made by practitioners after a number of years in practice who have acquired substantial experience in the area of proposed accreditation. Provision of accreditation schemes by a range of legal professional bodies, such as the Law Society of Scotland and the Law Society of England & Wales, are variously described as 'specialisms' schemes or 'accredited practitioner' schemes that, on being so accredited in a specific area of law or practice, permit the accredited practitioner concerned to advertise that fact in publicity material.

The aim of these schemes is to provide practitioners with an opportunity to have their specialised knowledge in a particular area of law or practice formally acknowledged and recorded, to the potential benefit of both consumers of legal services and the legal profession generally.

Current position

A 2007 practice note entitled 'Advertising specialisms' (April 2007 *Gazette*, p51) referred to the relevant statutory provisions and, in a non-regulatory way, provided guidance on their interpretation.

A solicitor may publish advertisements claiming specialist knowledge in any area of law or practice provided that:

- False or misleading claims of specialist knowledge are not made,
- Specialist knowledge superior to that of other solicitors is not claimed and,
- All other mandatory requirements relating to advertisements, including the restrictions on personal injury advertising, are complied with.

Any breach of these guidelines may result in regulatory or disciplinary action being taken, which may include the issue of a reprimand or referral to the Solicitors Disciplinary Tribunal.

In summary, while a solicitor may advertise his or her legal services by stating, for example, a 'specialism in employment law', the solicitor may not advertise his or her knowledge as superior to that of other solicitors by stating, for example, 'employment law specialist'.

The story so far

The Education Committee has set up a Practitioners' Accreditation Subcommittee, which consists of nominees from the Society's Criminal Law, Employment Law, and Family Law

REFERENCE POINT

statutory context

The relevant statutory context of this proposal is contained in section 4 of the *Solicitors (Amendment) Act 2002*, which replaced, in total, section 69 of the *Solicitors (Amendment) Act 1994* and, in substance, adds subsections 2 to 10 (inclusive) to the original section 71(1) of the *Solicitors Act 1954*, which simply reads as follows: "Regulations may be made with respect to the professional practice, conduct and discipline of solicitors."

Section 71(2) now provides that "a solicitor shall not publish or cause to be published an advertisement which … (d) without prejudice to any regulations under subsection 8 of this section, contains an express or implied assertion that the solicitor has specialist knowledge in any area of law or practice which is superior to that of other solicitors".

Section 71(3) in turn provides that an advertisement published or caused to be published by a solicitor shall not include more than the name/address/qualifications/factual information on the legal services provided/particulars of any charge or fee for the provision of any specified legal service/other information provided for in Society regulations approved by the Minister for Justice (for example, the *Solicitors (Advertising) Regulations 2002*).

Section 71(8) then provides: "Notwithstanding paragraph (d) of subsection 2 and subsection 3 of this section, the Society may by regulations provide that a solicitor who in the prescribed manner satisfies the Society of having specialist knowledge in a prescribed area of law or practice may be permitted by the Society to be designated, whether in an advertisement or otherwise, as having specialist knowledge in that area."

PIC: ISTOCK/MAEVE KELLY

(including Child Law) Committees, as well as Education Committee nominees. This subcommittee is currently considering all sides and aspects of the proposal that the Society should provide for "specialist accreditation as a member service offering".

It has been decided that, initially, three broad areas of law or practice – criminal law, employment law and family law (including child law) – should be considered for such specialist accreditation. These are areas of law and practice that clearly identify with the 'consumer protection' needs of potential clients who, perhaps for the first time, are exposed to the necessity of finding an appropriate solicitor for the legal service they now need and, arguably in the public interest, should be assisted in making such a choice.

The process for accreditation of a practitioner as a specialist practitioner in a particular area of law or practice in other jurisdictions (including Scotland, England & Wales, Australia and the US) is currently being considered by this subcommittee.

What we have learned from these enquiries is that requirements sought from practitioners applying to the domestic accreditation body for accreditation in these jurisdictions generally include all or some of the following qualifying requirements:

- The applicant holds an unrestricted practising certificate for a minimum specified number of prior years,
- The applicant has significant experience, measurement of which to be ascertained by, for example, the proportion of time/chargeable hours spent practising in the particular area, academic study and or authorship of books/ articles, among other possible criteria, during a minimum specified number of prior years preceding the application,
- The applicant can demonstrate experience in the conduct of complex case work in the particular area, and
- The applicant can provide references from persons with appropriate knowledge and standing in the particular area.

> **The subcommittee would welcome submissions on the proposal from bar associations and individual practitioners**

The period of accreditation of a practitioner as a specialist in the chosen particular area in those other jurisdictions ranges from three years to five years, with an accredited specialist being entitled to apply for renewal of the accreditation at the end of that period.

In some jurisdictions (such as England & Wales and Australia), assessment and methods of evaluation of an applicant practitioner's competencies includes the requirement to sit a written examination and/ or submit to a peer-group skills assessment. For example, as part of the specialist scheme offered by the Law Society of New South Wales, to be accredited as a child law specialist, the applicant is peer-assessed in the conducting of a simulated child client interview and an oral submission to a moot court.

What's your view?

The subcommittee would welcome submissions on the proposal from bar associations and individual practitioners. The submissions may be emailed to Yvonne Keating at y.keating@lawsociety.ie or Valerie Peart at vpeart@pearts.ie. Please also submit your views via the survey on specialist accreditation at www.lawsociety.ie/specialismsurvey.

At the conclusion of its work, the subcommittee will present a written report to the Education Committee and in turn to the Council, which will – in due course – decide whether the proposal should proceed to fruition and, if so, the form that any implementing regulations and operating scheme should take.

PIC: COURTESY RTÉ / BERNARD WALSH PHOTOGRAPHY

LOVE/HATE

Jenny McGeever is a founding partner in the specialist human rights and criminal law firm Fahy Bambury McGeever Solicitors

The effects of the majority Supreme Court decision in *DPP v JC* on the exclusion of unconstitutionally obtained evidence are set to reverberate for many years to come. Jenny McGeever presses pause

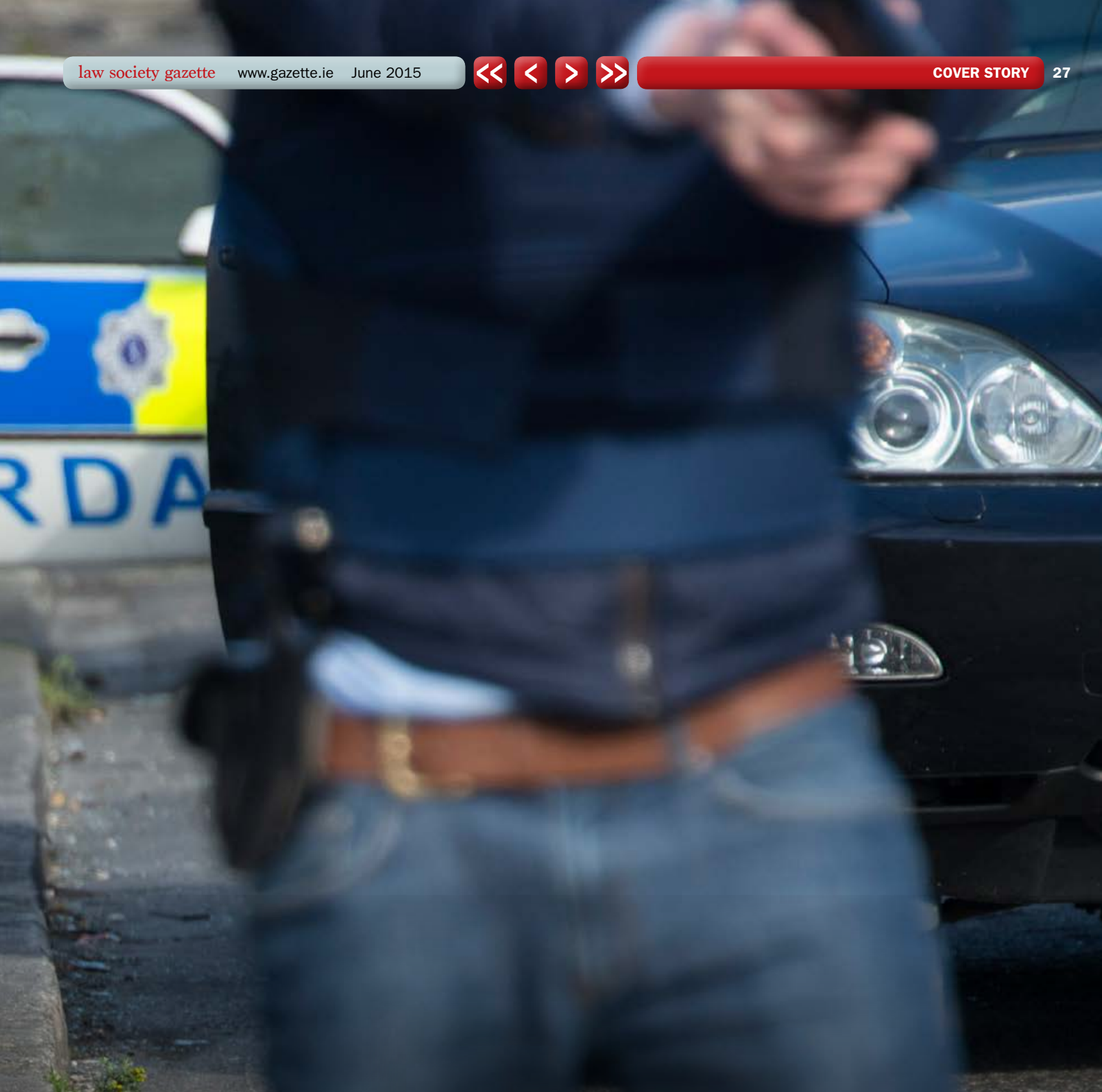
at a glance

- Until 15 April 2015, *DPP v Kenny* mandated the exclusion of unconstitutionally obtained evidence unless there were 'extraordinary excusing circumstances'
- The majority decisions in *JC* hold that the fruit of an unconstitutional act by a State enforcer may, in future, be admitted in evidence if the prosecution shows that the unconstitutional act by the enforcer, garda or otherwise, was 'inadvertent'
- This is a whole new area for evidence and submission in criminal cases and, it would appear, a very open-ended one. The issue of whether a particular act was merely 'inadvertent' but not 'grossly negligent' will arise in a great many cases

On 15 April, a seven-judge Supreme Court delivered six written judgments in the up-to-then largely unnoticed case of *DPP v JC*. Within 24 hours of delivery, the case was recognised as a landmark decision of the court under the presidency of Chief Justice Susan Denham. The Chief Justice, however, did not herself issue a judgment.

The six judges who wrote judgments were evenly divided. *The Irish Times* described those judgments as "trenchant and delicate, passionate and precise" and made it quite clear that all judges regarded the case as one of enormous importance.

But what seemed immediately noteworthy – and made



the lead story of *The Irish Times* the following day – was the stark and obvious fault line that the case exposed in the thinking of the court. By Friday 17 April, that newspaper's leading editorial described the main legal issue arising as "the wrong move on evidence".

Use your exclusion

The media reaction is understandable. There are two – not just one – important aspects of this decision. The first is about the all too common issue: how is the law to deal with evidence obtained by a "deliberate and conscious" unconstitutional act by State investigators?

The second is about how the judges construed the law and, in some cases, arrogated to themselves the jurisdiction to change it. This latter consideration refers to the appeal provision by which the judgment of *DPP v Kenny* came to be considered by the court, namely section 23 of the *Criminal Procedure Act 2010*.

Until 15 April 2015, *DPP v Kenny* mandated the exclusion of unconstitutionally obtained evidence unless there were "extraordinary excusing circumstances". Judicial examples of such circumstances included the need to save a victim in peril or to prevent the destruction of vital evidence.

The decision of Chief Justice Finlay in that case also meant that the unconstitutional act had to be "deliberate and conscious", in the sense of being not accidental or unintentional. This meant that the person whose rights were infringed did not have to show that the enforcer of the law specifically intended to breach his constitutional rights, either as a result of a deliberate decision or through ignorance. This was so because the 1990 court applied to the gardaí the same law as applies to the ordinary citizen: everyone is deemed

to know the law. No one can excuse an unconstitutional or illegal or even a negligent act by saying "I didn't know that it was illegal" or "I didn't know I had to take care not to breach someone else rights".

At least, no one could do that up to 15 April 2015.

Wind of change

The *Irish Independent* described the result of the *JC* case as a "seismic shift". So what exactly is the change?

The majority decisions in *JC* hold that the fruit of an unconstitutional act by a State enforcer may, in future, be admitted in evidence if the prosecution shows that the unconstitutional act by the enforcer, garda or otherwise, was "inadvertent". The *Oxford English Dictionary* defines this word as "careless or inattentive".

This was done, in the words of one of the majority judges, Mr Justice Clarke, on the basis that "society and victims of crime are entitled to have a criminal trial of the culpability of an accused based on proper consideration of all evidence".

He did however acknowledge that, "on the other hand, there is a need to ensure that investigative and enforcement agencies operate properly within the law".

He did not say how this was to be achieved, in light of the new 'inadvertence' justification.

What if some or all of the evidence against the accused was garnered by an unconstitutional action? Here, the majority have created a new test of 'inadvertence', as opposed to deliberate breach of a constitutional right or gross negligence.

But, for Mr Justice Hardiman, who wrote the leading judgment in dissent, the answer is to be found in the judgment of Chief Justice Finlay, 25 years ago in *DPP v Kenny*: "Evidence obtained by an invasion of the constitutional personal rights of a citizen must be excluded unless the court is satisfied either that the act constituting the breach of constitutional rights was committed unintentionally or accidentally, or is satisfied that there are extraordinary excusing circumstances which justify the admission of the evidence in the court's discretion."

The reason Chief Justice Finlay required, in general, the exclusion of unconstitutionally obtained evidence was neither to punish the investigators nor to benefit the accused. Rather, it was to vindicate the Constitution itself. As he said, in a passage also quoted by Mr Justice Hardiman: "The detection of crime and the conviction of guilty persons, no matter how important they may be in relation to the ordering of society, cannot … outweigh the unambiguously expressed constitutional obligation as far as practicable to defend and vindicate the personal rights of the citizen."

Breaking the law

While the majority in *JC* were happy to permit the admission in evidence of unconstitutionally obtained evidence if it could be shown that the evidence was obtained by 'inadvertence', Mr Justice Hardiman and others who agreed with him regarded this as an open door that would always – or virtually always – lead to the admission of evidence, no matter how it was obtained.

This is because the 'inadvertence rule' puts a "premium on ignorance", as Chief Justice O'Higgins, Chief Justice Finlay, Mr Justice Walsh and Mr Justice McCarthy said many years ago in judgments cited in this case.

Hardiman J continued: "I protest, in particular, against the distinction created by this part of the decision between the ordinary citizen and the members of the privileged and legally empowered group whom I have designated the *force publique*. If the ordinary citizen was provided with a defence of 'I didn't mean it' or 'I didn't know it was against the law', then many aspects of the law would become completely unenforceable. I believe that the application of this rule to the *force publique* has the effect of exalting that group and conferring a privileged status of virtual practical unaccountability upon it. I deeply regret that this is being done."

In a conclusion severely critical of the courts, Mr Justice Hardiman said: "I am horrified that it is proposed in the present case to make 'inadvertence' a lawful excuse for State infringement of individual's constitutional rights … if once inadvertence or mistake is acceptable as an excuse for ignoring or deliberately failing to ascertain the constitutional rights of ordinary citizens, then 'inadvertence' or mistake will be relied upon again and again. I deeply regret to say that the experience of the courts over the past 40 years strongly suggests that 'inadvertence' will be accepted very generally as a reason to allow to be proved in evidence the fruits of deliberate and conscious violation of citizens' rights."

> **The court found that, though Judge Mary Ellen Ring was entirely correct in law in what she did, she was also wrong – she erred – on the assumption that the law which was binding on her (the *Kenny* case) might later be found to have been wrongly decided**

This is a far-reaching statement and has already been criticised, for example, by Prof David Gwynne Morgan as "display[ing] no faith at all in the independence or sophistication of the judges of the future".

But many practitioners will, I think, consider it soundly based upon the experience of the past, including the very recent past.

In the closely related area of evidence obtained by illegal – as opposed to unconstitutional – means, where the judges have a discretion, there are very few cases of the discretion being exercised in favour of exclusion, according to the note of Mr Justice Hogan to the *Report of the Balance in the Criminal Law Review Group*.

In one recent case, where phone-tap evidence was quite correctly excluded, *DPP v Burke & Ors* (Waterford Circuit Court, July 2011), it so happened that all the defendants were gardaí. The onus of proof surely lies with those who hope or contend that the "judges of the future" will for some reason deviate sharply from the practices of their predecessors.

The final countdown

The legal form of the *JC* case was that it was a State appeal ("with prejudice") against an acquittal. This was possible since the enactment of section 23 of the *Criminal Procedure Act 2010*. This provision permits such an appeal "only" when there has been an error of law by the trial


Beware snitches!

judge, either in granting a directed verdict of not guilty or by excluding evidence. The latter was the ground in this case.

The State conceded, and all of the judges in the Supreme Court accepted, that the trial judge, Judge Mary Ellen Ring (Circuit Court), made no error in excluding evidence, but faithfully followed the law, which was binding on her in doing so. As Mr Justice Clarke said, she had no option but to exclude it. Nevertheless, the court found that, though she was entirely correct in law in what she did, she was also wrong – she erred – on the assumption that the law that was binding on her (the *Kenny* case) might later be found to have been wrongly decided. If that were so, then the evidence would have been wrongly excluded, though Judge Ring did not herself err in doing so. But it was she, and no one else, who excluded the evidence, as she "had no option" but to do so.

Hardiman J described this submission as: "A paradox worthy of *Catch-22*" and, as being "incoherent in law", represented "nonsense on stilts".

Journalist Fintan O'Toole opined: "In order to hear the case at all, the Supreme Court had to accept an absurdity." He continued: "To hear the case, the court had to perform some mental gymnastics. It had to find that she [Judge Ring] was both absolutely right and completely wrong."

From the point of view of the ordinary practising lawyer, it seems to me that the trial judge was either right or wrong, but could not be both at the same time; that the prisoner was, accordingly, either guilty or not guilty, but could not be both at the same time; that the appeal either was, or was not, properly before the Supreme Court. There must be, to say the least, grave doubt about the question of jurisdiction.

You ain't seen nothing yet

The practical consequences of the *JC* case will naturally be felt primarily in the area of criminal law. Mr Justice McKechnie, in his dissenting judgment, declared that criminal cases where the "deliberate and conscious invasion" point was raised would become much more complex and time consuming.

> From the point of view of the ordinary practising lawyer, it seems to me that the … the prisoner was, accordingly, either guilty or not guilty but could not be both at the same time: that the appeal either was, or was not, properly before the Supreme Court

In such a case, he said, "the court must embark upon a consideration of the conduct or state of mind, not only of the operative garda or gardaí who were involved in obtaining such evidence, but also of any other senior official or officials within the investigating or enforcement authority concerned who was involved either in that decision or in decisions of that type generally, or in putting in place policies concerning evidence gathering of the type concerned".

This is a whole new area for evidence and submission in criminal cases and, it would appear, a very open-ended one. The issue of whether a particular act was merely "inadvertent" but not "grossly negligent" will arise in a great many cases.

In this case, a previous decision of the Supreme Court was set aside in an appeal against an acquittal. Mr Justice Murray, in particular, was very strong on the consequences of this: "If a citizen cannot, with full confidence, rely upon a rule of law as laid down and defined by the Supreme Court, and applicable at the trial … without the risk that a verdict will be set aside because the law is changed by the Supreme Court after the trial, then the integrity of the judicial process is undermined. This is an appalling prospect."

It was, perhaps, this view voiced by Mr Justice Murray that led Mr Justice Hardiman to describe the majority's approach to the question of jurisdiction as "still more threatening for the future" than the substantive decision. This was because "it is based on a mode of construction of a statute – section 23 of the *Criminal Procedure Act 2010* – which is at variance of the ordinary meaning of the English language and which, if more widely adopted, would mean that words have no specific meaning and therefore that rights, which are expressed in words, can be reduced to meaninglessness, to mere words on a page…"

These difficulties, contradictions and criticisms will, no doubt, be rehearsed in a thousand criminal cases even before the end of this calendar year, and beyond.

look it up

Cases:
- *AG v Kennedy* [1946] IR 517
- *Benton v Maryland* [1969] 395 US 784
- *DPP v Damache* [2012] IESC 11 (2012) 1 IR 266
- *DPP v JC* [2015] IESC 31
- *DPP v Frank Shortt* [2002] 2 IR 696
- *DPP v Kenny* [1990] 2 IR 110
- *Shortt v Commissioner of An Garda Síochána & Ors* [2007] IESC (2007) 4 IR 587

Legislation:
- *Criminal Procedure Act 1967* (section 34), as substituted by section 21 of the *Criminal Justice Act 2006*
- *Criminal Procedure Act 2010* (section 23)

Literature:
- *Final Report of the Balance in the Criminal Law Review Group* (15 March 2007)

the THIN BLUE line

A recent judgment sets out the limits of the potential liability of the Garda Commissioner and the Minister for Justice for the actions of the gardaí and provides guidance for solicitors advising both plaintiffs and the relevant State authorities. Ben Mannering investigates

Ben Mannering is a solicitor and claims manager with the State Claims Agency

In an era of such varied policing duties as water protestors to returning jihadists, whistleblowers to penalty points scandals, the workload of An Garda Síochána appears never ending. Equally, the potential liability of the Garda Commissioner and the Justice Minister for the actions of the gardaí appears as meandering as the Yellow Brick Road – and all one can do is follow, follow, follow...

However, the recent judgment in *Kelly v Commissioner of An Garda Síochána* sets out the limits of such liability and provides guidance for solicitors advising both plaintiffs and the relevant State authorities advising the commissioner and the minister.

Crime and punishment

The plaintiff was a former miner who resided with his two children and was the husband of Sylvia Roche Kelly, who was murdered by one Gerry McGrath on 8 December 2007. The plaintiff brought a claim pursuant to part 4 of the *Civil Liability Act 1961* on his own behalf and that of his children and other family members of the deceased.

The plaintiff claimed that the failure and inaction of the defendants, in the context of a bail application, to inform the relevant court of certain other offences that McGrath had been charged with, caused or contributed to the fact that he was at large and on bail when he should not have been and that the plaintiff was, in the particular circumstances, entitled to maintain an action in negligence against the various defendants.

The court set out the chronology behind the events. Prior to the murder of Ms Roche Kelly, McGrath was afforded bail on a number of occasions until he was eventually remanded in custody at Limerick District Court in October 2007. He was bailed in October 2007. However, there was failure to alert the District Court judge to a prior assault matter. He was further charged in December 2007 with, among other things, assault causing harm at Virginia District Court. No mention was made of the Limerick remand. Tragically, Ms Roche Kelly was murdered on 18 December 2007. The accused pleaded guilty in January 2008 to the assault that had occurred in April 2007 and received a nine-month sentence. He subsequently received the mandatory life sentence for the murder of Ms Roche Kelly and finally received a ten-year prison sentence in respect of offences in Dundrum, Co Tipperary, which was made concurrent with the life sentence imposed in January 2009.

The plaintiff pleaded that the gardaí were negligent in failing to inform Virginia District Court of the offences in Dundrum and failed to revoke the bail of the accused in December 2007 at Virginia. It was also alleged that the

at a glance

- The plaintiff claimed that the failure and inaction of the gardaí to inform the relevant court of certain other offences, of which a convicted murderer had been charged, caused or contributed to the fact that he was at large and on bail when he should not have been
- The judge felt that there is a public interest in not imposing an actionable duty of care upon An Garda Síochána in the discharge and performance of their functions
- The court dismissed the plaintiff's claim, not on the basis of some supposed 'blanket immunity', but because long-established common law principles, whereby a duty of care is deemed to arise, were not present on the facts

gardaí negligently failed to inform the District Court judge at the bail hearing in Limerick in October 2007 that the accused had been charged with an assault on a female taxi driver in Cavan on 30 April 2007, thus bringing about a situation where the accused was allowed to remain at liberty, and had these matters been brought to the attention of the District Court judge, the plaintiff's bail may have been revoked and, in such circumstances, he would not have been at large to commit the murder of Ms Roche Kelly.

An application was brought by the defendants pursuant to order 19 (rule 28) of the *Rules of the Superior Courts* seeking that the plaintiff's claim be dismissed or struck out on the grounds that the pleading disclosed no reasonable cause of action and that, on the basis of existing law, the plaintiff's claim was bound to fail. There was no suggestion that there had been malfeasance on the part of An Garda Síochána.

Law and order

The judge considered first the relevant provisions of the *Bail Act 1997*. Section 2 provides: "Where an application for bail is made by a person charged with a serious offence, the court may refuse the application if the court is satisfied that such refusal is reasonably considered necessary to prevent the commission of a serious offence by that person."

Kearns P stated that there are serious problems with the system of bail, recently confirmed by Detective Chief Inspector Kevin Toland on behalf of the Garda Inspectorate. One quarter of recorded headline crime, including murders and rapes, are committed by people on bail, and there is no power to arrest available to a member of An Garda Síochána for breach of a bail term, and the member must in every case go back to court to seek a summons or warrant. A considerable amount of garda time is already taken up by the failure of persons granted bail to abide by terms of bail.

The current law is premised on the recognition that the work of the gardaí in the investigation and prosecution of crime will be rendered virtually impossible if an additional duty of care, actionable in damages, were to be superimposed on their already extremely difficult workload. A failure of communication or failure to follow up lines of investigation would, if actionable in damages, inevitably drive the force into ever defensive modes of performing their duties. While one must look at the particular facts of each case, Kearns P felt that these policy considerations are a reason there is a public interest in not imposing an actionable duty of care upon An Garda Síochána in the discharge and performance of their functions.

The president then considered the case law to date on such matters.

The bridge

In *Lockwood v Ireland and Others*, the court dismissed a claim made against the gardaí by a rape claimant, when a rape trial collapsed on account of a mistake made in the arrest of the accused (the arrest was deemed unlawful, leading to the inadmissibility of the statements). The court took the view that there was no duty of care in tort such as would create an entitlement to damages arising from the manner in which the gardaí conducted its investigation, and that the claimant would have to establish *mala fides* on the part of the gardaí in order to maintain a claim for damages in such circumstances.

> **One quarter of recorded headline crime, including murders and rapes, are committed by people on bail, and there is no power to arrest available to a member of An Garda Síochána for breach of a bail term**

In *LM v Commissioner of An Garda Síochána and Others*, Mr Justice Hedigan dismissed an action by the plaintiff, who complained that the gardaí failed to properly investigate and prosecute a rape allegation. The rape complaint was made in May 1990, when the plaintiff was a child, and no steps were taken between December 1990 and September 1996, until the English Child Protection

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Agency contacted the gardaí. The English police interviewed the alleged perpetrator in April 1997, and he was thereafter extradited back to Ireland in October 1998 and convicted. The Court of Criminal Appeal quashed the conviction in 2001, and an order prohibiting a retrial was later granted. The plaintiff's mental health deteriorated thereafter, and she sued An Garda Síochána for the delay in prosecuting the claim.

Hedigan held that "the key issue in this case is whether it would be contrary to public policy to impose a duty of care on the gardaí … It is in the public interest that those bodies should perform their functions without the fear or threat of action against them by individuals. The imposition of liability might lead to the investigated operations of the police being exercised in the defensive frame of mind … The result would be a significant diversion of policy manpower and attention from their most important function, that of the suppression of crime."

Again, Hedigan J was asked a similar question in *AG v JK and Others*. The plaintiff's case was that the gardaí had asked her to provide accommodation for the husband of her murdered friend when he could no longer reside in his house (as it was a murder scene). The husband had a previous rape conviction, and the plaintiff alleged that he later raped her. At p24, Hedigan J held: "On the basis of the now well-established law outlined … no duty of care arises in the circumstances herein."

The judge then went on to to consider the now infamous seminal 1989 decision in *Hill v Chief Constable of West Yorkshire*, which involved the Yorkshire Ripper, Peter Sutcliffe. The plaintiff therein was the mother of a woman who was killed by Sutcliffe and who alleged that the police investigation was negligent and, had a proper investigation been carried out, Sutcliffe would have been apprehended sooner and her daughter would therefore not have died. Lord Keith of Kinkel held that "the general sense of public duty which motivates police forces is unlikely to be appreciably reinforced by the imposition of such liability so far as concerns their function in the investigation and suppression of crime. From time to time, they make mistakes in the exercise of that function, but it is not to be doubted that they apply their best endeavours to the performance of it."

Criminal minds

Kearns P, in *Kelly*, set out the public policy arguments as considered in *Smyth v Commissioner of An Garda Síochána*. The High Court in that matter had refused to dismiss the plaintiff's claims, at interlocutory stage, in circumstances where such a matter might have been expected to be dismissed on public policy grounds. The principle enunciated did not confer a blanket immunity in all circumstances, but rather a principle that admitted exceptions in special circumstances.

The plaintiff argued that the instant proceedings were an even stronger basis for making an exception. It was submitted that the public policy reasons that might be in favour of exclusion were outweighed by the public policy in favour of applying ordinary liability principles, because the entire bail system, as a matter of public policy, attempts to avoid bail being granted to a person who may go on to commit a serious offence.

The plaintiff further advanced that article 2(1) of the *European Convention on Human Rights* imposes upon the State an obligation to protect the life of individuals against the acts of third parties, which may be taken as including particular victims identifiable in advance as potential targets of lethal acts and also those not so identifiable. In *Maiorano v Italy*, the Italian state was found to be responsible in damages in respect of a double murder committed by a dangerous offender who was allowed out on day release. While it had not been possible to identify in advance the two murder victims as potential victims for crime, article 2 required the general protection of a society against the potential danger, such as that arising, from a person who had been convicted of a violent crime. The court therein emphasised that article 2 enjoined the state not only to refrain from the intentional and unlawful taking of life, but also the appropriate steps to safeguard the lives of those within its jurisdiction.

The European Court, in *Osman v United Kingdom*, took a different decision to the *Hill* case. A split decision of the Grand Chamber, *Osman* dealt with the alleged failure of authorities to protect the right to life of the applicant husband and a second applicant from a threat posed by an individual, and the lawfulness of restrictions on the applicants' right of access to a court to sue authorities for damages caused by that failure. The applicants succeeded. The court upheld the principle that the police owed individuals a duty in respect of article 2 claims, which implies, among other things, a positive obligation for the state to take preventative operational measures to protect an individual whose life is at risk from the criminal acts of another individual, once those authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of the individual and failed to take measures that, judged reasonably, might have been expected to avoid that risk.

However, it was noted that, in *Z v United Kingdom*, the British courts revisited the *Osman* decision and the court came to the conclusion that the inability of the applicants to sue the local authority flowed not from an immunity but from the applicable principles governing the substantive right of action in domestic law. The European Court of Human Rights reviewed the jurisprudence of the House of Lords on actions for police negligence, and what was involved in such cases was not a blanket immunity from suit that the police enjoyed, but rather that, under substantive domestic law, there existed no duty of care owed by the police in their investigatory and prosecutorial functions, and this was held in to be in accordance with the convention.

The bill

Kearns P distinguished the Italian *Maiorano* case. He did so on the basis that it was a different criminal and a judicial structure and was one where the offender had been convicted of similar offences in the past, was serving a prison sentence, and was released under a day-release system in a context where the relevant authorities had failed to act on specific warnings of his declared intention to commit further crimes. It was clearly distinguishable from the instant case.

The court therefore dismissed the plaintiff's claim, not on the basis of some supposed 'blanket immunity', but because long-established-common law principles, whereby a duty of care is deemed to arise, were not present on the facts of this unfortunate case.

look it up

Cases:

- *AG v JK and Others* [2011] IEHC 65
- *Hill v Chief Constable of West Yorkshire* [1989] AC 53
- *Kelly v Commissioner of An Garda Síochána, Minister for Justice, Equality and Law Reform, Ireland and the Attorney General* [2015] IEHC 19
- *Lockwood v Ireland and Others* [2010] IEHC 430
- *LM v Commissioner of An Garda Síochána and Others* [2011] IEHC 14
- *Maiorano v Italy* (case number 28634/06)
- *Osman v United Kingdom* (23452/54) (1999) 1 FLR 193 ECHR
- *Smyth v Commissioner of An Garda Síochána* [2014] IEHC 453
- *Z v United Kingdom* [2002] 34 EHRR 97

Legislation:

- *Bail Act 1997*
- *Civil Liability Act 1961*

At a time when the State's interpretation of data protection law is subject to increasing scrutiny, perhaps the implementation of article 23 of the *Data Protection Directive* should be considered once more, argues Denis Kelleher

DATA DAY problems

Denis Kelleher is the author of Privacy and Data Protection Law in Ireland, *the second edition of which was published by Bloomsbury Professional in May 2015*

Their marriage was traumatic and dysfunctional. Their rows had led to the gardaí being called on a number of occasions. 'Intimate relations' between the couple had ceased, and so she did not want him to know that she had bought a pregnancy test from a pharmacy. But he found the receipt and persuaded the pharmacy to let him view CCTV footage of her purchasing the test. He used his mobile phone to photograph the footage, then used the images as a 'stick to beat her with' in the years that followed.

She complained to the Data Protection Commissioner (DPC), who held that the pharmacy had breached her rights under the *Data Protection Acts*. She suffered acute stress and depression as a result of this breach, which forced her to seek counselling. So she sued for damages for breach of her data protection rights, settling her case for a reported €10,000.

Rarely seen

Breaches of the *Data Protection Acts* are not uncommon – 910 complaints of such breaches were made to the Data Protection Commissioner in 2013. But

at a glance

- Successful actions for damages in respect of breaches of the *Data Protection Acts* are relatively rare.
- Section 7 of the *Data Protection Act 1988* is one of the reasons for this rarity
- It should be possible to describe other breaches of data protection as breaches of privacy
- Such re-descriptions are possible and are a necessary response to what appears to be an incorrect implementation of the EU *Data Protection Directive*

'Bueno excellente – heh heh heh'

> Given the difficulty of providing a causal connection between a breach of the *Data Protection Acts* and specific losses or damage suffered by a subject, it is unsurprising that successful actions under section 7 are so rare

successful actions for damages in respect of such breaches are relatively rare. Section 7 of the *Data Protection Act 1988* is one of the reasons for this rarity, providing as it does that: "For the purposes of the law of torts and to the extent that that law does not so provide, a person, being a data controller or a data processor, shall, so far as regards the collection by him of personal data or information intended for inclusion in such data or his dealing with such data, owe a duty of care to the data subject concerned."

The meaning of this provision was considered by the High Court in *Collins v FBD Insurance*. The plaintiff was a plumber whose van had been stolen and who claimed on his insurance with the defendant. The defendant investigated his claim and learned the plaintiff had a previous conviction for receiving stolen goods and so did not pay out. The plaintiff then made an access request under the *Data Protection Acts*, to which the defendant failed to respond within 40 days. The plaintiff complained to the DPC, who initially concluded that the defendant had breached the plaintiff's right of access and then concluded that the processing of the plaintiff's personal data by the defendant's private investigator had breached the data security principle set out in section 2(1)(d) of the *Data Protection Acts*.

An action for damages was then commenced on a number of grounds: breach of his right of access, breach of the data security principle, and improper processing of data relating to his criminal conviction. The plaintiff was initially successful in the Circuit Court and was awarded €15,000 in damages. But the defendant successfully appealed. Feeney J found that section 7 imposed a duty of care upon data controllers and that a breach of that duty might result in an award of damages, but that "the section does not provide for automatic damages for a breach of the act and there is no reference or identification of strict liability". Feeney J went onto explain that a "person seeking compensation arising from a breach of statutory duty under an act must establish that the loss or damage that such person has suffered flowed from the breach". As Collins was not able to identify any specific loss or damage that he had suffered, Feeney J concluded that there was nothing for which he could be compensated.

Causal connection

Given the difficulty of providing a causal connection between a breach of the *Data Protection Acts* and specific losses or damage suffered by a subject, it is unsurprising that successful actions under section 7 are so rare. Section 7 is itself an implementation of article 23 of the *Data Protection Directive*, which requires that "member states shall provide that any person who has suffered damage as a result of an unlawful processing operation or of any act incompatible with the national provisions adopted pursuant to this directive is entitled to receive compensation from the controller for the damage suffered". Like the Irish section 7, section 13 of the British *Data Protection Act* implements this article by placing a limitation upon the damages that may be awarded for a breach of data protection rights. And in a recent judgment, the English Court of Appeal held that this implementation was incorrect.

The judgment in question is that of *Vidal-Hall v Google Inc*, the facts of which were that the "defendant collected private information about the claimants' internet usage via their Apple *Safari* browser… without the claimants' knowledge and consent" by using a small string of text saved on the user's device ('cookies'). The plaintiff alleged that this was a breach of the British *Data Protection Act* and sought "compensation under section 13 of the DPA for damage and distress". But without "a claim for pecuniary loss".

Google Inc is an American company "registered in Delaware and has its principal place of business in California". In order to serve Google outside the jurisdiction of the English courts, the claimants had to show that there could "be a claim for compensation without pecuniary loss". The problem for the claimants was that the wording of section 13 of the British *Data Protection Act* seemed to exclude the possibility of such a claim being made. The English court considered article 23 of the *Data Protection Directive* and held that it should "be given its natural and wide meaning so as to include both material and non-material damage". The court explained that "it would be strange if the directive could not compensate those individuals whose data privacy had been invaded by a data controller so as to cause them emotional distress (but not pecuniary damage). It is the distressing invasion of privacy which must be taken to be the primary form of damage (commonly referred to in the European context as 'moral damage'), and the data subject should have an effective remedy in respect of that damage."

This led the court to set aside the limitations on damages imposed by section 13 and hold that there was a "real and substantial cause of action". The court agreed with counsel for the claimants that "compensatory damages may be relatively modest (as they often are in claims for misuse of private information and for breaches of the DPA) … But that is not the beginning or end of the matter … the damages may be small, but the issues of principle are large."

> As it stands, any subject who wishes to claim damages for breach of their data protection rights must endeavour to link that claim to one for breach of their right to privacy

Broadening the heads

While the judgment of the English Court of Appeal may have some persuasive effect, it is not binding upon the Irish courts. And the limitations imposed by the Irish *Data Protection Act* upon claims for breach of its provisions are not precisely the same as those imposed by the English act. But an Irish court may at some future date be required to consider whether it agrees with the English Court of Appeal that the *Data Protection Directive* allows subjects to claim for both "both material and non-material damage". If that putative Irish court were to agree with the English interpretation of the directive, then this would broaden the heads under which damages may be claimed.

Of course, such an interpretation would be at odds with the judgment of Feeney J in *Collins v FBD*, who held that the "statutory position in Ireland is that no matter how blatant the breach, the person the subject of the breach can only receive damages on proof of loss or damage caused by the breach".

As it stands, any subject who wishes to claim damages for breach of their data protection rights must endeavour to link that claim to one for breach of their right to privacy. The Irish courts have been willing to award damages for breaches of the right to privacy that would have been analogous to breaches of the *Data Protection Acts*. In *Kennedy & Arnold v Ireland*, the State had illegally intercepted the plaintiff's phone calls, which the court held breached their right to privacy. Such interceptions would have lacked a legitimate basis and breached the principles of data protection and so been in breach of sections 2A and 2 of the *Data Protection Acts* (had those acts then been in force).

Privacy and peaceful enjoyment

In *Gray v Minister for Justice*, the plaintiffs were members of a family who had moved from Blanchardstown to Ballybunion under a rural resettlement scheme operated by the government, where they settled successfully

on a small estate. The father of the family then agreed to allow his nephew to stay for a short time. Unfortunately, his nephew had been "convicted on a charge of violent rape and … sentenced to serve a term of 15 years' imprisonment" together with "earlier convictions for robbery and indecent assault". The nephew moved in with the family upon his release from prison. They were visited by local gardaí, and the nephew agreed to go back to Dublin, to where the parents of the family drove him. But in the meantime, his presence had become known to the local community – an article was published on the front page of *The Kerryman* "and on successive days thereafter, a series of articles appeared in local and national newspapers. Many were published under such headlines as 'Get rapist out of town' and 'Resident rapist feared by families'." As a result, the family fled back to Dublin. Quirke J was "satisfied on the evidence and on the balance of probabilities that the information and verification which gave rise to the publication…came from a member or members of An Garda Síochána". Quirke J held that there was a "duty of care owed by the State to persons who may be adversely affected by the disclosure or publication of such information".

> **Breaches of the *Data Protection Acts* are not uncommon – 910 complaints of such breaches were made to the Data Protection Commissioner in 2013**

Quirke J awarded the family damages of €70,000 as compensation for the "violation of the constitutionally protected right enjoyed by each of the plaintiffs to privacy and the peaceful enjoyment of their home". Again, this disclosure would also have amounted to a breach of sections 2 and 2D of the *Data Protections Acts*.

It should similarly be possible to describe other breaches of data protection as breaches of privacy. Such re-descriptions are possible and are a necessary response to what appears to be an incorrect implementation of the *Data Protection Directive*. But at a time when the State's application and interpretation of that law is subject to increasing scrutiny at European and international levels, perhaps the implementation of article 23 of the *Data Protection Directive* should be considered once more.

look it up

Cases:

- *Kennedy & Arnold v Ireland* [1987] IR 587
- *Gray v Minister for Justice* [2007] IEHC 52 (17 January 2007)
- *Collins v FBD Insurance* [2013] IEHC 137 (14 March 2013)
- *Vidal-Hall v Google Inc* [2015] EWCA Civ 311 (27 March 2015)

Legislation:

- *Data Protection (Amendment) Act 2003*
- *Data Protection Act 1988*
- *Data Protection Act 1998* (Britain)
- *Data Protection Directive* (95/46/EC)

LEVIATHAN

The *Companies Act 2014* makes changes to the area of insolvency and taking security from companies, and introduces a new Summary Approval Procedure. Conor Lupton explores the nature of the beast

Conor Lupton is a partner in Comyn Kelleher Tobin Solicitors, 29 South Mall, Cork, and a member of the Law Society's Business Law Committee

The *Companies Act 2014* has consolidated all previous Irish company law into one large piece of legislation. It has also made a number of important changes to various elements of company law.

In terms of taking security and registering security, the act makes changes to the categories of charges to be registered and also, in addition, to how those charges are then registered in the Companies Registration Office. The act provides a broad definition of a charge, but also includes excluded categories of charges that do not have to be registered, for example, charges over bank accounts or cash.

In relation to the registration of charges, in the future there will be two ways a charge can be registered under the act. Registration can proceed through the one-stage procedure of lodgement of a form C1, which has been used previously under the *Companies Acts*, or by the use of a new two-stage procedure. Under the one-stage procedure, the form C1 must be submitted within 21 days of the creation of the charge, as usual.

Under the new two-stage procedure, the form C1A can be submitted, which gives notice of the intention to create a charge. Within 21 days of the receipt of the correctly completed form C1A, a form C1B must be filed, confirming completion of the charge. It is important to note that, if the two-stage procedure is selected and if the form C1B is not submitted within 21 days, then the form C1A will be rejected. It is important for practitioners to be aware that the Companies Registration Office intends that, from now on, the forms C1, C1A and C1B must be filed online.

> **With regard to examinerships, the legislation has been consolidated into the new act and there has been no material change to that legislation**

Summary Approval Procedure

Chapter 7 of part 4 of the act establishes a procedure whereby companies can engage in otherwise restricted activities by following the appropriate procedure as set out in that chapter. The Summary Approval Procedure (SAP) effectively standardises the already existing 'whitewash' procedures that already applied to, for example, section 60 of the *Companies Act 1963* and section 34 of the *Companies Act 1990*. The SAP also includes a whitewash procedure in relation to additional matters.

The SAP can be used in the following circumstances:

- Financial assistance for the acquisition of shares (previously section 60 of the *Companies Act 1963*),
- Reduction in company capital,
- Variation of company capital on reorganisations,
- The treatment of pre-acquisition profits or losses as being profits available for distribution by a holding company,
- The entering into of loans or other related transactions with directors or connected persons (previously section 34 of the *Companies Act 1990*),
- A member's voluntary winding-up.

The procedure to be followed varies slightly in respect of different activities, but the majority of the activities can be approved by carrying out the following procedure:

- A declaration is made by the directors confirming that a full enquiry has been made into the affairs of the company and that the company is able to pay its debts and liabilities if they fall due for a period of 12 months after the restricted activity is carried out. The declaration must be completed by all of the directors or by a majority of directors where there are more than two.
- The members must pass a special resolution (at least 75% approval) approving the restricted activity.

at a glance

- The *Companies Act* makes changes to the categories of charges to be registered and also in addition as to how those charges are then registered in the Companies Registration Office
- The act establishes a procedure whereby companies can engage in otherwise restricted activities by following the appropriate procedure as set out
- The legislation around receivers, examinership, and winding-up has been consolidated, and the strike-off of companies has now been put on a more formal footing

In the case of a merger, it must be a unanimous resolution.

- A copy of the declaration must be delivered to the Companies Registration Office within 21 days of the commencement date of the restricted activity. A copy of the special resolution must be delivered to the Registrar of Companies within 15 days of the date on which it is passed.

Depending on the type of restricted activity, additional information may be required to be included in the declaration. In addition, in respect of certain restricted activities, a report is required to accompany the declaration of the company's auditor or a person qualified to be appointed as auditor of the company, which should state whether, in the opinion of that person, the declaration is not unreasonable.

> In most cases, while the legislation regarding receivers has been consolidated, there have not been that many changes implemented

This makes a change from the current regime under the section 34 whitewash procedure, whereby, in that section, the independent person's report was required to state that the declaration was reasonable in their opinion. This requirement under the old section 34 posed a particular difficulty for many auditors, and indeed many refused to provide this report on the basis of guidance from their professional body. It is anticipated that, with the new wording contained in section 208 of the 2014 act, auditors may feel in a better position to provide the required report to comply with the SAP.

Receivers, examinership and winding-up

In most cases, while the legislation regarding receivers has been consolidated, there have not been that many changes implemented. However, section 437 of the act lists the powers of receivers, which is helpful. This is a non-exhaustive list and without prejudice to additional powers that might be contained in a debenture.

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PIC: WIKIMEDIA COMMONS

With regard to examinerships, the legislation has been consolidated into the new act and there has been no material change to that legislation.

The law relating to winding-up, whether voluntary or by the court, has been consolidated in full.

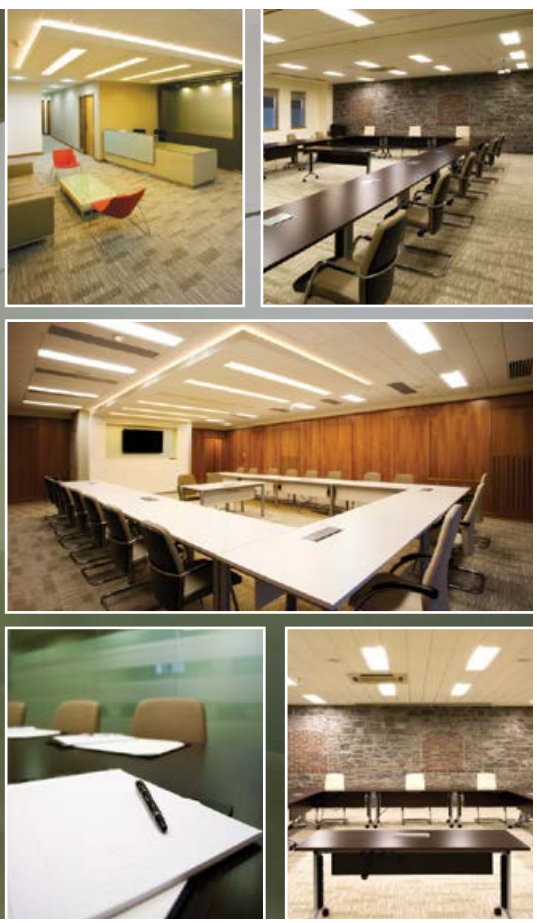
Some of the main changes in this area of company law are:

- Section 633 of the act provides that a liquidator or provisional liquidator must be qualified for appointment, and a table is included in that section setting out the qualification criteria.
- In section 569 of the act, the circumstances in which a company may be wound-up by the court are outlined. These contain all of the criteria that are already set out in *Companies Act 1963*, but include a new criteria, which is when winding-up is in the public interest.
- Section 570 increases the minimum indebtedness in order for a creditor to petition to wind-up a company. Previously, the minimum was a euro equivalent of £1,000, but the new minimum indebtedness will be €10,000. In the usual way, a 21-day demand of that amount of debt must be made before the petition can be issued.

Companies strike-off

The strike-off of companies has, for many years, been operated on a voluntary basis by the Registrar of Companies. While many practitioners would agree that this system operated reasonably clearly and successfully, the strike-off of companies has now been put on a formal footing in sections 725 to 735 of the act. While no major changes to the current procedure have been introduced, it is of course helpful to put this on a more formal basis.

The consolidation of these elements of company law into one piece of legislation will no doubt take a little time for practitioners to get used to. However, it will be of great value over time to have all of the legislation consolidated. In addition, the changes outlined above are, on the whole, a welcome improvement to this area of law.



'SORRY' seems to be the hardest word

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

A newspaper article forced life prisoner Stephen Doyle to reassess his life and how best to turn it around. Now 38, he has set himself the task of assisting released prisoners to re-engage with society through 'Care After Prison'. Maggie Armstrong unlocks the door

Stephen Doyle is a brawny figure of about 6ft 4in, hulking over the various people who pass through the Carmelite Community Centre on Dublin's Aungier Street. He is, quite visibly, a pillar of that community, as the youth and community officer and as the founder and director of Care After Prison (CAP), which is based there. He is also a lifer, and will remain on parole for life, having been found guilty of murder in 2000. "Everybody here knows my background," says the boy from Ballymun, now striving to keep ex-offenders on the right side of the law.

He snaps down the legs of a fold-up table with almighty force, and we sit by a window next to a lush green garden clambering with plants. At the speed and detail with which he talks, you could take him as a man making up for lost time – though that would be a mistaken impression.

When Stephen was released on the recommendation of former Minister for Justice Alan Shatter, he was described on national news as 'exceptional'. This is his first media interview: he doesn't engage with the newspapers, but he was eager for lawyers to hear the story of Care After Prison, a unique peer-led organisation.

It begins in February 2000, on the Sunday after he was sentenced to life, when a guard dropped a newspaper into his cell. He recalls staring in disbelief at the word 'evil' before his name. It was a matter of semantics, but he took it personally. "I looked at it again and I thought – 'that's me'. I couldn't associate the person they were calling evil as the person I felt I was. It devastated me. I said to myself: how can you recover from that word 'evil'?"

Many commentators would have chosen the word evil when discussing the offence Stephen was convicted of, aged 23. He had set out, on the night of 15 January 1998, with a group of his cohorts to harm somebody, and a young man was kicked to death. The courtroom heard he had believed a person was abusing his infant daughter, and that it was his intention to punish that person. He was given life in prison.

After the disturbing encounter with his media persona in the Sunday papers, he made contact with the family of the deceased to tell them he was sorry. He had said he was sorry in the courtroom and wanted to address them directly. The first year in prison is "a tangled web of loss of hope," he says. "It is a very emotional time."

He wrote a letter and took it to the post. He was told it wasn't as simple as that – offenders were barred from making contact with victims. So he asked the prison chaplain to deliver it in person. The chaplain did so, and returned with a message for Doyle that he believes changed the direction of his life at that desperate impasse.

The victim's family first of all asked how he was. They then asked how his family was. "I thought that was very kind," says Stephen. "They were remarkable people." They said they forgave him but that they wanted him to take on a number of responsibilities: "to re-educate myself while I was in prison, to make something positive come from the experience of their loss and mine – that's Care After Prison – and to forgive myself.

at a glance

- Life after prison
- Confronting his media persona
- Remorse and forgiveness

> I never looked for forgiveness – I didn't think it was something I could ever receive, so when it came, it came with a huge burden of responsibility. And I use that burden every day

PICS: DAVID MURPHY

"I never looked for forgiveness – I didn't think it was something I could ever receive, so when it came, it came with a huge burden of responsibility. And I use that burden every day.

"I set about reflecting on what I did, why I did it, and how it could never happen again – to be respectful of the family which I was guilty of destroying."

'Disadvantaged'

Just as some labelled him 'evil', others might have labelled him 'disadvantaged' from the outset. Stephen grew up in Ballymun in a 1960s block of flats known as Shangan, which met its fate in the demolition and regeneration programme.

His father's family owned chip vans, and his mother had been raised in a Magdalene laundry (High Park Convent in Drumcondra), having lost her mother to suicide when she was seven. When Stephen was very young, his parents separated and home life became regimented and violent.

"My mother reared us – me and my sister – as if we were still in the laundries. She was extremely damaged as a person. People asked me, how did you blend into prison so easily? The answer was, and it's true, that I was in prison my whole life.

"There were abuses in the home," he says. "As a child it had a massive impact on the adult I became. I have an intense dislike for people who abuse children. It's part of the reason I believe I ended up committing my offence."

He and his sister Rachel were solitary children, who stuck together. "My mother had this desire for us to be strong and able to mind ourselves, so from as early as I remember we were both in karate and kick-boxing classes. I've always been a big chap – that kind of went against me."

It went against him, he says, because he was not a troublemaker but "well able to look after myself if necessary". In court, he feels, "they were looking at this oversized man standing in the dock".

His mother remarried "a drinker" and she started drinking too. When Stephen left an incendiary household at the age of 15, it was to start a new life on his own. He rented a bedsit in Drumcondra and got a job in a pub, going to school every day, with plans to do his Leaving Cert the following year.

"I was pulling pints – I loved that job. I thought it was a brilliant job at the time. Unfortunately, my mother came in drunk and she threw a bottle across the counter, smashed the whole backdrop – a mirror with glasses on it. And I left.

"I really tried very hard to stay within the norms of society. I wanted to stay in education, I wanted to be a normal young person, but I just couldn't do it. I had to work to survive."

He left school in the first term of fifth year and drifted, taking work as a bouncer outside pubs, night clubs and fast-food joints. It was dangerous work: "I would be a far better door man now than I was then, because I have the diplomacy now. Whereas then, it went from 'gear one' to 'gear six'."

> **'It's a very volatile, very violent environment, but it's also an environment that's full of hope and full of bright, brilliant people, both sides of the wall – the staff and prisoners'**

Dogged determination

The morning after he received the message from the victim's parents, he enrolled in the school in prison. Over the next few years, he sat his Leaving Certificate, subject by subject. His former prison mates in Mountjoy remember the doggedness with which he settled into his rehabilitation, through counselling – and the practical help he gave others. This included everything from helping a new prisoner settle into the prison, to helping someone who was learning to read and write. "It was very small, informal stuff at the start. That started to grow as the prison governors saw a value in it.

"At times, I'd be asked to go over and see someone who was a little bit down on the other side of the prison. It became widely accepted that they could send someone to me."

So he became a mentor figure? "Self-appointed," he laughs.

The memory of the word 'evil' next to his name still lingered. "I wanted to be seen as the person I was instead of the person I was portrayed as – and I felt there were huge differences between the two people."

Prison gave him more than enough opportunity to reflect. Memories of a scarred childhood flooded back when, in January 2002, his sister Rachel died of Hodgkin's Lymphoma aged 23. He was escorted by guards to be with her in hospital. "I was handcuffed to the bed when she died. I was grateful of being there, but it was quite hard, too. She was my only family.

"During my time in prison, I saw hideous things happen. Awful things. I saw two people being stabbed to death while in custody. I believe that there's post-traumatic stress disorder that goes with being in prison for a long time. Because you're living your life on your nerves. You're constantly waiting for something to go wrong. The prison environment can go dark very, very quickly. It's not good for your mental health.

"Prison's a very complex environment," he reflects. "It's a very volatile, very violent environment, but it's also an environment that's full of hope and full of bright, brilliant people, both sides of the wall – the staff and prisoners. It's a place where there's a lot of laughter, a lot of song."

He was the lighting director when the prison theatre company performed *The Field*, *Philadelphia Here I Come* and other classic plays.

"I read anything, anything that grabbed my interest. Biographies, the Bible – funnily enough, crime novels. Books on social care, criminology, psychology. I was very interested in the workings of the mind, particularly my own mind."

Mountjoy went through an upheaval of change, not all of it related to the drastic conditions of overcrowding that reached a crisis around 2009.

"When I came into prison first, it was an 1850s prison. But things gradually started to creep in." In 2003, televisions were introduced in the cells – "a huge revelation. All of a sudden, books became obsolete, they were gone, and we were all watching *Coronation Street* and *EastEnders* and life became pretty normal again". But, he says, "It is what it says on the tin: it's prison."

Penance and rebirth

"Care After Prison is my version of penance and rebirth," says Stephen. It came out of conversations with the then chaplain of Mountjoy, Fr Charlie Hoey, and with Paul McKay, a member of the Visiting Committee, who Stephen developed a firm working relationship with over the years.

In his "self-appointed" role of a confidante, trusted by the guards to listen to people, Stephen had started to learn things. "You noticed that people would talk to their peers quite openly. If there was an issue with drug use, they would tell a peer that they were taking drugs. I was thinking, why not have that same type of honesty of openness within other prison services, like the Probation?

"I suppose the answer is fear a lot of the time. People are coming into the system with little or no trust of the HSE or any of those

Some members of the Care After Prison team *(back, l to r)*: Aisling Meyler, Thomas Kerns, Rosalinde Schut, Stephen Doyle, Peter O'Flathery, and *(front, l to r)*: Erinn Tobin, Rachel McCauley and Laura Farrell

Government bodies that were responsible for the oversight of their lives when they were younger. There's a kind of inherited mistrust of anyone that's in authority."

He also noticed a pattern of reoffending. "What would change that? What would allow people to stay out of custody?" he wondered.

In October 2011, the three men – prisoner, priest and prison worker – formed CAP, largely funded by the Irish Prison Service. It was launched by the then Deputy Lord Mayor of Dublin Maria Parodi and John Lonergan, then governor of Mountjoy. "The Irish Prison Service and the Probation Service showed an enormous trust in our organisation, and in me personally," says Stephen.

> **The prison environment can go dark very, very quickly. It's not good for your mental health**

When they set it up, he was still a prisoner. He would leave Mounjoy's Training Unit, where he served the last five years of his sentence, and go out to work on Aungier Street on day release. "I was going back to custody every night while helping people survive out of custody. Which is kind of strange. But it's just how it was."

He holds the unusual accolade of being the first lifer in the country's history to have full-time employment while in prison.

Dealing with frustration

Today, at CAP, a small group of staff and volunteers work to reduce recidivism and promote safer communities. "We set out to limit people's exposure to the frustrations of reconnecting in the community. Any sort of difficulty a person believes is paramount to them reoffending, we will address, no matter how big or small it is."

They work with individuals on practical and more substantial projects. It might be with having driving-licence issues, or delving into the grittier areas of methadone clinics, and finding accommodation and employment.

Since 2011, the organisation has worked on 3,300 cases nationwide, supporting ex-offenders, their families and also victims of crime.

"We have people who have gone into full-time employment and people who have progressed in what others might say are very small ways, but which are huge to them. People might have been smoking cannabis, and stepping away from that might have been the only change in their lives, but they're not buying something that's illegal."

The rates of reoffending in Ireland are troubling. An Irish Prison Service report in 2013 found that 62.3% of prisoners reoffended within three years of release. According to Stephen: "Our reoffending rates are very, very low. Our compliance rates are very, very high."

When President Michael D Higgins visited Care After Prison in 2012, he described the organisation as "an opportunity to transform lives" and "a place that offers respect, dignity and hope".

"You have to hope that justice comes in the course of a lifetime rather than at particular stages of life," says Stephen. "And that goes for people who are victims of crime."

Stephen Doyle will speak on victim/offender dialogue at One Resolve's First Thursday event at 7.30pm on 4 June in the Shelbourne Hotel.

MARTIN CRILLY 1952 – 2014

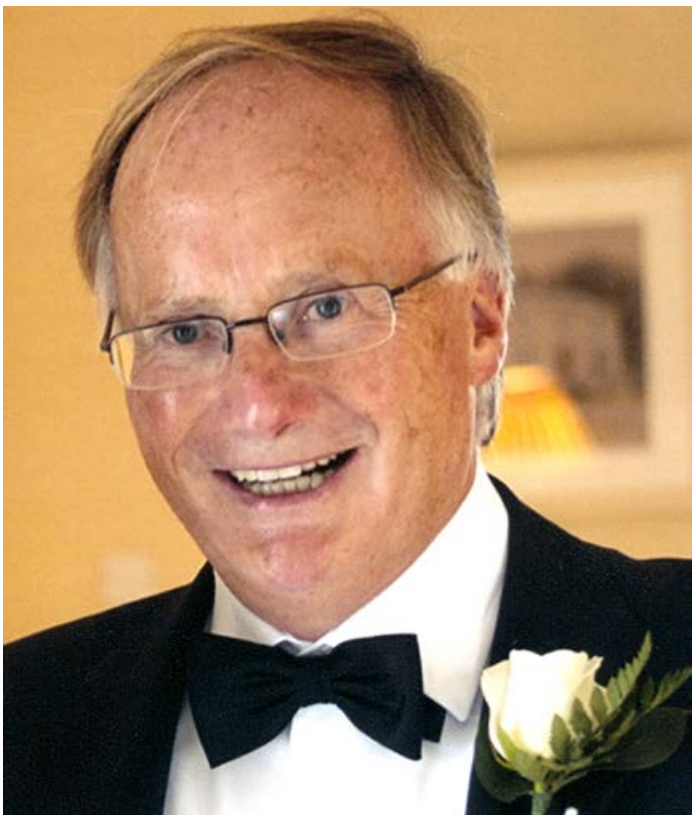
On 6 October 2014, the untimely death of Carrickmacross solicitor Martin Crilly took place following a brave battle with cancer. Martin passed away peacefully in the arms of his family, having remained optimistic throughout his short illness.

He was born on 16 August 1952 to Hugh and Catherine Crilly. He was a brother to Hugh, Eamon and Mary (Grogan). He was raised on the Avenue Road, Dundalk, Co Louth, and from there he attended the Marist College, Dundalk, for secondary education.

Martin and his beloved wife Anne (née McMorrow) were childhood sweethearts and were married in Dublin on 4 April 1976. They moved to Carrickmacross in 1982. They spent many happy years there raising their three children, Shane, Suzanne and Laura.

Martin studied at UCD, where he was conferred with a BCL, and subsequently qualified as a solicitor in 1975. In 1979, he established what would become a very successful legal practice at 7 Main Street, Carrickmacross, developing into a popular and well-respected solicitor within the town. Although he was a Louth man, the people of Carrickmacross embraced him, and he was soon converted to hanging the Monaghan flag from his office window. He gave great support to his adoptive Monaghan senior football team and, indeed, his native Louth.

Martin had a great love of the outdoors and would go out of his way to attend as many football, soccer and rugby matches as possible. And when he wasn't playing sport, he was watching it, and he had a particular love of tennis. He regularly played in clubs in Carrickmacross and Dundalk until he became ill.



Martin's love of soccer shone through – he is vividly remembered as a keen player for the Dundalk and UCD teams. His enthusiasm continued throughout his career, playing in many solicitors v gardaí games. His determination and focus, both on and off the field, was one of his most evident characteristics, for which he will be remembered. His passion for all things athletic was palpable. Highlights of his life included trips to Italia '90 and the USA in 1994 with the Irish soccer team.

Over the 35 years spent in Carrickmacross, Martin built his firm (alongside his right-hand woman, Mary McArdle) into a successful general practice. Martin was recognised for his expertise in dealing with defence civil litigation. He was a fearless advocate on behalf of his clients and would leave no stone unturned when dealing with a case. He was regarded as a larger-than-life character, a true gentleman who always had a smile on his face, and would go out of his way to put his clients, colleagues and friends at ease. His broad love of music, poetry and sport allowed him to connect with people in a way that was memorable. Martin generously gave of his time to all, rendering him infinitely popular, but also regularly leaving him running late!

A notable high point of Martin's career was the successful test case of *O'Gorman & Co Ltd, Jes Holdings Ltd*, a case that ran for 17 years, in which he diligently applied the law on ground rents on behalf of the townspeople of Carrickmacross. It is therefore a fitting tribute that this case is now enshrined in the Irish legal landscape, and it was something of which Martin was immensely proud.

Martin was a family man and took great pride when his children Shane, Suzanne and Laura, and his niece Johanna, took steps to study law. In the last few months of his illness, he took great joy in the time he spent with his family, particularly days enjoyed with his grandson James and the trips taken around Ireland with Anne.

Martin will be sorely missed by his family, friends and colleagues. He was a great force in the lives of many, leaving an imprint wherever he went. The true testament to Martin's character was the large gathering of colleagues and friends at his funeral in St Patrick's Cathedral, Dundalk, together with the wonderful eulogy given by Hugh Mohan SC and the guard of honour given by his legal colleagues. The cathedral was filled with both laughter and tears as those who knew him mourned their loss with happy memories. Forever in our hearts and thoughts.

"For what it teaches is just this
We are not alone in our loneliness,
Others have been here and known
Griefs we thought our special own."

(Patrick Kavanagh – *Thank You, Thank You*)

SC & LC

Council report – 24 April 2015

The Council observed a minute's silence in memory of former Law Society president Maurice R Curran. Maurice was managing partner of Mason Hayes & Curran for many years and served as president in 1988/1989. He had been a founding member of the Society of Young Solicitors and of the SMDF, which he had chaired for almost two decades.

Legal Services Regulation Bill 2011

Michael Quinlan noted that report stage in the Dáil had completed, and the bill would now move to the Seanad. Second stage in the Seanad could commence as early as mid-May, with committee stage following in the autumn.

eConveyancing Project

Patrick Dorgan reported that a series of presentations on e-conveyancing would commence the following week with the Waterford Law Society, and a further presentation was scheduled for the DSBA in early June. A tentative timeline for the beta roll-out to a selected number of firms would be 18 months' time. A comprehensive series of workshops and seminars would be provided throughout the country in due course. Mr Dorgan emphasised that, while e-conveyancing was not a panacea for all ills, much of the drudgery involved in the existing conveyancing process would be removed. Core legal skills would not become automated, and sophisticated and careful legal work would still be required.

Collapse of Setanta Insurance

Stuart Gilhooly briefed the Council on the current situation in relation to claims against Setanta Insurance and noted that a High Court application had been made by the Accountant of the Courts of Justice by way of special summons for a trial of an issue of law to determine whether MIBI was liable for claims made under the Setanta policies. The case would be assigned to a designated High Court judge by the President of the High Court on the following Monday. The Society had agreed to act as *legitimus contradictor* in the proceedings. MIBI was responding to the proceedings, and it was likely that there would be a number of notice parties. An *eBulletin* would issue to the profession early the following week.

Meeting with Office of Government Procurement

The director general reported that the Society had hosted a seminar on 22 April, at which 130 practitioners heard the Office of Government Procurement present its proposals for reform in the area of legal services procurement. A considerable amount of information had been provided by the OGP, and many practitioner spoke from the floor on a variety of issues. In hosting the seminar, the Society had been facilitating – not endorsing – the OGP's proposals.

Marriage equality referendum

On behalf of the Human Rights Committee, Shane McCarthy presented a position paper to the Council on the marriage equality referendum. He said that a very simple position had been taken by the committee in recommending that the Society should take a policy position in support of the referendum. The committee could not think of any other set of circumstances where the Society would not vigorously oppose an issue of discrimination on the basis of sex. The committee was aware that, in the past, there had been some reluctance within the Council to publicly engage in relation to referenda. Nevertheless, the committee was strongly of the view that this was an equality issue and there was an onus on the Society to show leadership.

Following a lengthy discussion, the Council agreed that the Society should take a position in support of the marriage equality referendum, with 22 votes in favour and nine votes against (see 'President's Message', May 2015 *Gazette*, and the *eBulletin* of 6 May 2015).

Age of presidential candidates referendum

The Council agreed that the Society should also take a position in support of the age of presidential candidates referendum, with 21 votes in favour and ten against.

Solicitors Disciplinary Tribunal

The Council approved the nomination of Niall Farrell as chairman of the Solicitors Disciplinary Tribunal, replacing Ward McEllin, with effect from 21 May 2015. The Council noted that the appointment was that of the President of the High Court.

Irish Takeover Panel

The Council confirmed the nomination of Paul Egan as director of the Irish Takeover Panel for a three-year term and the nomination of Lorcan Tiernan as alternate director of the Irish Takeover Panel, also for a period of three years.

practice notes

BUSINESS LAW COMMITTEE

The *Companies Act 2014*: dealing with priorities

The vast bulk of the *Companies Act 2014* was commenced on 1 June 2015. The legislation is a substantial challenge, but also an opportunity. The Law Society has focused on arming the profession with the knowledge of company law required to deal with this legislation.

There has been a series of articles in the *Gazette*, with more to follow. An extensive programme of CPD events throughout the country has been conducted, with a further major CPD event to take place in Cork on 10 June (proceeds to go to the Irish Rule of Law charity).

In addition, practitioners need tools such as practice notes and precedents. The act introduces two types of private company limited by shares: the new model private company limited by shares (LTD) and the designated activity company (DAC). The overwhelming majority of companies will be LTDs, the constitutional documents of which are quite different to those to which we are accustomed. During the transition period of 18 months from the commencement date, existing private companies will have to consider which corporate structure they will assume. The priority of the Business Law Committee has been to prepare a specimen constitution for an LTD that would be of assistance to the profession.

The suite of documents accompanying the practice notes here are also available on the Business Law Committee's webpage at www.lawsociety.ie/business-law-precedents.

The first practice note ('Adopting a new constitution under the *Companies Act 2014* – an overview') gives an overview of what is required to navigate the changes contemplated by the legislation and the options available to existing companies. That practice note also directs readers to the relevant documents to assist them.

The best approach for dealing with the change would be for the members to make a positive decision to adopt a new constitution. The second practice note ('Adoption of a new constitution by members') gives guidance on what needs to be done and how it should be accomplished.

The committee has prepared a draft model constitution, which is available on the committee's webpage. The committee has also prepared draft resolutions that are also available on our webpage.

If a constitution is not adopted by the members, in certain circumstances, the directors have an obligation to prepare a constitution. This is the subject of the third practice note ('Constitution prepared by directors'). In order to show how the process would work in practice, the committee has prepared a case study showing how a sample memorandum and articles of association would be converted into a constitution of an LTD by the directors. The practice note directs the reader to the case note on the committee's webpage.

For those companies that chose to convert to a DAC, there is help available in the fourth practice note ('Constitution on conversion to a DAC'). Again, a draft resolution for the assistance of the profession had been prepared and is available on the committee webpage.

The committee is indebted to a subcommittee of its members that devoted very considerable resources to the preparation of these documents. We would also like to thank Elizabeth Fitzgerald, solicitor, who was of invaluable assistance and to extend our thanks to Paul Heffernan of McCann FitzGerald, who kindly made available to the committee material that had been prepared by him.

It must be emphasised that these documents are specimens only. Inevitably, in preparing drafts, views were taken that may not be appropriate in particular cases. Solicitors should be aware that there are many provisions of the act that are optional and can be adjusted and/or deleted to accommodate particular circumstances.

Observations and suggestions for improvement would be welcome.

The Business Law Committee hopes that these tools, and others that follow, will be of service to the profession.

Paul Keane, chairman

BUSINESS LAW COMMITTEE

1.1 – Adopting a new constitution under the *Companies Act 2014* – an overview

This practice note deals with how an existing private company should adopt a new constitution that satisfies the requirements of the new *Companies Act 2014*. For these purposes, an 'existing private company' is defined in s15 of the act as a private company limited by shares, which was incorporated under any former enactment relating to companies and is in existence at the commencement of s15.

Once the act comes into force, all existing private limited companies will be obliged to alter their legal form. They cannot continue in their current form.

What company form to adopt?

The vast majority of existing private companies will choose to convert to the new form of private company limited by shares, to which parts 1 to 15 of the act apply (which, for convenience, will be referred to as the LTD). Some companies will become, either by choice or due to statutory obligation, a designated activity company, to which part 16 of the act applies (DAC). This practice note will confine itself to the conversion by an existing private company to either a LTD or a DAC.

There are two ways of converting an existing private company to a LTD. The two options are by a constitution adopted by the members (s59) or a constitution prepared and adopted by the directors (s60).

What is the difference between a DAC and a LTD company?

A DAC will have a single-document constitution comprising a memorandum (to include an objects clause) and articles of association. It will be able to list debt securities and will be in the form permitted to operate as a credit institution or an insurance undertaking (subject to Central Bank regulation). A DAC company's name will end in DAC or 'designated activity company' or 'cuideachta ghníomhaíochta ainmnithe'.

By contrast, an LTD will be governed by a single-document constitution that will differ quite substantially from the old memorandum and articles of association. It does not have an objects clause, as it has full and unlimited capacity to enter transactions and undertake any business or activity. LTD companies cannot list debt securities, nor operate as credit institutions or insurance undertakings.

When do we have to take action?

The act (s15) provides for a transition period of 18 months beginning on the date on which s15 of the act is commenced, with power for the minister to extend the period by up to 12 months if any difficulties arise in the operation of the new legislation (s16). Actions relating to DACs are to be taken within 15 months of commencement. The act is expected to have been commenced on 1 June 2015. If commenced when expected, the relevant deadlines for your diary are 1 September 2016 (for DAC) and 1 December 2016 (for LTD).

What happens if our company does nothing?

1) Transition period – part 16 of the act shall apply to the company as if it were a DAC: from the commencement of part 2 of the act until the end of the transition period, the law on DACs in part 16 of the act will largely apply to existing private companies (s58(1)). This means that the company will, for example, continue to be limited in its powers by its objects clause (s58), be required to have two directors and, where there is more than one shareholder, it must continue to hold an annual general meeting.
2) Post-transition period – company will be deemed LTD: at the end of the transition period, the existing private company will be deemed to have a constitution that comprises the provisions of the company's existing memorandum and articles of association but modified as required under s61(1) and s61(3). The existing private company will be deemed a LTD (s55).

Does that mean that our company does not have to take any action?

Not quite. There are a number of reasons why each company should be proactive about making the change.

1) Certain companies are not permitted to be LTD companies and must re-register. These companies are:
   - Credit institutions and insurance undertakings (s18(2)),
   - Companies with listed debt securities (ss56(3) and 68).
2) Shareholders have powers to compel the company to convert to a DAC up to three months before the end of the transition period:
   - The members of an existing private company may opt to convert the company to a DAC by passing an ordinary resolution (s56(1)),
   - Where a notice in writing to convert to a DAC is served on an existing private company by the holders of more than 25% of the voting rights in the company, the company must re-register as a DAC (s56(2)).

Where the company does not convert to a DAC before the expiry of the transition period, a member of the company holding not less than 15% of the nominal value of the company's issued share capital or a creditor holding not less than 15% of the company's debentures (provided such debentures restrict alterations to the objects clauses in the memorandum of association) may apply to the High Court for an order directing that the company shall re-register as a DAC (s57).

3) While there is no specific penalty/offence for directors that fail to prepare and register the new constitution, directors have statutory obligations under s60 to prepare a constitution in the prescribed form, deliver a copy to each member, and to deliver the constitution to the Companies Registration Office unless:
   - The members have already adopted a constitution (s59 (1)),
   - The company is required to re-register as a DAC under ss56(2) or 56(3),
   - The company is in the process of registering as another type of company (s56(3) and part 20),
   - The company is in the process of registering as a DAC pursuant to a resolution passed under s56(1).

Further, it is the duty of each director of a company to ensure that the company complies with the act (s223(1)).

4) The deemed constitution under s55 or a constitution prepared by the directors in the form prescribed by s60(2) is going to be untidy. The cross-references between old Table A provisions and the new *Companies Acts* are complicated. It is important to note that, if a company's existing articles of association adopt all or any of the regulations contained in Table A in the first schedule to the *Companies Act 1963*, those regulations will continue to apply, despite the fact that the 2014 act repeals the 1963 act (and other *Companies Acts*), save to the extent that they are inconsistent with any mandatory provisions of the 2014 act. Any references in such regulations to any provision of the prior *Companies Acts* will be read as references to the corresponding provision of the 2014 act. There will be confusion and a lack of clarity on an ongoing basis as to what provisions do and do not apply. Furthermore, some provisions in the act are mandatory and will 'overrule' a Table A provision. On this basis, it is much better for a company's members to adopt a new constitution under s59.
5) Shareholder oppression. Albeit this type of action is unlikely to take place, it is a possibility under the act that a member may take an action for shareholder oppression due to the directors' failure to adopt a new constitution. Where any member of a company considers that his or her obligations or rights have been prejudiced by the exercise, non-exercise, or the particular way of exercising a power by the company or the directors of the company, the member may apply to the court for an order under s212 (remedy in case of oppression). Importantly, where the directors have failed to adopt a new constitution under s60, it will be assumed that the directors are acting in a manner oppressive towards the member taking the action or in disregard of his or her interests as a member of the company (s62(1)).

How the members convert to LTD (s59)

Section 59 of the act provides that an existing private company, by special resolution passed in accordance with its existing memorandum and articles and subject to compliance with the provisions of part 16 as to the variation of rights and obligations of members, may, after the commencement of this part, adopt a new constitution in the form provided under s19 of the act.

The required special resolution will either be passed at an extraordinary general meeting of the company or, if authorised by the articles of association, by means of a resolution in writing signed by all the members under s141(8) of the *Companies Act 1963*.

If the new constitution operates to vary the rights and obligations attached to any class of shares in the company, the holders of 75%, in nominal value, of the issued shares of that class must consent in writing to the variation or the variation must be sanctioned by a special resolution passed at a separate general meeting of the holders of that class.

Section 59 of the act provides that where, before the end of the transition period, a new constitution has been adopted and has been delivered to the Registrar of Companies for registration, the company shall, on its registration, become a private company limited by shares, to which parts 1 to 15 of the act apply.

For further information, please refer to the following documents, which are available on the on the

practice notes

Business Law Committee webpage:

- Practice note – adoption of a new constitution by members (document 2.1),
- Draft model constitution (document 2.2),
- Case study – converting existing articles of association to a constitution of an LTD (members) (document 2.3),
- Suggested form resolutions (document 5.1),
- Sample template memorandum and articles of association (for comparison) (document 5.2).

How the directors convert to LTD (s60)

Section 60 of the act provides that the directors shall convert an existing private company to a LTD, provided the company is not in the process of converting or required to convert to another type of company and provided the members have not already adopted a constitution (s60(1)). The directors must prepare a constitution in the form prescribed under s19, deliver a copy to each member, and deliver the constitution to the Companies Registration Office for registration. The company shall, on this registration, become a private company limited by shares, to which parts 1 to 15 of the act apply.

Section 60(3) provides that the constitution registered by the directors under s60 will consist solely of the provisions of its existing articles of association and the provisions of its existing memorandum of association, other than:

- Its objects, or
- Any provisions that provide for, or prohibit, the alteration of all or any of the provisions of its memorandum or articles of association.

For further information, see (www.lawsociety.ie/business-law-precedents):

- Practice note – document 3.1,
- Case study – constitution prepared by directors converting – tracked copy (document 3.2),
- Case study – constitution prepared by directors converting – clean copy (document 3.3),
- Suggested form resolutions (document 5.1),
- Sample memorandum and articles of association (for comparison) (document 5.2).

How the company converts to a DAC (ss56 and 63)

Section 56 of the act provides for the conversion of an existing private company to a designated activity company.

An existing private company may re-register as a designated activity company by passing an ordinary resolution not later than three months before the expiry of the transition period resolving that the company be so registered (s56(1)).

An existing private company shall re-register as a designated activity company before the expiry of the transition period if, not later than three months before the expiry of that period, a notice in writing requiring it do so is served on it by a member or members holding shares in the company that confer, in aggregate, more than 25% of the total voting rights in the company (s56(2)).

Section 57 of the act provides that if, before the expiry of the transition period, the company has not re-registered as a DAC (whether obliged to do so or not), the holder or holders of not less than 15% in nominal value of the company's share capital or any class thereof or one or more creditors of the company who hold not less than 15% of the company's debentures entitling the holders to object to alterations of its objects may apply to the court for an order directing that the company re-registers as a DAC and, unless cause to the contrary is shown, the court must make such an order.

For further information, see (www.lawsociety.ie/business-law-precedents):

- Practice note – constitution on conversion to a DAC (document 4.1),
- Suggested form resolutions (document 5.1).

BUSINESS LAW COMMITTEE

2.1 – Adoption of a new constitution by members

This practice note deals with the preparation and registration of a new constitution by the members of a private company limited by shares (an LTD).

How do members prepare their new constitution?

The following is a checklist of actions to be taken:

Delete:

1) **The objects from the memorandum of association, and**
2) **Any provisions that allow for or prohibit the alteration of any part of the memorandum or articles of association.**

State:

1) **The company's name in the form '[COMPANY NAME] Limited',**
2) **That the company is a private company limited by shares registered under part 2 of the *Companies Act 2014*,**
3) **That the liability of the members is limited,**
4) **The authorised share capital and the division of that capital into shares of a fixed amount to be specified in the constitution,**
5) **The number of shares taken by each subscriber, and**
6) **The new supplemental regulations (see below).**

The constitution must:

1) **Be in a form as near as circumstances permit to that shown in schedule 1 of the act,**
2) **Be divided into paragraphs and numbered consecutively, and**
3) **Comply with the provisions of part 16 of the act with respect to the variation of rights and obligations of members (s59(1)(b)).**

Is there an example document showing these changes?

The Business Law Committee has prepared a draft model constitution that is available on the forms and precedent section of the committee's webpage (see document 2.2). A case study that details the methodology used in the conversion of a sample set of articles of association to the draft model constitution is also available (see document 2.3).

What are the basic considerations when drafting a new constitution?

Parts 1-15 of the act relate to the LTD company. The act contains 151 optional statutory default positions applicable to the LTD that may be varied or amended (Courtney, *Bloomsbury Professional's Guide to the Companies Act 2014*, p46). Fortunately, these optional default provisions were drafted to reflect the standard positions adopted by the majority of companies in their memorandum and articles of association prior to enactment of the act. These optional provisions may be disapplied or modified, and companies may draft their own bespoke alternative provisions.

Please note, however: care should be taken with respect to introducing bespoke provisions, as actions taken that are not in accordance with various sections of the act may constitute an offence.The mass disapplication of optional provisions described above is particularly likely to occur in the case of large companies or in the case of joint ventures or similar where the spe-

cifics of the company require greater control by way of the constitution.

For a smaller or simpler company, there are still a number of statutory default provisions that it may be considered appropriate to vary. Examples of such provisions are listed below:

- Section 69(6) to (12) – preemption rights,
- Section 144(3)(c) – disapplication of automatic retirement of director appointed by directors at next annual general meeting,
- Section 148(2) – vacation of office of director,
- Section 160(9) to (12) – powers of committees,
- Section 160(4) – notice to directors temporarily absent from the state,
- Section 161(1) – written resolutions,
- Section 165 – powers of alternate directors.

Provisions relating to these sections are included in document 2.2, the draft model constitution (see www.lawsociety.ie/business-law-precedents).

There are also a limited number of provisions to which a company must 'opt in' if it wishes to avail of the benefits of the provision. A company may opt in by permitting the action in the constitution or by other means listed in the relevant clause such as special resolution. Consideration should be given to whether to make express provision for these matters in the constitution.

The following is a list of opt-in provisions to be considered when drafting a new form constitution. This list does not purport to be comprehensive:

- Section 44(2) – power of a company to have official seal for use abroad,
- Section 69(1)* – power of a company to allot shares,
- Section 105(4)* – power of a company to acquire its own shares,
- Section 108 – power of a company to redeem preference shares issued by company before 5 May 1959,
- Section 181(1) – provision for a notice period for general meetings greater than 21 days,
- Section 228(1)(d)(i)* – to permit a director to use the company's property, information or opportunities,
- Section 228 (1)(e)(i) – to permit a director to agree to restrict the director's power to exercise an independent judgment,
- Section 235* – indemnity for officers of the company.

(Provisions relating to the items marked with an asterisk above are contained in the draft model constitution.)*

Can the authorised share capital limitation be removed in the same process as adopting the new constitution?

Under the act, an LTD can dispense with the limitation of having an authorised share capital (s19(1)(d)(ii)). This may be done by way of special resolution as described in s32 and with the amendment to the constitution as described in s19(3) of the act.

Is there a requirement for the original subscribers to sign the amended constitution?

When submitting a new company's constitution to the CRO, s19(2)(c) of the act states that a constitution shall either be signed by each subscriber in the presence of at least one witness or be authenticated "in the manner referred to in section 888". Pursuant to s888, a document may be authenticated in the manner prescribed by ministerial regulation (s12(1)).

With respect to the amended constitution, current practice when submitting an amended memorandum and articles to the Companies Registration Office is to include the list of original subscribers and their holdings, but such subscribers are not required to sign the revised memorandum and articles. It is expected that this practice will continue with respect to the submission of the constitution adopted by members of an existing private company to convert to an LTD.

Further, in the case of single member companies, the current practice of the Companies Registration Office is that the wording "we, the several persons" does not have to be amended to the singular and we understand that this will continue to be the case.

The constitution is prepared – what next?

To adopt the new constitution, the company should take the following steps:

1) In accordance with the requirements of its existing memorandum and articles, pass a special resolution adopting the new constitution (the Business Law Committee has prepared suggested form resolutions that are available on its webpage – see document 5.1), and
2) Deliver the new constitution with Form N1 to the Companies Registration Office for registration. Please consult guidance from the Companies Registration Office on the requirements for completion of this form.

Once registered, the Companies Registration Office will issue a new certificate of incorporation stating that the company is registered under part 2 of the act.

BUSINESS LAW COMMITTEE

3.1 – Constitution prepared by directors

This practice note deals with the preparation and registration of a new constitution by directors of a private company limited by shares (an LTD).

When should the directors prepare and register a new constitution?

Under s60 of the *Companies Act 2014*, the directors of a company have an obligation to prepare and register a new constitution before the expiration of the transition period (currently expected to expire on 1 December 2016) unless the company:

- Has already adopted a new constitution by action of the members,
- Is required to re-register as a designated activity company (DAC),
- Is proceeding to re-register as a DAC or as another type of company, or
- Is required by a s57 order to re-register as a DAC or proceedings with respect to such re-registration are pending.

How do directors prepare their new constitution?

There are very specific actions to be taken by the directors to prepare the constitution. These actions are contained in s60(3) of the act. There is no scope for the directors to amend the existing memorandum and articles other than as prescribed.

The following is a checklist of actions to be taken:

Delete:

1) The objects from the memorandum of association, and
2) Any provisions that allow for or prohibit the alteration of any part of the memorandum or articles of association.

State:

1) The company's name in the form '[COMPANY NAME] Limited',
2) That the company is a private company limited by shares registered under part 2 of the *Companies Act 2014*,
3) That the liability of the members is limited,
4) The authorised share capital and the division of that capital into shares of a fixed amount of a certain value (note the requirement for an authorised share capital for a new company has been made optional; however, it is not within the scope of this revised

constitution prepared by directors to drop reference to authorised share capital),
5) The number of shares taken by each subscriber, and
6) The previous articles of association without modification of their content.

The constitution must:
1) Be in a form as near as circumstances permit to that shown in schedule 1 of the act, and
2) Be divided into paragraphs and numbered consecutively.

This may lead to a situation where the share capital of the company is listed at regulation 4 (in accordance with the form contained in schedule 1) and the share capital is again listed in the restatement of the previous articles of association. In this situation, the conservative approach is to allow the duplication.

In those rare cases where a private company limited by shares (as distinct from a company limited by guarantee) is exempt from including 'limited' in its name, that exemption no longer applies (s60(3)).

Is there an example document showing these changes?

The Business Law Committee has prepared a case study demonstrating how a sample memorandum and articles of association can be converted into a constitution by the directors of an LTD. This case study is available on the forms and precedents section of the Business Law Committee webpage – see documents 3.2 (tracked copy), 3.3 (clean copy) and 5.2 (sample memorandum and articles of association).

Our company does not have an articles of association document. What do we do?

Where a company has adopted Table A articles without modification, such companies should include a statement that "the articles of the company comprise the regulations at Table A in the first schedule to the *Companies Act 1963*" (s60(4)).

Why do we refer to Table A in our new constitution when the *Companies Act 1963* is being repealed?

References to Table A in the constitution shall be read as references to the corresponding provisions of the act. Where the act and Table A do not agree, the act's provisions will prevail (s60(6)).

Table A regulations are treated as having been updated into the form in which they existed on the date of the repeal of the *Companies Act 1963* (s60(7)).

There are special rules that apply for companies governed by model regulations contained in pre-1963 *Companies Acts*. Please see sections 5 and 6 of the act for guidance on savings and transitional provisions.

Is there a requirement for the subscribers to sign the amended constitution?

Section 19(2)(c) of the act states that a constitution shall either be signed by each subscriber in the presence of at least one witness or be authenticated "in the manner referred to in section 888". Section 888 states that a document may be authenticated in the prescribed manner. Ministerial regulations relating to s888 have yet to issue.

Current practice for an existing company when submitting an amended memorandum and articles to the Companies Registration Office is to include the list of original subscribers and their holdings, but such subscribers are not required to sign the revised memorandum and articles.

It is expected that this practice will continue with respect to the submission of the constitution prepared by directors of an existing private company to convert to an LTD.

The constitution is prepared. What next?

To adopt the new constitution, the directors should take the following steps:
1) A copy must be delivered to each member of the company, and
2) Delivered with Form N1 to the Companies Registration Office for registration. Please consult guidance from the Companies Registration Office on the requirements for completion of this form.

Once registered, the Companies Registration Office will issue a new certificate of incorporation stating that the company is registered under part 2 of the act.

BUSINESS LAW COMMITTEE

4.1 – Constitution on conversion to a DAC

This practice note deals with the preparation and registration of a new constitution (memorandum and articles of association) for conversion of an existing private company to a designated activity company (DAC).

What is the procedure for re-registration as a DAC?

The procedure for re-registration of an existing private company as a DAC pursuant to the *Companies Act 2014* under s56(1), (2) or (3) or pursuant to an order of the court under s57(1) is set out in s63 of the act.

Application for re-registration of the company as a DAC in the prescribed form must be delivered to the Companies Registration Office together with the following documents:
1) A copy of the ordinary resolution or the resolution of the directors,
2) A copy of the memorandum and articles of the company as altered by the resolution, and
3) A statement in the prescribed form by a director or secretary of the company that the requirements of the act as to re-registration as a DAC have been complied with.

What alterations are to be made to the memorandum and articles of association?

Section 63 provides that the company's memorandum must be altered so that it states that the company is to be a designated activity company and substitutes the words "designated activity company" or "cuideachta ghníomnaíochta ainmnithe" for the word "limited" or "teoranta".

The alteration in the memorandum is effected by means of the ordinary resolution of the members referred to in s56(1) if that subsection applies or,

if any of ss56(2) or 56(3) or 57 apply, by means of a resolution of the directors of the company passed pursuant to the relevant subsection or court order, as the case may be.

Can any further alterations be made to the memorandum and articles of association?

The objects clauses of a DAC may only be altered by special resolution of the company (s974(1)) and therefore may not be amended by way of the resolutions passed to convert the existing private company into a DAC. Certain members and creditors of the company have the ability to make an application to the courts to have such alteration cancelled within 21 days of the passing of the special resolution (ss974(3) and 974(5).

The other provisions of the memorandum and the articles of association may also be altered by special resolution (ss977 and 978). If, however, the memorandum prohibits any such alteration, ss977 and 978 do not apply.

Is a draft of the resolutions to convert to a DAC available?

The Business Law Committee has prepared suggested form resolutions, which are available on the forms and precedent section of its webpage (see document 5.1). This includes suggested wording for resolutions for conversion of the company to DAC.

The ordinary resolution to be passed by the members pursuant to s56(1) may be passed by the members in general meeting or, if the company's existing articles permit, by means of a written resolution signed by all the members under s141(8) of the *Companies Act 1963*.

Resolutions to be passed by the directors under ss56(2) or 56(3) or pursuant to an order of the court made under s57 may be passed by way of the company's normal method for passing a directors' resolution.

REGULATION OF PRACTICE COMMITTEE

The importance of up-to-date books of account

Regulation 13 of the *Solicitors Accounts Regulations 2014* requires that a "a solicitor shall, **at all times** in the course of and arising from his or her practice as a solicitor, maintain (as part of his or her accounting records) proper books of account and such relevant supporting documents as will enable clients moneys handled and dealt with by the solicitor to be duly recorded and the entries relevant thereto in the books of account to be appropriately vouched" (emphasis added).

The Law Society wishes to stress the importance of maintaining the books of account up to date at all times and reviewing the books of account from both a practical and regulatory point of view. The optimum frequency of updating the books of account is dependent upon a number of factors, such as the size of the practice, the number of financial transactions, and so on. Ideally, the books of account should be updated on a daily basis or when a financial transaction occurs. In the case of a practice consisting of one or two solicitors, it may be more appropriate to update the books on a weekly basis. The Law Society would consider it a rare circumstance that a monthly basis would be deemed appropriate, and never a longer period than monthly.

From a practical point of view, failure to maintain the books of account up to date often results in poor financial management and a lack of awareness of the profitability and viability of the practice. Professional fees held in the client account are sometimes overlooked, in the belief that they were previously transferred to the office account, payment of overheads is made when not in sufficient funds to do so, requiring the solicitor to explain matters to their suppliers, or errors are made on both the office and client account. Suppliers may be paid twice, resulting in a delay in receiving a refund. From a client account perspective, the lack of up-to-date books of account often results in a failure to identify inactive balances, which may include land registry fees, undischarged outlays, undischarged bequests, and so on.

Errors arising in relation to the client account are often more serious. The Regulation of Practice Committee has encountered a number of issues that have arisen due to the lack of proper books of account. These issues often go unnoticed for long periods due to the lack of proper books of account, exacerbating the problem. For example:

- Overpayments made to clients, overpayments of third party outlays, and so on – these overpayments often give rise to debit balances (breach of regulation 7(2),
- Payments from/lodgements to wrong bank account (breach of regulations 5 and 7),
- Duplication of or over-transfer of fees, giving rise to debit balances on the client ledger and credit balances on the office ledger (breach of regulations 7(2) and 11(5)),
- Credit balances on the office ledger arising (breach of regulation 11(5)) arising from the failure to record the professional fees due as a debit on the office ledger (breach of regulation 11(4)) or failure to record payment of outlays subsequently recovered.

The breach of regulation 13 and/or a combination of the above breaches have given rise to various sanctions being imposed. These sanctions include the imposition of a levy, the imposition of conditions on the solicitor's practicing certificate, and referrals to the Solicitors Disciplinary Tribunal and the High Court.

John Elliot, Registrar of Solicitors and Director of Regulation.

REGULATION OF PRACTICE COMMITTEE

Responsibility for deficits arising as a result of cybercrime

The May 2015 edition of the *Law Society Gazette* contained an article entitled 'Revenge of the Cybermen'. This article detailed recent cases of fraud perpetrated on client bank accounts, resulting in a deficit in client moneys.

The Regulation of Practice Committee wishes to emphasise that any deficit arising in client moneys held by a practice is the personal responsibility of the partners/principal of the practice, whether caused by a solicitor or staff member or as a victim of cybercrime. It is therefore the responsibility of the partners/principal to reimburse the client account the amount fraudulently taken, rectifying any deficit, whether from the proceeds of insurance cover and/or from personal funds.

John Elliot,
Registrar of Solicitors and Director of Regulation.

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Certificate in Advanced IP	Saturday 27 February 2016	€1,200
Certificate in eCommerce and Social Media	Saturday 9 April 2016	€1,200
Diploma in Arbitration	Saturday 3 October	€3,200
Diploma in Finance Law	Tuesday 6 October	€2,200
Diploma in Corporate Law and Governance	Wednesday 7 October	€2,200
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CONTACT DETAILS

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Please note that the Law Society of Ireland's Diploma Centre reserves the right to change the courses that may be offered and course prices may be subject to change. Some of these courses may be iPad courses in which case there will be a higher fee payable to include the device. Contact the Diploma Centre or check our website for up-to-date fees and dates.

legislation update

14 April – 11 May 2015

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

ACTS

Roads Act 2015
Number: 14/2015
Dissolves the Railway Procurement Agency and transfers its functions and staff to the National Roads Authority; amends the *Roads Act 1993* and the *Transport (Railway Infrastructure) Act 2001*; provides for additional functions to be assigned to the National Roads Authority and provides for related matters.
Commencement: 6/5/2015; commencement order(s) required for dissolution of RPA

Vehicle Clamping Act 2015
Number: 13/2015
Regulates the clamping of vehicles on public roads and certain other places. The National Transport Authority is conferred with regulatory powers with respect to the physical administration of clamping, provision of appropriate signage in places where clamping is operated, and the setting of maximum clamp release and vehicle relocation charges. Amends the *Transport Act 1950*, section 101B of the *Road Traffic Act 1961*, the *Fishery Harbour Centres Act 1968*, the *Harbours Act 1996*, and the *Transport (Railway Infrastructure) Act 2001*, and provides for related matters.
Commencement: Commencement order(s) required as per s1(2) of the act

Social Welfare (Miscellaneous Provisions) Act 2015
Number: 12/2015
Amends and extends the *Social Welfare Acts*, amends the *Taxes Consolidation Act 1997* and the *Personal Injuries Assessment Board Act 2003*, and provides for related matters.
Commencement: 6/5/2015; see act for commencement particulars for various benefits

Education (Miscellaneous Provisions) Act 2015
Number: 10/2015
Enables an education provider to describe itself outside the State, in certain circumstances, as a university; amends the *Universities Act 1997*, the *Education Act 1998*, and the *Student Support Act 2011*, and provides for related matters.
Commencement: 5/5/2015 for ss7 and 8; commencement order(s) to be made for other sections

SELECTED STATUTORY INSTRUMENTS

District Court (Family Law Reporting) Rules 2015
Number: SI 141/2015
Substitute order 61A of the *District Court Rules* to facilitate the reporting of family law proceedings following amendment of the *Civil Liability and Courts Act 2004* by the *Courts and Civil Law (Miscellaneous Provisions) Act 2013*.
Commencement: 11/5/2015

Circuit Court Rules (Sex Offenders Act 2001) 2015
Number: SI 142/2015
Amend order 68, rule 3 of the *Circuit Court Rules* to prescribe that applications under section 16 of the *Sex Offenders Act 2001* will be made, as the default arrangement, *ex parte*, with discretion to the court to direct that the application be heard on notice.
Commencement: 14/4/2015.

District Court (Child Care) Rules 2015
Number: SI 143/2015
Amend order 84 of the *District Court Rules* to prescribe that certain applications in child care proceedings be grounded on affidavit.
Commencement: 11/5/2015

Companies Act 2014 (Forms) Regulations 2015
Number: SI 147/2015
Prescribe the forms to be used for the purposes of certain provisions of the *Companies Act 2014*.
Commencement: 1/6/2015

Courts and Court Officers Act 2002 (Register of Reserved Judgments) (Amendment) Regulations 2015
Number: SI 163/2015
Amend the *Courts and Court Officers Act 2002 (Register of Reserved Judgments) Regulations 2005* (SI 171/2005) to provide for the establishment and maintenance on computer by the Courts Service of a register of judgments reserved by the Court of Appeal and set out the location of the register and the arrangements for getting a copy of an entry in the register.
Commencement: 29/4/2015.

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

Prepared by the Law Society Library

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 Claire Keaney, a solicitor practising as Keaney & Company at 2 The Coachhouse, Slane, Co Meath, and in the matter of the *Solicitors Acts 1954-2011* [7372/DT177/13]
Law Society of Ireland (applicant)
Claire Keaney (respondent solicitor)
On 25 November 2014 and 3 March 2015, the Solicitors Disciplinary Tribunal sat to consider a complaint against the solicitor. The tribunal found the respondent solicitor guilty of professional misconduct in her practice as a solicitor in that she failed to ensure there was furnished to the Society an accountant's report for the year ended 31 December 2012 within six months of that date, in breach of regulation 21(1) of the *Solicitors Accounts Regulations 2001* (SI 421 of 2001).

The tribunal ordered that the respondent solicitor:
1) Do stand admonished and advised,
2) Pay a sum of €100 to the compensation fund,
3) Pay the whole of the costs of the Society to be taxed by a taxing master of the High Court in default of agreement.

In the matter of John P Kean, a solicitor formerly practising as a partner in Gleeson & Kean, Solicitors, High Street, Tuam, Co Galway, and in the matter of the *Solicitors Acts 1954-2011* [3488/DT150/13]
Law Society of Ireland (applicant)
John P Kean (respondent solicitor)
On 5 March 2015, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of professional misconduct in his practice as a solicitor in that he had:
1) Failed to comply with an undertaking furnished to a named bank on 23 May 2005 in respect of his named clients and property in Waterford in a timely manner,
2) Failed to respond to the Society's correspondence and, in particular, the Society's letters of 16 September 2011, 15 December 2011, 24 January 2012, and 9 May 2012 in a timely manner or at all.

The tribunal ordered that the respondent solicitor:
1) Do stand censured,
2) Pay a sum of €2,000 to the compensation fund,
3) Pay the costs of the Society limited to €1,000.

In the matter of John P Kean, a solicitor formerly practising as a partner in Gleeson & Kean, Solicitors, High Street, Tuam, Co Galway, and in the matter of the *Solicitors Acts 1954-2011* [3488/DT28/14]
Law Society of Ireland (applicant)
John P Kean (respondent solicitor)
On 5 March 2015, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of professional misconduct in his practice as a solicitor in that he had:
1) Failed to comply with an undertaking dated 7 June 2006 furnished to the complainants in respect of a property in Claremorris, Co Mayo, in respect of his clients, the named borrowers, in a timely manner,
2) Failed to comply with an undertaking dated 8 June 2006 furnished to the complainants in respect of another property at Claremorris, Co Mayo, in respect of his named clients and borrowers in a timely manner,
3) Failed to comply with the direction of the Complaints and Client Relations Committee made at its meeting on 4 December 2012 to file a comprehensive update in connection with the complaint by 23 January 2012.

NOTICE: THE HIGH COURT

In the matter of Heather Perrin, a former solicitor, and in the matter of the *Solicitors Acts 1954-2011* [2015 no 33SA]

Take notice that, by order of the High Court made on Monday 20 April 2015, it was ordered that the name of Heather Perrin be struck from the Roll of Solicitors.

Her name had already been struck from the Roll by order of the High Court made on 3 February 2014.

John Elliot,
Registrar of Solicitors,
Law Society of Ireland,
30 April 2015

The tribunal ordered that the respondent solicitor:
1) Do stand censured,
2) Pay a sum of €2,000 to the compensation fund,
3) Pay the costs of the Society, limited to €1,000.

In the matter of Niall O'Kelly, a solicitor previously practising as Niall O'Kelly, Solicitors, 52 Fortfield Park, Terenure, Dublin 6W, and in the matter of the *Solicitors Acts 1954-2011* [5202/DT145/13 and High Court record 2015 no 2SA]
Law Society of Ireland (applicant)
Niall O'Kelly (respondent solicitor)
On 9 October 2014, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of professional misconduct in his practice as a solicitor in that he:
1) Failed to comply with an undertaking furnished to EBS Building Society, dated 28 August 2003, in respect of his named client and property at Firhouse, Dublin 24, in a timely manner or at all,
2) Failed to comply with an undertaking furnished to EBS Building Society on 2 July 2001 in respect of his named client and property at Phibblestown, Dublin 15, in a timely manner or at all,
3) Failed to comply with an undertaking dated 30 May 2003 furnished to EBS Building Society in respect of his named clients and property at Ballymoney, Co Wexford, in a timely manner or at all,
4) Failed to comply with an undertaking dated 2 October 2002 furnished to EBS Building Society in respect of his named client and property in Dublin 8 in a timely manner or at all,
5) Failed to respond to the Society's correspondence of 23 February 2012 and 30 March 2012 within the time specified,
6) Failed to comply with the High Court order made on 21 May 2012 in a timely manner or at all.

The tribunal ordered that the matter go forward to the High Court and, on 9 March 2015, the President of the High Court made the following order:
1) That the name of the respondent solicitor be struck off the Roll of Solicitors,
2) That the respondent solicitor pay the costs of the Society and the costs of the proceedings before the Solicitors Disciplinary Tribunal, to be taxed in default of agreement.

The solicitor was previously struck of the Roll of Solicitors by order of the High Court made on 20 October 2014 in proceedings 2014 no 116SA.

In the matter of Michael J Butler, a solicitor practising as Michael J Butler, Solicitor, 42/43 Main Street, Tipperary, and in the matter of the *Solicitors Acts 1954-2011* [2150/DT10/14]
Law Society of Ireland (applicant)
Michael J Butler (respondent solicitor)
On 10 March 2015, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of professional misconduct in his practice as a solicitor in that he:

1) Failed to respond to the Society's correspondence and, in particular, the Society's letters of 18 July 2012, 29 August 2012, and 17 October 2012 in a timely manner, within the time prescribed, or at all,
2) Failed to comply with the direction of the Complaints and Client Relations Committee made at its meeting on 16 October 2012 within the time limit of 21 days or at all,
3) Failed to comply with the direction made by the Complaints and Client Relations Committee at its meeting of 11 December 2012 that he comply with the earlier direction of the committee, which was extended by 16 days from 11 December 2012, and that he furnish an update to the committee no later than 18 January 2013.

The tribunal ordered that the respondent solicitor:
1) Do stand censured,
2) Pay a sum of €500 to the compensation fund,
3) Pay a contribution of €1,000 towards the whole of the costs of the Society.

In the matter of Michael J Butler, a solicitor practising as Michael J Butler, Solicitor, 42/43 Main Street, Tipperary, and in the matter of the *Solicitors Acts 1954-2011* [2150/DT11/14]
Law Society of Ireland (applicant)
Michael J Butler (respondent solicitor)
On 10 March 2015, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of professional misconduct in his practice as a solicitor in that he:
1) Failed to comply with an undertaking dated 27 February 2006 furnished to EBS Building Society in respect of his named clients and property at Co Tipperary in a timely manner or at all,
2) Failed to respond to correspondence and, in particular, the Society's letters dated 25 January 2011, 22 February 2011, 25 March 2011, 12 July 2011, 19 September 2011, 20 December 2011, 2 March 2012, 5 April 2012, 28 June 2012, and 18 September 2012 in a timely manner, within the time provided, or at all,
3) Failed to comply with the direction made by the Complaints and Client Relations Committee at its meeting on 23 March 2011 that he furnish certain specified documentation to the Society within 21 days,
4) Failed to comply with the directions made by the Complaints and Client Relations Committee at its meeting of 6 July 2011 that he furnish a full update in writing to the Society on or before 15 August 2011,
5) Failed to comply with the direction of the Complaints and Client Relations Committee made at its meeting on 14 September 2011 that he furnish an update in writing on or before 1 December 2011 in connection with this complaint,
6) Failed to comply with the direction made by the Complaints and Client Relations Committee at its meeting of 14 December 2011 that he furnish a full update in relation to this complaint on or before 31 January 2012,
7) Failed to comply with the direction made by the Complaints and Client Relations Committee at its meeting on 28 February 2012 that he furnish a full update to the Society on or before 20 March 2012,
8) Failed to comply with the direction made by the Complaints and Client Relations Committee at its meeting of 3 April 2012 that he provide an update to the Society on or before 6 June 2012,
9) Failed to comply with the direction of the Complaints and Client Relations Committee made at its meeting on 16 October 2012 that he furnish a full report to the Society within 14 days of the date of that meeting,
10) Failed to comply with the direction of the Complaints and Client Relations Committee made at its meeting of 11 December 2012 that he furnish a full update to the Society within 16 days of 11 December 2012 and that he furnish a copy of the signed mortgage to the Property Registration Authority.

The tribunal ordered that the respondent solicitor:
1) Do stand censured,
2) Pay a sum of €500 to the compensation fund,
3) Pay a contribution of €1,000 towards the whole of the costs of the Society.

In the matter of Michael J Butler, a solicitor practising as Michael J Butler, Solicitor, 42/43 Main Street, Tipperary, and in the matter of the *Solicitors Acts 1954-2011* [2150/DT38/14]
Law Society of Ireland (applicant)
Michael J Butler (respondent solicitor)
On 10 March 2015, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of professional misconduct in his practice as a solicitor in that he:
1) Failed to comply with an undertaking dated 29 June 2002 furnished to IIB Homeloans (now KBC Bank) in respect of his named clients and borrowers and property at Tipperary, Co Tipperary, in a timely manner or at all,
2) Failed to respond to the Society's correspondence and, in particular, to the Society's letters to him of 22 June 2009, 7 June 2009, 15 July 2009, 13 September 2012, 10 October 2012, and 14 December 2012 in a timely manner or at all,
3) Failed to comply with the direction of the Complaints and Client Relations Committee at its meeting of 11 December 2012 that he furnish a full update in relation to the complaint to the Society no later than 18 January 2013.

The tribunal ordered that the respondent solicitor:
1) Do stand censured,
2) Pay a sum of €500 to the compensation fund,
3) Pay a contribution of €1,000 towards the costs of the Society.

In the matter of Heather Perrin, a former solicitor, formerly practising as Heather Perrin, Solicitor, 54 Fairview Strand, Fairview, Dublin 3, and in the matter of the *Solicitors Acts 1954-2011* [4732/DT158/13 and High Court record 2015 no 33SA]
Law Society of Ireland (applicant)
Heather Perrin (respondent)
On 18 November 2014, the Solicitors Disciplinary Tribunal found the respondent guilty of professional misconduct in that she:
1) Was convicted before Dublin Circuit Criminal Court of an offence of making a gain or causing a loss by deception, contrary to section 6 of the *Criminal Justice (Theft and Fraud Offences) Act 2001* and, on 28 November 2012, was sentenced to a term of two-and-a-half years' imprisonment, to date from 28 November 2012,
2) Was convicted by the Dublin Circuit Criminal Court of an offence of false accounting, contrary to section 10(1)(c) and (3) of the *Criminal Justice (Theft and Fraud Offences) Act 2001* and, on 13 March 2013, was sentenced to a term of two years' imprisonment, to date from 22 February 2013.

The tribunal ordered that the matter go forward to the High Court and, on 20 April 2015, the President of the High Court made the following order:
1) An order striking the name of the respondent off the Roll of Solicitors,
2) An order that the respondent pay whole of the costs of the Society, to be taxed by a taxing master of the High Court in default of agreement.

The respondent's name had previously been struck off the Roll of Solicitors by order of the High Court on 3 February 2014. g

eurlegal

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

EU POLICY IN THE ENERGY SECTOR: TEMPERING RUSSIA'S POLITICAL INFLUENCE?

The parallel application of regulation and competition law is, at this point, uncontroversial (see *Deutsche Telecom AG v Commission*, Case C-280/08 P [2010] ECR I-9555). It is also true that competition law and the European social model go hand in hand. According to article 3(3) of the *Treaty on European Union*, "a highly competitive social market economy" is one of the union's goals. The dynamic between regulation, competition law and social policy is currently evident in the European Commission's energy policy on Central and Eastern Europe and, in particular, in its relationship with its – at times – more testing of neighbours, the Russian Federation.

Following Russia's annexation of the Crimean peninsula in March 2014 and the subsequent imposition of Western sanctions, Gazprom (Russia's state-owned gas giant) increased its gas prices to Ukraine. The price increase resulted from Gazprom's withdrawal of the discount that had been granted under the previous Ukrainian president, Victor Yanukovych. In response, Kiev refused to pay the increased price and, consequently, Gazprom ceased its supply of gas deliveries, for the third time since 2006. In April, Russian President Vladimir Putin declared in an open letter to European leaders that Europe faced an increasing risk of a new gas supply crisis. While a binding protocol (dated 29 October 2014) signed by the commission, Russia and Ukraine guaranteed gas for Ukraine, the emerging conflict between Ukraine and Russia once again focused attention on the security of the EU's gas supplies and Russia's use of energy for political leverage.

On the one hand, Russia still provides around a third of the EU's gas, about half of which is transited via Ukraine; on the other hand, European dependency is decreasing. This is due, in part, to the increase in sales of US shale, the installation of specialist terminals that allow for the importation of liquefied natural gas, and efforts to reverse the traditional flow of gas. The EU also remains Russia's largest gas market, which, with greater coordination, provides greater buying power. In light of the reduced dependency and rebalanced bargaining power, the EU has positioned itself to take a more hard-line approach to Russia and Gazprom via its competition and regulatory powers.

> **'Security of supply in the energy market has been a persistent challenge for the EU over the past ten years or more'**

Regulatory policy

Directive 2003/55 concerning common rules for the internal market in natural gas was intended, albeit without much success, to achieve the liberalisation of the EU gas market through methods such as ownership unbundling. Unbundling requires the separation of a company's upstream generation and downstream sale operations from their transmission networks, which means that the transmission system operator must be independent from unrelated activities. In June 2005, the commission launched a sector inquiry under article 17 of Regulation 1/2003 into competition in the gas and electricity markets. On 10 January 2007, the commission published its final report identifying a number of areas of market failure as follows:

- The continuing market power of incumbents in many member states,
- The inadequate separation of network and supply companies, leading to foreclosure of new entrants and investments,
- A lack of cross-border integration of networks and cross-border regulatory supervision, and
- Insufficient investment in infrastructure.

Following this, in September 2007, proposals for an energy reform package were presented by the commission and, following significant negotiations, the EU formally adopted the new, third, liberalisation package (known as the 'Third Energy Package') on 25 June 2009, which includes Directive 2009/73 concerning common rules for the internal market in natural gas. Key features of the Third Energy Package included a reformed unbundling provision to be applied throughout the EU to both EU and non-EU-owned companies (which controversially significantly widened the impact of the legislation). A further feature was the increased emphasis on fair competition between EU companies and third-country companies.

In December 2013, the alignment of Gazprom's practices with the Third Energy Package was brought to the fore. It was then that the commission 'recommended' that member states who had signed agreements with Russia in connection with the South Stream natural gas pipeline renegotiate the terms of their deals. The South Stream pipeline was the planned and highly political gas pipeline under the Black Sea and across the Balkans, that would have allowed Russian gas supply to bypass Ukraine. Speaking in the European Parliament in December 2013, Klaus-Dieter Borchardt (internal energy market director) said that the South Stream agreements were in breach of EU law, in that:

- The ownership bundling rules were potentially contravened,
- Non-discriminatory access of third parties to the pipelines needed to be ensured, and
- The tariff structure needed to be addressed.

In response, Russia put the countries in which it traditionally had influence (Austria, Bulgaria and Croatia) under pressure to resist the commission. However, in an unprecedented move on 1 December 2014 at a press briefing in Ankara, Mr Putin, citing EU objections, abruptly cancelled the project. With this intervention, the EU had – arguably for the first time – successfully confronted the Kremlin.

The commission now appears to want to build on this interventionist success. In a speech delivered on 19 February 2015, Alexander Italianer (the EU director general for competition) noted that European integration in the energy markets is still lacking. Mr Italianer referred to the commission's intention to introduce a "comprehensive set of regulatory initiatives" and noted that "competition law enforcement will

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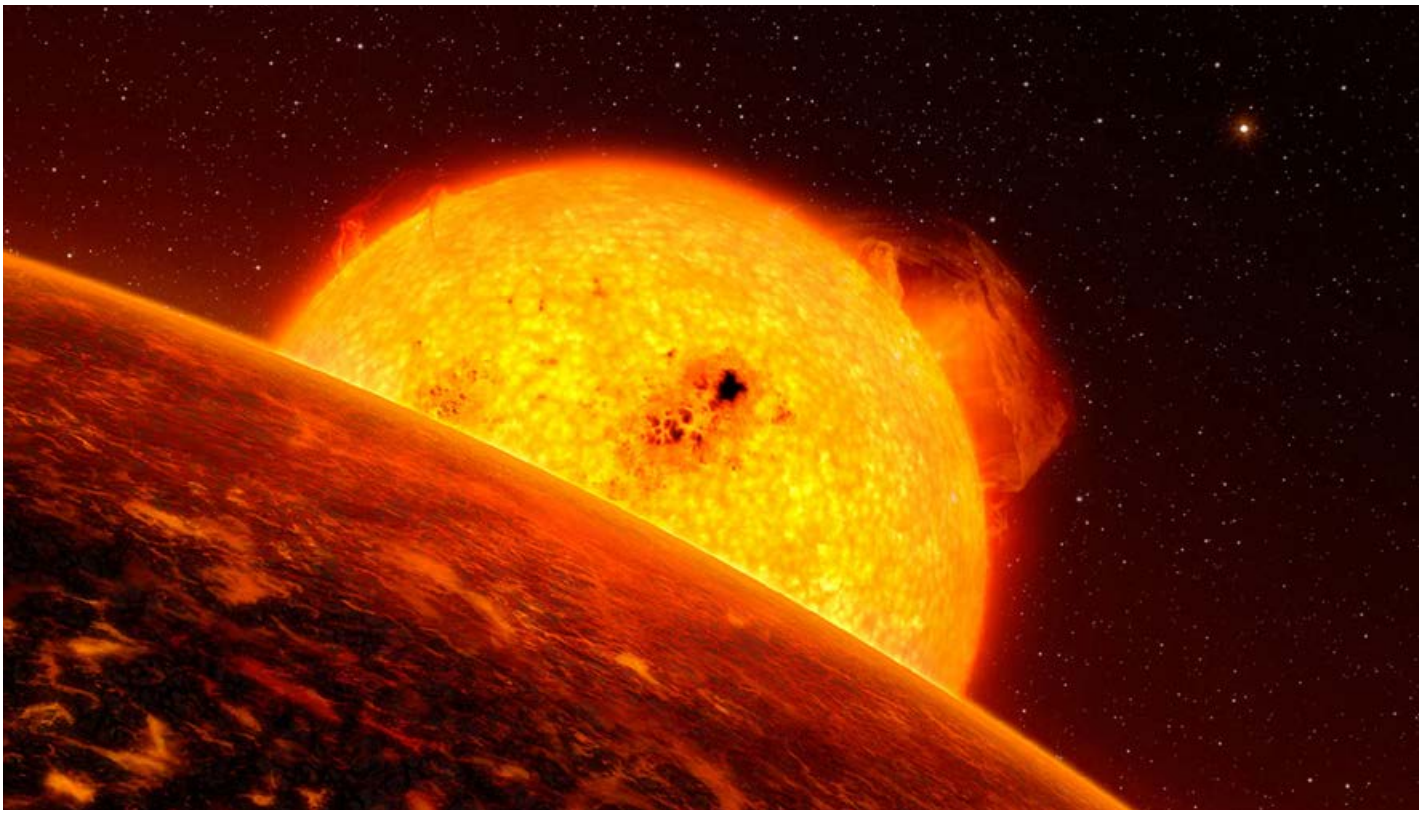

Now *that's* a gas giant...

actively accompany this process". On 25 February 2015, the commission announced its strategy for achieving this goal (the 'Energy Union Strategy'), which focuses on energy security, solidarity and trust, the internal energy market, energy efficiency, decarbonisation, and research, innovation and competitiveness. Promoting interconnectors will also be a priority.

Competition enforcement

A further step was taken on 22 April 2015, when the commission announced that it had sent a statement of objections (SOO) to Gazprom for an abuse of its dominant position in the gas supply markets in Central and Eastern European member states – that is, breach of article 102 of the TFEU. The commission's preliminary view, contained in the SOO, is that Gazprom is pursuing an "overall strategy to partition" certain markets and that its conduct impedes cross-border sales of gas, raises artificial barriers to trade, and results in higher retail gas prices. Specifically, the commission finds that Gazprom:

- Hinders cross-border gas sales via territorial restrictions in its supply agreements,
- Pursues an unfair pricing policy by indexing gas prices to oil product prices, and
- Makes gas supplies conditional on obtaining unrelated commitments from wholesalers concerning gas transport infrastructure.

The SOO follows a dramatic start to the investigation when, in 2011, the commission conducted its largest ever antitrust dawn raid on Gazprom offices. However, the momentum of the investigation appeared to wane in 2013/2014 during the conflict in Ukraine and protracted commitment discussions. With the arrival of the new commission in November 2014 came a new impetus, followed by the SOO. The threat of a large fine (theoretically 10% of annual revenue, which was $150bn in 2013), mandatory structural amendments, and reputational damage is significant for Gazprom and Russia. However, Gazprom has rejected the commission's allegations and considers that the claims are "unsubstantiated". Gazprom expects that the matter will be resolved at an intergovernmental level and hopes that "special attention will be paid" to the fact that Gazprom is established outside the jurisdiction of the EU and has a status of "strategic state-controlled entity" (press release, 22 April 2015).

At a recent talk delivered at the IIEA in Dublin, Edward Lucas (energy correspondent for *The Economist*) referred to the proceedings as "a giant torpedo aimed absolutely at the heart of battleship Kremlin, because if the complaint is launched, it is curtains for Gazprom in its current form in Eastern Europe. It will do far more damage than even the Third Energy Package did – it will be humiliating, it will be expensive and it opens a whole can of worms in terms of other things." Mr Lucas has suggested that the commission has, through its competition enforcement policy, blunted the edge of Mr Putin's most effective foreign-policy tool: the politicised export of gas.

Commentary

Gazprom was previously subject to antitrust investigations by the commission, albeit under article 101 TFEU (which prohibits anticompetitive agreements) for applying territorial restriction clauses. However, each of these cases was settled. In the context of the current investigation, the commission appears to be taking a more hard-line position.

Security of supply in the energy market has been a persistent challenge for the EU over the past ten years or more. The crux of that issue has centred on Russia's predominance in the supply of gas to Europe – an advantage that Russia has used for its political leverage with repercussions much greater than the price of gas. As discussed

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19 June	Law Society Skillnet Essential Solicitor Update 2015 –in partnership with Clare Bar Association and Limerick Solicitors' Bar Association - Temple Gate Hotel, Ennis, Co. Clare	n/a	€95	5 General plus 1 Regulatory Matters (by Group Study)
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above, the EU has in recent years adopted a multifaceted approach in dealing with this issue. Firstly, it has taken targeted steps to lower its dependency on Russian gas, thereby strengthening its bargaining power. By doing this, the EU has positioned itself to take a tougher approach to Russia, which it has done through a combination of regulation and competition law, thereby bolstering the EU's political weight. This position has been augmented with the recent use of economic sanctions against Russia (See Council Decision 2014/872/CFSP and Council Regulation (EU) 1290/2014 of 4 December 2014).

PIC: ZVEZDA

While Russia may well have historically used gas supply for political leverage, to what extent should the commission's regulatory and competition enforcement priorities be determined by such objectives? In the context of the Gazprom investigation, Margrethe Vestager (competition commissioner) recognises that "this may be seen as some as a more political case", but points out that state-owned companies or companies with strong governmental influences have previously been investigated under EU antitrust rules and that, contrary to Gazprom's view, "all companies that operate in the European market – no matter if they are European or not – have to play by our EU rules" (Statement 15/4834).

More generally, Italianer has observed that a "combination of social concerns and economic liberty can be found in the very origins of competition law", referring to the father of competition law, US Senator John Sherman, who called trusts "evil". It is also the case that the inception of EU competition policy (via the 1957 *Treaty of Rome*) was aimed at ensuring a system of free competition to address the predominance of large cartels of German industry that, it was widely believed, had made it easier for the Nazis to assume economic control simply by bribing a small number of industrialists.

The precise objective of article 102 of the TFEU has not been expressly set out in any decision or formal commission document. However, the commission's published guidance on its enforcement priorities in respect of article 102 TFEU (OJ 2009 C 45/2) specified for the first time the essential aim of article 102. It provides that the aim of the commission's enforcement activity is to ensure that dominant undertakings do not impair effective competition, "thus having an adverse impact on consumer welfare, whether in the form of higher price levels than would have otherwise prevailed or in some other form, such as limiting quality or reducing consumer choice." It would appear that the commission's priority is to promote consumer welfare by protecting the competitive process through an efficient market, which may mean a politically stable one. It is not usual for regulatory policy to have at its core such social objectives.

Following the commission's success in the battle of South Stream and delivery of the SOO, it will be fascinating to observe Russia's response and the European policymakers' next steps. How this will play out is currently unclear. It therefore remains to be seen whether the EU's regulatory and competition enforcement policy can effectively temper Russia's political influence in the long term. However, based on the EU's extensive powers and more recent willingness to act on them, the significance of the EU should not be underestimated.

Judy O'Connell is a legal adviser at the Commission for Communications Regulation. Any views expressed are the author's own and do not represent the views of the commission.

Recent developments in European law

FREE MOVEMENT

Case C-153/14, *K and A*, 19 March 2015

Dutch law allows married couples who are third-country nationals to be granted family reunification in the Netherlands. However, the applicant was required to pass a civic integration examination prior to entry, to demonstrate a basic knowledge of the Dutch language and of the Netherlands. An exemption may be given in the case of a serious mental or physical disability and in cases of hardship. Nationals of certain third states, such as Canada and the USA, are also exempt. There is an examination fee of €350. If the examination has to be retaken, the fee is payable again. To help those preparing for the exam, the Netherlands provides a self-study pack in 18 languages at a cost of €110.

A Dutch court asked whether this examination is compatible with the *Family Reunification Directive* (2003/86). This directive allows member states to require third-country nationals to comply with integration measures. The Dutch court was considering the cases of an Azerbaijani and a Nigerian who wished to join their husbands living in the Netherland who were also third-country nationals. They both pleaded physical or mental difficulties in order to be exempted from the examination. The Dutch authority did not consider these to be sufficiently serious and therefore refused the applications.

Advocate General Juliane Kokott, in her opinion, indicated that the examination at issue is in principle a permissible integration measure within the meaning of the directive. Learning the language of a state is an essential prerequisite for integration. Knowledge of the language helps with employment and in the event of an emergency.

professional notices

WILLS

Burke, James (deceased), late of 741 Rowanville, Kildare, who died on 14 April 2015. Would any person having knowledge of a will made by the above-named deceased, or if any firm is holding same, please contact Patrick V Boland & Son, Solicitors, Main Street, Newbridge, Co Kildare; tel: 045 431 216, email: emma@pvbolandsolicitors.ie

Chism, Leo (deceased), late of 6 Bachelors Walk, Ballyshannon, Co Donegal. Would any person having any knowledge of any will of the above-named deceased, who died on 22 December 2014, please contact VP McMullin, Solicitors, Tirconnell Street, Ballyshannon, Co Donegal; ref: CH11/2/TS; tel: 071 985 1187, email: bsn@vpmcmullin.com

Coghlan, Katherine (deceased), formerly of 3 Johnstown, Waterford, and late of Lorretta (otherwise Loreto), Priests Road, Tramore, Co Waterford. Would any person having knowledge of the original will executed by the above-named deceased on 9 February 1984, having died on 19 February 2015, please contact T Kiersey & Company, Solicitors, 17 Catherine Street, Waterford; tel: 051 874 4366, fax: 051 879390, email: gkiersey@gmail.com

Hickey, Alexander (deceased), late of Rathmore, Co Kerry, who died on 3 March 2009. Would any person having knowledge of a will made by the above-named deceased please contact Sarah Moore, O'Flynn Exhams Solicitors, 58 South Mall, Cork; tel: 021 427 7788, email: sm@ofx.ie

Kinsella, Dolores Margaret, a ward of court, formerly of 39 Convent Road, Dalkey, Co Dublin. Would any person having knowledge of any will made by the above-named person please contact Mackey O'Sullivan, Solicitors, 10 Merrion Square, Dublin 2; tel: 01 661 5655, email: jhmm@mos.ie

Kinsella, Mona (otherwise Mary Monica) (deceased), late of 39 Convent Road, Dalkey, Co Dublin, who died on 23 June 2014. Would any person having knowledge of any will made by the above-named deceased please contact Mackey O'Sullivan, Solicitors, 10 Merrion Square, Dublin 2; tel: 01 661 5655, email: jhmm@mos.ie

Miliffe, Eamonn Liam (deceased), late of Rathbawn Road, Castlebar, Co Mayo. Would any person having knowledge of the

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

professional notices

whereabouts of any will made by the above-named deceased, who died on 3 May 2012, please contact Katherine Ryan, solicitor, Upper Charles Street, Castlebar, Co Mayo; tel: 094 902 6077, email: katherineryan@eircom.net

O'Donnell, Rita (deceased), late of Greystown, Killenaule, Co Tipperary, who died at South Tipperary General Hospital, Clonmel, Co Tipperary, on 27 February 2013. Would any person or firm having knowledge or possession of any will made by the above-named deceased please contact Alan Kirwan, Kirwan McKeown James, 22 Kildare Street, Dublin 2; DX 222 Dublin; tel: 01 661 2297, email: alan.kirwan@kmj.ie

O'Meara Butler, Mary (deceased), late of Grettaville, Stillorgan Park, Co Dublin, who died on 30 February 2014. Would any person having knowledge of any will made by the above-named deceased please contact Ken J Byrne & Co, Solicitors, 17 Rock Hill, Main Street, Blackrock, Co Dublin; tel: 01 283 2715, fax: 01 01 283 3453; email: byrnekb@eircom.net

Tallon, James (orse Jim) (deceased), late of Emoclew, Arklow, Co Wicklow. Would any person holding or having knowledge of a will made by the above-named deceased, who died on 27 February 2015, please contact Gartlan Furey Solicitors, 20 Fitzwilliam Place, Dublin 2; ref: TAG100/0100; tel: 01 799 8010, email: privateclient@gartlanfurey.ie

Wagner, Emil (deceased), late of Ailt an Oir, Upper Glenageary Road, Dun Laoghaire, Co Dublin, who died on 19 April 2015. Would any person having knowledge of a will made by the above-named deceased in 2013 or later, or any firm holding the same, please contact Kristine Wagner-Goodman as a matter of urgency at Lilac Cottage, The Downs, Norton, Herefordshire, UK, HR7 4NZ; tel: 00 44 1885 483312, email: kristinegoodman13@yahoo.com

Walsh, Brigid (deceased), late of 20 The Bramblings, Killester, Dublin 5, who died on 25 December 2014. Would any person having knowledge of any will made by the above-named deceased please contact Kelly Noone & Co, Solicitors, Taney Hall, Eglinton Terrace, Dundrum, Dublin 14; DX 76 008; email: solrs@kellynoone.ie

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TITLE DEEDS

No 9 St Senan's Road, Enniscorthy, Co Wexford. Would anyone knowing the whereabouts or having any information regarding the title deeds to the above property, please contact Fabian Cadden, solicitor, tel: 01 825 0299, email: info@fabiancadden.ie

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 number 48 Pearse (formerly Queens) Square, Dublin 2, and on an application being made by Marie Smith

Take notice that any person having any interest in the freehold estate of the following property: all that and those the premises demised by indenture of lease dated 5 February 1953, made between Eileen Gallagher of the first part, Theobald Stuart Butler, Nora Franks, Emma Margaret Roughan and Ethel August Clark of the second part, and the said Eileen Gallagher of the third part, for a term of 37 years, which premises are described as number 48 Pearse Square, Dublin 2.

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

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

Date: 5 June 2015

Signed: O'Mara Geraghty McCourt (solicitors for the applicant), 51 Northumberland Road, Dublin 4

In the matter of the *Landlord and Tenant Acts 1967-1994* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of an application by Weleyre Holdings Limited and Manna Property Company and in the matter of the property known as Rabbitt's Pub, 23-25 Forster Street, Galway

Take notice any person having an interest in the freehold estate or any intermediate estates in the property known as Rabbitt's Pub, 23-25 Forster Street, in the city of Galway, held under an indenture of lease made on 23 August 1888 between John Henry Chomley and Charles Rabbitt for a term of 200 years from 29 September 1887.

Take notice that the applicants, Weleyre Holdings Limited and Manna Property Company, being the persons currently entitled to the lessees' interest, intend to submit an application to the county registrar for the county of the city of Galway, sitting at the Courthouse, Galway, for the acquisition of the freehold interest and all intermediate interest in the aforesaid property and that any party asserting that they hold the fee simple or any intermediate interest in the aforesaid property is called upon to furnish evidence of title to the said property to the below named solicitors within 21 days from the date of this notice.

In default of any such notice being received, Weleyre Holdings Limited and Manna Property Company intend to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the city of Galway for directions as may be appropriate on the basis that the persons beneficially entitled to the superior interest including the freehold reversion on said premises are unknown or unascertained.

Date: 5 June 2015

Signed: P&G Stack (solicitors for the applicants), Main Street, Maynooth, Co Kildare

de minimis non curat lex

Legal high for Manchester Police

A joke tweet from Greater Manchester Police offering help for addicts cheesed off with their drug dealers has gone viral, reports the *Independent*.

The force's light-hearted take on the admittedly serious issue of illegal drugs being sold on the black market went down a treat on Twitter – it received dozens of responses and thousands of retweets.

GMP's Urmston branch wrote: "Annoyed with your drug dealer? Tell us who it is and we'll have a word with them for you."

To date, no one has taken them up on the offer.

LIMERICK, YOU'RE A LADY

There was a young lawyer named Rex,
Who had very small organs of sex.
When charged with exposure,
He said with composure:
'De minimis non curat lex.'

Ex-cow in English police shoot-to-kill shocker!

A cow now bereft of life has been shot dead by English police after it escaped from a field. The three-hour operation led to the call-out of armed units and a helicopter.

The cow, which has ceased to be, was one of three that escaped from a field near Newcastle. The two others had a luckier fate – though whether ending up in a burger bun can be described as 'luckier' is pushing it a bit.

Police were alerted by members of the public who spotted the bovines wandering towards a busy main road. Part of the coast road from Newcastle to Tynemouth had to be shut as police tried to catch one cow in a nearby field.

A spokesperson for Northumbria Police said: "The cow was in a highly distressed state and considered to be a significant risk to members of the public and motorists. The decision was made for the animal to be destroyed by firearms officers at the scene."

The sad end for the cow, which is no more, led many to join a Facebook group called 'RIP Bessie the Wallsend Cow' (about: "In memory of Bessie The Cow, shot dead by police in a gang-related incident in Wallsend on Sunday 17 May 2015"). Many were upset at her untimely demise, with up to 6,000 claiming they would take part in a candle-light procession for the deceased animal.

"So the Coast Road had been closed and they still shot her?" said Trudi Saddler. "Pure laziness and lack of patience. Nobody was in danger but the cow."

iPhone saves shooting victim

A man survived a shooting after his iPhone took the brunt of the blast, writes the *Independent*. The 25-year-old victim, who was walking his dog, managed to make his way home after sustaining serious injuries to his abdomen. He was later taken to Aintree Hospital in Liverpool in a serious condition.

The incident occurred after the victim confronted defendant Ryan Duggan (19) and a number of others who had allegedly turned off the water supply to his block of flats. Following an altercation, the victim chased Mr Duggan down a footpath.

During the chase, which took place in October 2014, Mr Duggan turned on the victim and fired a shotgun. The weapon was later found by a ballistics expert, with the spent cartridge still inside. Duggan was found guilty of attempted murder after a three-day trial at Chester Crown Court and was also found guilty of four other related offences.

Detective inspector Gary McIntyre, said: "Fortunately, the victim's mobile phone took the brunt of the shot and, as a result of this, he survived."

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Financial Regulatory – Assistant – J00505
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