



2FAST 2FRIVOLOUS

'Vexatious' claims before the courts



GINGER SNAP

The Gazette speaks to US judge Ginger Lerner-Wren about her innovative role



DUKES OF HAZARD

Prioritising 'psychosocial risks' to maximise workplace wellbeing



BUSINESS, AS USUAL

Legal services' significant contribution to Ireland's multinational offering

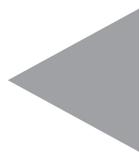


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The rise and rise of the rule of power

When we are confronted with the 'rule of power' versus the 'rule of law', we often consider that this struggle is played out in a larger dimension and affects a larger audience, such as the land war we are currently witnessing on our continent in Ukraine. However, the struggle between the rise of the rule of power versus the rule of law and access to justice is more immediate and relevant to our everyday lives.

As your president, it is and has been my privilege to advise and inform newly qualified solicitors that lawyers are the guardians of the law – the guardians of the rights of our people. As such, we lawyers are, and have to be, ever vigilant, particularly when these rights come under pressure. There is an old saying: "What we allow is what will continue."

We are, however, fortunate in Ireland to live in a democracy and to be served by politicians who are mindful of the balance and struggle between the rule of power and the rule of law, as well as access to justice. At present, the people of Ireland are in the comforting position of being able to make representations to our legislators with the knowledge that they will be listened to regarding their concerns.

And there are concerns!

Access-to-justice restrictions

The recently published draft *Planning and Development Bill 2022* contains a number of provisions that are potentially concerning for residents' associations and community groups who might wish to challenge certain planning decisions. These matters are very much 'on the radar' of the Law Society's new Environmental and Planning Law Committee.

In addition, there is at present a move to restrict the right of access to justice for victims, particularly those in medical-negligence cases. The *Patient Safety (Notifiable Incidents and Open Disclosure) Bill 2019*, section 60, proposes a significant restriction that clearly states that

medical audits shall not be disclosed.

If the bill is passed in its current format, it will result in a situation where the late heroines Vicky Phelan and Ruth Morrissey would never have been able to gather the evidence necessary to highlight their tragic situation and to bring their circumstances into the public domain, ensuring the protection of the lives of many others.

Indeed, there is a recent move to stigmatise medical-negligence victims, blaming the present state of the health service on claims made by such victims. It is not so long ago that we had a similar stigmatisation of victims of accident cases arising from publicity campaigns by the insurance sector, who, like many other corporations, seek to protect their own business interests.

Independent judiciary

We are fortunate in Ireland to have an independent high-quality judiciary who will guard fiercely the rights of our people. That is not to say that pressures for efficiency and productivity are not exerted on our courts' system (as on other sectors) and while 'justice delayed is justice denied', justice rushed for the sake of expediency is equally a denial of the rights of our people.

The term 'the public interest' has been used by some to support and justify changes that result in pressure on the rights of our people. When we hear that term, we generally nod sagely and agree that the public interest is often paramount – but is it? What is the public interest, and who decides the criteria?

Life and society is cyclical – the rise and rise of the rule of power has occurred many times over the centuries. Our vigilance as judges and lawyers is required to maintain the balance to ensure that power – whether of corporations or of the State – does not overtake justice and the rights of our people, and that there is always equality of arms and a level playing pitch in our courts system. 



JUSTICE
RUSHED FOR
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OUR PEOPLE

Maura Derivan

MAURA DERIVAN,
PRESIDENT



PIC: © JENNIFER HADLEY, COMEDY WILDLIFE, 2022

THE BIG PICTURE



TALK TO THE FLIPPER

"This beach ain't big enough for the two of us!" A Gentoo penguin (right) appears to snub his Magellanic penguin neighbour while taking a stroll on a beach in the Falkland Islands/ Islas Malvinas. The image was the winner of the 'People's Choice Award' in the Comedy Wildlife Photographer of the Year 2022

Women's Day marks solicitor centenary



ALL PICS: CAN REMOND

An International Women's Day event at the Law Society on 8 March also marked the launch of centenary commemorations for the admission of the first women to the Roll of Solicitors in Ireland. Pictured with current President Maura Derivan (centre) are past-presidents Geraldine Clarke, Elma Lynch, Michele O'Boyle and Michelle Ní Longáin

Mary Bergin and Audrey White



Orla Fenton



Paul Egan, Michael V O'Mahony, Michael Quinlan and Paul Kelly



Emily Harrington, Naomi Clarke (MHC), Marta Halabala, Kateryna Andarak (Arthur Cox), Alina Kuksemko and Nykolas Kvortesov



Marwa Zamir and Mah Naz



Maura Derivan



Jade Bakare and Juli Rea



Teri Kelly, Valerie Peart, Susan Martin and Sonia McEntee



Ms Justice Eileen Roberts, Maura Derivan, Aoife McNicholl, Michele O'Boyle and Jade Bakare



Mah Naz and Cristina Stamatescu

Convivial Diploma Centre conferrals



The Diploma Centre hosted three conferral ceremonies at Blackhall Place on 27 January, and on 13 and 21 February. Over 600 students and their guests attended. It was the first time that many of the students had met, as they had completed their diplomas online during the recent pandemic



ALL PICS: CIAN REDMOND

Ms Justice Eileen Roberts (*right*) presenting Dublin District Coroner Aisling Gannon SC with her Diploma in Judicial Skills and Decision-Making



Denis Halton receives his Diploma in Technology and IP Law from Ms Justice Marie Baker



Attending the conferral on 27 January were (*l to r*): Ms Justice Eileen Roberts, Judge Patrick McMahon (retired District Court judge), Marie O'Brien (partner, A&L Goodbody), Claire O'Mahony (head of Diploma Centre), Richard Hammond SC (chair, Law Society Education Committee), and Aisling Gannon SC (Dublin District Coroner)



Diploma in Healthcare Law conferees Zetti Azvee and Natasya Mohammed Nor



Conor Burke receives the Diploma in Construction Law Prize from Ms Justice Marguerite Bolger



Diploma in Aviation Leasing and Finance conferees Laura Crilly, Judge Patrick McMahon (retired District Court judge), and Suzanne Crilly (solicitor, course executive)



Certificate in Company Secretarial Law and Practice (front, l to r): Geraldine Rafferty BL (course executive), Conn Cleary (regional development manager, Chartered Governance Institute), Mrs Eilish Rock, Jennifer Rock, Ruairí Cosgrove (director, entity governance and compliance at PwC, and vice-president of the Chartered Governance Institute); (back, l to r): Dwayne Keogh, Deirdre Garvey, Rosalinda Brunetti, and Tony Roche



Diploma Centre conferees meet in person for the first time at the 27 January event



Ms Justice Eileen Roberts addresses conferees at the 27 January ceremony



At the Diploma in Education Law conferral were (front, l to r): Alice de Búrca, Mr Justice Michael Quinn, Ms Justice Bronagh O'Hanlon (retired judge of the High Court), Richard Hammond SC (chair, Law Society Education Committee), Patricia Harvey BL (course executive) and Geraldine Rafferty BL (course executive); (back, l to r): Christine Hayes, Conor Hayes, Kay Lehane, Lourda Roseingrave, Sandra McIntyre, Elaine Cosgrave, Michael Walsh, and Fintan Walsh

Donning the 'green jersey' for legal services

ALL PICS: CIAN REDMOND



Law Society President Maura Derivan addresses the Ireland for Law Summit, which was hosted by the Law Society at Blackhall Place on 28 February



David Barniville and Liam Kennedy



Mark Garrett and Patrick Leonard





Caoimhe Collins, Michelle Ní Longáin and Thomas Hallinan



President of the High Court David Barniville addresses the audience



Garry McSharry and Larry Fenelon



Members of the Law Society's Steering Group for the Ireland for Law General Counsel Summit, with Law Society President Maura Derivan

Turning the covers at the DSBA Book Awards



DSBA president Susan Martin addresses attendees at the DSBA Book Awards at the Westin Hotel on 17 February



Keith Walsh SC, Laura Cahillane, Attorney General Rosa Fanning, DSBA president Susan Martin, Prof Paul McCutcheon (University of Limerick), and Paul English (Peter Fitzpatrick Cost Accountants, sponsors)

ALL PICS: OWEN O'CONNOR



Kyran McGinley, Judge Mary Fahy, Margaret McGinley, and Conor Fahy



Paul Egan, Attracta O'Regan, and Daragh Hogan



Sinéad Kearney (ByrneWallace, sponsors), Declan McGrath, Attorney General Rossa Fanning, DSBA president Susan Martin, Emily Egan McGrath, and Keith Walsh SC



Mary Keane, Gayle Ralph and Fiona Cullen

King's Inns pips Law Society at national final



Andrea Whelton, Sarah Courtney, Enya Levy (coach, Arthur Cox), Raaj Zutshi (coach, A&L Goodbody), Jane Rigby (Dillon Eustace), and Gavin Creuss Callaghan (A&L Goodbody) at the National Negotiation Competition at Blackhall Place on 18 February



King's Inns' team members Carla Fusciardi Wallace and Justin McAleese receive the winner's trophy from Mr Justice Michael Peart

ALL PICS: GIAN REDMOND



King's Inns' team members Carla Fusciardi Wallace and Justin McAleese in discussion with Law Society team members Andrea Whelton (Arthur Cox) and Sarah Courtney (Arthur Cox)



Runners-up Sarah Courtney and Andrea Whelton with Mr Justice Michael Peart

Celebrating the Grand Slam in some style!



Celebrating Ireland's Grand Slam win on Saturday 18 March were (back, l to r) Mary Coffey (AMOSS LLP), Jen Gannon (Grant Thornton), Greg Glynn (Forensic Risk Alliance), former Irish internationals Mick Galway and Marcus Horan, Padraic O'Kennedy (ByrneWallace), Jerry Burke (AMOSS LLP), and Ronan Egan (ByrneWallace); (front, l to r) Maura Derivan (Law Society president), Paddy Derivan (Derivan Sexton), and Derville White (ByrneWallace)



Carrick-on-Suir connections! Maura Derivan congratulates Irish international rugby star Hugo Keenan following Ireland's Grand Slam win on 18 March. Keenan had to be withdrawn from the game with England after 39 minutes due to a head collision. Hugo was one of six nominees for the 'Six Nations Player of the Championship'

SLA does it in southern style



ALL PICS: DARRAGH KANE PHOTOGRAPHY

The annual President's Dinner of the Southern Law Association was hosted by President Emma Meagher Neville on 24 February 2023 at The Maryborough Hotel, Cork, and was attended by members of the SLA Council



Judge Marie Baker, Melissa Gowan (Cantillons Solicitors), and Sinéad Behan



Cormac O'Regan and Dermot Kelly



Yvonne Joyce, Clare Daly, Karen Tobin, and Amy Murphy



Joan Byrne, Fiona Twomey, President Emma Meagher Neville, and Elaine O'Sullivan



Mary Crowley (Courts Service), Juli Rea, and Joyce Good Hammond

Winning smiles at 23 February parchments

ALL PICS: JASON CLARKE PHOTOGRAPHY



President of the High Court, Mr Justice David Barniville



Morette Kinsella (Council member) with Law Society President Maura Derivan and Justine Carty (Council member)



Éilís Barry (chief executive, FLAC)



Conor Irvine and Cormac O'Brien



Sarah Burns, Rachael Byrne and Luke Murray



Michelle Reynolds, Aoife Keane and Frances Whelan

Mediation in employment disputes



P.C.: CIAN REDMOND

Ms Justice Marguerite Bolger will chair the event

● **GEMME**, the national non-profit organisation of judges that promotes and develops alternative dispute resolution and legal mediation, is holding its next event, 'Mediation in Employment Law Disputes', on 18 April.

This hybrid event (online and in-person) will be held in the Gaffney Room of the Bar Council's Distillery Building on Church Street at 4.30pm and is open to all.

Employment law expert Ms Justice Marguerite Bolger will chair the event. Speakers will include Mark Connaughton SC and Breda O'Malley (Hayes Solicitors), both acknowledged experts with significant experience in handling employment-law disputes.

The seminar should be of particular interest to lawyers, employers, employees, employer organisations, and trade unionists. Those wishing to register can do so at <https://ti.to/Barofireland/gemme-april>. Queries may be emailed to info@gemmeireland.ie.

Legislation needed to address pensions anomaly

● The Law Society has told the Pensions Authority that there will be serious knock-on effects from new EU pension legislation on death-in-service benefits for former spouses.

This is a result of increased compliance and governance obligations for trustees of occupational pension schemes arising directly from the implementation of the European *IORP II Directive*.

A large-scale market-wide movement of private-sector defined-contribution occupational pension schemes to master trusts is currently underway.

'Master trusts' oversee multiple pension schemes and spread compliance and cost risks across all of the participating employers.

As matters currently stand, no payment will be made to the beneficiary of a contingent-benefit pension adjustment order on the death in service of a member of a scheme that has moved to a master trust.



P.C.: CIAN REDMOND

Director general Mark Garrett: situation 'very serious'

The potential financial loss to such a beneficiary may be in the region of several hundred thousand euro (depending on the value of the contingent benefit), the Law Society has warned.

Court orders in family-law divorce and separation cases, requiring death-in-service payments to be made to the surviving ex-spouse or dependent family members, cannot be enforced, given that the order relates to the original pension scheme, not

the new master trust. There is a short timeframe under which such orders can be varied by the courts, hence the urgency.

The Law Society believes that the issue is of such severity that emergency legislation is required.

The Society has engaged constructively with the Pensions Authority to discuss the issue, and has proposed a potential solution to prevent further impact on affected consumers. Legal practitioners have also been notified, so that they can protect the interests of their clients.

In a letter to the Pensions Authority, Law Society Director General Mark Garrett described the situation as "very serious" and said it need to be addressed "without delay", adding "this is a significant issue that had been identified through the work of the Law Society's Family and Child Law Committee, who are the practitioners working with clients every day."

Launch of new Law Society Environmental and Planning Law Committee

● The Law Society has launched a new Environmental and Planning Law Committee.

At the launch on 29 March, guest speaker Ms Justice Nuala Butler spoke about her experience as a practitioner and updated attendees on recent developments.

Chaired by Rachel Minch SC, the committee members are Conor Linehan SC (vice-chair), Andrew Jackson,

Brendan Curran, Danielle Conaghan, Eoin Brady, Fergal Ruane, Nap Keeling, Nicole Ridge, Zoe Richardson, and Clare Tarpey (secretary).

Its remit includes:

- Assisting the Society in its interventions in relation to law reform or legislative proposals,
- Providing expert knowledge and guidance and acting as a reference point for the

Society and the Council on these matters,

- Cooperating with and assisting other committees and task forces on issues of mutual interest,
- Preparing submissions, statements, and observations that are balanced, principles-based, and compliant with the Society's policy development and communication processes.

Society seeks your views

● The Law Society is seeking your views in a survey of all solicitors (from Wednesday 19 April) to assist in the development of the Law Society's 2024-2028 strategy statement.

President Maura Derivan said: "The current statement of strategy for the Law Society expires in December 2023. Given the scale of the challenges that the profession and wider society have encountered over the last few years, it is necessary and prudent to review, adapt, and harness the potential of the Society for its members, and also taking into account the public interest.

"The world is going through an unprecedented level of change, which is set to continue. The next ten years will see substantial changes to the way in which we live our lives and do our work. Much of that transformation will be mandated and regulated by changes in the law."

Real opportunity

Director general Mark Garrett commented: "Against a changing landscape, and in developing the new statement of strategy, I see real opportunity for the legal profession and the Law Society – because we promote and advocate for the high standards that consumers, businesses, and employees want more than ever. That is why we are committed to a proactive strategy to help mitigate the challenges and take advantage of the opportunities that the changes will bring."

Maura Derivan added: "At this early stage of the process, we want to hear your views and your voice about what you believe are the priorities



PIC: CIAN REDMOND

for the Law Society for the next five years. We also want to hear how we can shape our resources and capabilities for the solicitors' profession and in the public interest."

Member survey

Late last year, focus groups were held with the bar associations to obtain their perspectives on the challenges

and opportunities for the profession and the Law Society. This will now be built upon, with an online survey of all members on the Roll of Solicitors and trainees.

It will be independently led by B&A Research, and all contributions will remain confidential and anonymous. The survey will take 10-12 minutes to complete. Members will receive the survey from B&A Research's email address, with the following subject: 'Invitation to complete B&A Research and Law Society of Ireland Survey'. The survey will remain open for two weeks.

"This is the first survey of such scale in two years," said President Derivan. "It is an opportunity for every solicitor to give their views and assistance in shaping the future strategic direction of the Law Society."

IHREC grant scheme now open

● The Irish Human Rights and Equality Commission has opened this year's round of a grant scheme for organisations and groups working on issues of human rights and equality. Civil-society organisations applying for funding under the scheme can make an application for either a small grant (of up to €6,000) or a general grant (of up to €20,000), with a total of €400,000 available.

Grants are open to national or local groups and voluntary organisations, networks, non-governmental organisations, rights-holders groups, area-based community groups, communities of interest groups, and trade unions. The deadline for receipt of applications is Wednesday 26 April 2023 at 3pm.

Book now for President's Conference

● Details of the Law Society of Ireland President's Conference 2023 have been announced.

The theme will be 'Your future – building a successful legal profession, legal career and legal practice over the next decade'. It will take place on Friday 12 May from 11am to 5.15pm at Mount Juliet Estate, Thomastown, Co Kilkenny.

Attendance will give one CPD hour in regulatory matters and four in management and professional development skills (by group study). This total of five CPD hours fulfils the 'in-person' CPD scheme requirement for 2023.



PIC: CIAN REDMOND

At 11am, Law Society President Maura Derivan will give a welcome address and will introduce Council members. Director general Mark Garrett will then speak on 'Your career, your legal practice and the future of work

for solicitors in Ireland'.

Other speakers will include Paul Healy (chief executive, Skillnet Ireland), Sarah Kelly (partner, legal recruitment, The Panel), Antoinette Moriarty (head of Law Society Psychological Services), Attracta O'Regan (head of Law Society Professional Training), Paula Fearon (McCann FitzGerald), Mike O'Reilly (O'Reilly Business Services), Justin Purcell (Law Society Practice Support), and Sorcha Hayes (head of practice regulation, Law Society).

Further information is available at lawsociety.ie and booking is now open.

ENDANGERED LAWYERS

BENNY TAI, HONG KONG



PICT: LAU CHUNG REN/LAMY

● Benny Tai (58) is a former University of Hong Kong law professor. He is one of the initiators of the 2014 Occupy Central with Love and Peace pro-democracy movement, which was strongly condemned by the Beijing authorities at the time and resulted in death threats. He lost his university post in 2020 as a result of a criminal conviction over his role in the 2014 pro-democracy protests. He accused the university of bowing to pressure from Beijing.

He was one of the founders of the pro-democracy umbrella protests. The Hong Kong-Beijing Liaison Office, which represents the Beijing government in Hong Kong, welcomed his removal, saying: "The University of Hong Kong's decision to fire Benny Tai is a move that punishes evil and praises the virtuous."

Benny Tai published an article, 'Ten steps to mutual destruction', in the now-closed *Apple Daily* newspaper and on Facebook, which outlined how pro-democracy candidates could win 35 out of the 60 seats in the legislative council.

He is now being tried for "a conspiracy to subvert state power" along with 46 others. They took part in an unofficial democratic primary election in 2020 aimed at maximising the number of opposition seats in the city's legislature. Up to 600,000 citizens took part in the primaries, queuing at over 250 polling stations around the city over two days, to decide on opposition candidates for September 2020 elections to the legislative council. They turned out despite warnings that participation could violate the new national security law.

The 47 were arrested *en masse* in January 2021 by national security police, prompting angry protests. Most have been held on remand, with just a few allowed bail. They are being tried by three judges with no jury under the draconian national security law.

The prosecution alleges that the democrats held more than ten meetings since January 2020 to work out how to implement the primary and had agreed to support the five demands of the 2019 protest movement, which included universal suffrage, greater police accountability, and an amnesty for all detained protesters.

Tai was handed a ten-month prison term in May 2022 for "illegally" promoting an earlier strategic voting scheme titled 'ThunderGo' ahead of the 2016 legislative council elections via six paid newspaper ads.

Alma Clissmann is a recent member of the Law Society's Human Rights Committee.

International PII report published



● The International Bar Association has published an [international set of principles](#) on professional indemnity insurance (PII) for the legal profession.

The Bar Issues Commission Policy Committee and the Legal Policy and Research Unit formed a working group to raise awareness of the concept. The *International Principles on Professional Indemnity Insurance for the Legal Profession* will assist bar associations and regulatory bodies in addressing three principal issues, namely:

- Should such insurance be mandatory and, if so, under what conditions?
- Whether an attorney covered by PII should be mandatorily disclosed?
- If so, to whom should it be disclosed – the client, the public, or a regulatory body?

During research for the report, the working group found little global uniformity about the requirement of a lawyer to hold PII and, where a requirement did exist, there was no consistency in terms of the extent or scope of the coverage.

A 2014 survey undertaken by the Council of Bars and Law Societies of Europe found that most European countries have mandatory PII but, in the US, which is one of the largest legal markets in the world, only two states (Idaho and Oregon) require lawyers to hold PII. Malpractice insurance is mandatory in Canadian and Australian provinces and states, but far less common across Africa, Asia, and South America.

The chair of the Bar Issues Commission, Ken Murphy, remarked: "Professional indemnity insurance is highly consequential for everyone involved with the legal profession, but there is comparatively little awareness of the framework or concept at a global level.

"It is my hope that, following the extensive work carried out by the working group, the principles laid out in this new report will provide bar associations and regulatory bodies with some guidance around the issues involved in professional indemnity insurance."

Civil legal aid conference



PIC: PHOTOCALL

Members of the Chief Justice's Working Group on Access to Justice: John Lunney (Law Society), Joseph O'Sullivan (Bar of Ireland), Chief Justice Donal O'Donnell, Eilis Barry (CEO, FLAC), Mr Justice John MacMenamin (retired Supreme Court judge), and John McDaid (CEO, Legal Aid Board)

● The Law Society supported a recent conference on civil legal aid, hosted by the Chief Justice's Working Group on Access to Justice at Dublin Castle on 24-25 February. The event brought together stakeholders to review the current civil legal-aid model in Ireland and to discuss the

changes necessary to develop a model legal-aid system here.

Speaking at the event, Law Society President Maura Derivan commended the Civil Legal Aid Group and the Minister for Justice for seeking a consultation to review the Civil Legal Aid Scheme for the first time in its 40-year history.

Tailte Éireann starts operations

● A new agency – brought about by the merger of the Property Registration Authority, the Valuation Office, and Ordnance Survey Ireland – has officially begun operating.

Tailte Éireann will provide a property-title registration system, a State valuation service, and a national mapping and surveying infrastructure.

The agency was formally launched on 1 March by Minister of State Kieran O'Donnell at its new headquarters in the Distillers' Building in Smithfield Square, Dublin.

"The new agency is the primary national source of property information and geo-spatial data, and will be a leader in developing and delivering land-information services," the

minister said. "These functions are essential for underpinning the State's economy in many areas – including property, planning, agriculture, local government, the environment, and construction."

Interim chief executive Liz Pope said that the body would play a significant role in the system of land administration in Ireland.

The chair of the board of Tailte Éireann is David McGarry, who will serve a five-year term. He is a member of the Institute of Directors and Chartered Accountants Ireland. The ordinary board members are Martin Sisk, Rowena Mulcahy, Mary Keane (former Law Society director general), Shirley Coulter, Deirdre O'Keeffe, and Gerard Quinn.

IRLI IN MALAWI

MALAWI PRISONERS GO HUNGRY



Kate Loughran (IRLI's programme lawyer) delivering food with staff at Ntchisi Prison in February 2023

● In Malawi, Irish Rule of Law International works to increase access to justice for vulnerable, unrepresented accused people. About 90% of Malawi's prisoners have no access to legal representation, and Malawi's prisons operate at about 230% capacity. Food shortages are a constant feature of prison life in Malawi.

Typically, prisoners are only fed one bowl of 'nsima' (maize) a day. In 2009, the Constitutional Court deemed this minimum standard grossly inadequate; however, the situation has only deteriorated since then. In October 2022, it emerged that prisoners across Malawi were going two or three days without food.

One reason for this situation is chronic underfunding. For the 2021/22 fiscal year, the prison system requested a budget of approximately K2.8 billion (about €2.5 million), but was only allocated K1.3 billion (€1.2 million) – some of which did not even make it to the prisons.

In November, a collaborative advocacy effort from IRLI and other NGOs resulted in a commitment from government to provide prisons with a supplementary K1 billion, but chronic food shortages persist. In recent months, the Irish Embassy in Malawi also donated money to prisons to purchase food.

Many of Malawi's prisons used to have their own farms and were more or less self-sustainable. However, as the country has fallen into abject poverty (as a result, in part, of successive corrupt governments), many of these farms have ceased to operate.

To address this problem, the government of Malawi must properly equip existing prison farms and make new land available to prisons so that they can become self-sustaining once again. The time is long overdue – we now need effective policies to ensure all prisoners receive adequate and nutritious food.

Susie Kiely is country programme manager at Irish Rule of Law International.

Calcutta Run: celebrating 25 years!

● The Calcutta Run is back and is celebrating 25 years of stunning success. The organising committee is encouraging as many from the profession as possible to run or walk the 5k and 10k routes from Blackhall Place through the Phoenix Park on 27 May. Once again, the event will feature the infamous Finish Line Festival, complete with barbecue, music and DJ, kids mini-athletics, face painting and more.

This silver anniversary run is aiming to welcome more than 1,000 participants, 200 volunteers and staff, and charity partners and sponsors – all with the goal of raising funds for The Hope Foundation and the Peter McVerry Trust.

Show your support by registering a team, or individually, at www.calcuttarun.com. Every



PIC: CIAN REDMOND

participant who raises funds will receive a technical t-shirt, barbecue ticket, and a goodie bag.

A little Leeway

In other good news, the Cork Calcutta Run returns this year on 27 May. Two worthy local

charities for the homeless – SHARE and The Hope Foundation – will benefit. Participants can choose to take part in a 5k walk or fun run in Blackrock – suitable for all ages and abilities – followed by a free barbecue on the grounds

of Blackrock National Hurling Club.

Also back is the [Tag Rugby Fundraiser](#), which will take place on 6 May at Blackhall Place and TU Dublin. No tag experience or ability is required, and the event will be open to all legal practitioners across the country. The tournament will consist of 32 teams, with each team capped at 12 members.

Teams may enter less than 12 players if they so wish, but must include a minimum of seven players – four males and three females playing at any one time. Teams, smaller groups, and individual sign-ups are encouraged. Email your name to calcuttatag2023@gmail.com and the organisers will look after the rest. Food, drinks, and music will be laid on.

Swinging like Tiger

After a sold-out inaugural event in 2022, the Law Society is once again hosting the [Calcutta Run Golf Classic](#) tournament as part of the fundraising effort. The tournament will take place at Castleknock Golf Club on Friday 19 May. For bookings and further information, contact calcuttarungolf@gmail.com.

Having raised a combined €5 million in 24 years, the aim is to raise €300,000 in 2023. Spread the word among your colleagues, family members, and friends – the Peter McVerry Trust and The Hope Foundation need all the help they can get.

For further information, email julie@calcuttarun.com. The dates for your diary are:

- 6 May – tag rugby (Blackhall Place and TU Dublin),
- 19 May – golf classic (Castleknock Golf Club),
- 27 May – Blackhall Place run, and
- 28 May – Cork run (Blackrock).

Library launches new subject guides

● The Law Society Library has introduced a new member and student service called Law Society Subject Guides, which highlight subject-specific resources and relevant information for different practice areas of law.

The guides are an excellent starting point for solicitors, future solicitors, and course participants who wish to improve their knowledge of a legal subject. They are also a convenient way for practitioners to access frequently used materials in their own practice areas, as a ‘one-stop shop’.

Members and students can access relevant Law Society precedents and practice notes via the subject guides, and explore available books,



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e-books, journal articles, case law, legislation and other information pertinent to the topics.

Each month, the library will circulate a new subject guide through its newsletter *LawWatch*.

To get access to all of the subject guides, visit the library section at www.lawsociety.ie/subjectguides.

Mairéad O’Sullivan (head of Library and Information Services) says: “The library is committed to its users and the expansion of the information service. We hope that members and students will find the Law Society Subject Guides helpful and informative.”

The library welcomes your feedback, comments, and suggestions, which can be emailed to m.osullivan@lawsociety.ie.

Robert Purcell (1974-2023)

● Robert Purcell, who died on 27 February, was widely regarded as one of the leading criminal-defence solicitors in the country, having spent his entire career with the firm of ME Hanahoe.

The son of legendary Galway GAA player Sean Purcell, Robert came from a large extended family and was a graduate of Garbally College, Ballinasloe. He studied for his undergraduate degree at Waterford Institute of Technology before graduating from Trinity College Dublin, where he completed a masters in law in 1997. He served his traineeship with ME Hanahoe Solicitors and was admitted to the Roll in 2004. While training to be a solicitor, Robert met Tessa Robinson, who was training to become a barrister. They married at Ballintubber Abbey, Co Mayo, in 2005. He was made partner in the firm in 2015.

A protégé of Michael Hanahoe, Robert focused his practice on criminal defence, which he mastered over a 20-year career, advising clients in cases appearing before the District, Circuit, Central Criminal and Supreme Court, as well as the Court of Appeal and European Court of Human Rights.

Champion

A champion for unpopular causes, he was a consistent advocate that a strong defence is the measure of a strong justice system. Robert built a reputation for defending the most challenging cases concerning the most troubling of accusations. He afforded the same level of respect and dignity to all those whom he represented, without consideration of background or history, and approached each case with diligence and professionalism, regardless



of the charges they faced. Compassionate and empathetic, he was particularly admired for the lengths he went to in comforting and assuring the families of the accused subjected to the stress and anxiety of having a loved one exposed to the criminal-justice system.

Robert was a long-standing member of the Law Society's Criminal Law Committee, joining it in 2009 and eventually becoming its chairman. Colleagues described him as a leader in building a robust criminal-justice system in the country, and a powerhouse behind all of the major policy-reform initiatives of the committee.

Notable contributions

Some of Robert's more notable contributions included assisting with the Law Reform Commission's *Consultation Paper on Jury Service*, providing commentary on the *Gender Recognition Act 2015* and its impact on transgender prisoners, and addressing the

Dáil Justice Committee on the *Criminal Justice (Victims of Crime) (Amendment) Bill 2018*. Robert was also a member of the *Gazette's* Editorial Board and frequently contributed to the magazine by writing articles or facilitating interviews concerning developments in criminal law.

He was also keenly interested in legal education and was dedicated to ensuring that criminal law maintained a high profile in the training of solicitors. He was extremely generous with his time, knowledge, and talent, and he was often observed in the courts offering counsel and guidance to more junior solicitors in other firms on the intricacies of complex applications and procedures.

A regular lecturer and tutor on the Professional Practice Course, Robert delivered continuing professional development papers on the *Criminal Justice Act 2011* and *District Court Rules* and, following the decision to permit solicitors to be present to advise during questioning, co-authored

the Law Society's guidance for solicitors attending garda stations.

Sports enthusiast

Robert's love of sport and dedication to physical fitness was well known. A long-term follower of Galway hurling, he was in Croke Park to see his team lift the Liam McCarthy Cup in 2017.

A keen cyclist – and when not otherwise traversing the country on his road bike – he could often be observed racing along the quays between his office at Sunlight Chambers on Parliament Street, the Criminal Courts of Justice, and various garda stations, always swapping his helmet for his trademark military cap on arrival.

His son Rory tragically passed away last year on 1 February 2022. Robert struggled with Rory's passing for a year, before finally succumbing to a broken heart. He is survived by his wife Tessa, daughter Amy, and son Aran.

Ar dbeis Dé go raibh a anam dílis.

MH



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Friday 12 May 2023
MOUNT JULIET, KILKENNY

Your future – building a successful legal profession, legal career, and legal practice over the next decade

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- Your practice viability, present and future options

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PROFESSIONAL LIVES

Sharing personal and professional stories has long been a powerful way to create a sense of connection and belonging. It creates a space for vulnerability that can provide the listener with inspiration and hope, or newfound insight to a challenge or difficulty they too might be facing. We welcome you to get in touch with ps@lawsociety.ie to share a story for this 'Professional Lives' column.

Through surrender, victory

This year, I celebrate 30 years as a partner at Herbert Smith Freehills (HSF) and 38 years overall at the international firm. It has not all been plain sailing. My first 20 years as a lawyer were particularly challenging – on the face of it, marked by significant achievements that included partnership and time in Hong Kong, Italy, and Singapore, but lurking beneath the surface the misery of stress, anxiety, depression, and alcoholism.

I went public with my struggles through a 'This is me' video in 2015, which was shared with 6,000 members of the firm. My wife was reluctant that I should bare my soul, ironically saying: "Once the cork is out of the bottle, you can't put it back in." But I'm glad I did. Through my brokenness came strength, through my surrender, victory. My firm deserves enormous credit for sticking with me, as does my wife, Deb.

When I first told my story, people thanked me, but said: "Maybe it's okay for you – you're a partner and have earned that support, but will it be different if I'm in business services, an associate, a trainee?"

At that time, I had no answer. But now I do. People from all parts of HSF have told their story, and I know that people have gone through to partnership with a history of mental-wellbeing issues. How wonderful is that? Have we

got it right in all offices and in all practice areas? Of course not.

Like many organisations, we face the classic dilemma: someone is a superstar and outperforms financially, but they are unkind and fail to build teams properly. Do we reduce their remuneration? Do we ask them to leave?

For me, the answer is clear, but I have the luxury of not calling the big shots – I can lob stones from the sidelines and try to encourage. Can we envisage something truly different? Can we be brave enough to say that we will be a firm that puts its people first in everything – and, through that, create something special, where people come to work energised and full of passion and ready to deliver for clients? A firm differentiated by compassion on the one hand, and delivering excellence on the other?

Dangerous cocktail

What might this look like? For one thing, I am clear that we have to look at the time-sheet/chargeable-hour approach to billing for work and how this links to bonuses for associates (this is a dangerous cocktail). We need to build a culture where all partners and business leaders lead by example and understand the 'red lines' of the people who work with them. (In other words, what is critical for each member of their team – is it exercise, sleep, the Wednesday evening

function, or the caring obligations for children or parents?) A culture where mental ill-health is understood as common and as terrible, but where full recovery can be achieved with the right care and interventions. A culture where mental wellbeing is at the top of the agenda and not a 'nice to have'.

Looking after people is not giving up on exceptional performance – on the contrary, the two can hold hands. The pursuit of profit, and only profit, will end in sadness and pain. We will become locked into what the world values more than anything – money and the trappings of money. If we do that, we will have failed. And we will have generations of people thinking: "If only I can achieve that, then I will be happy." But we won't – I promise – because I have been there and tasted that.

So, as I look back on 38 years, I can see an important choice we need to make – two paths. Which will we choose? Because, at the end of the day, we all have agency – even when we think we don't. Choose now, please! 📧

Cbris Parsons has been with Herbert Smith Freehills for 38 years and chair of the India practice for the last 18 years. In 2018, sponsored by HSF, Cbris completed an intensive programme in psychotherapy at Regent's University in London. This year, he began a diploma in counselling and psychotherapy at the Centre of Counselling and Psychotherapy Education in London.

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100 YEARS OF WOMEN IN THE PROFESSION

The Gazette continues its series marking the centenary of the first women in Ireland to qualify as solicitors. Beatrice Mushatt was the daughter of Jewish Lithuanian parents who fled the Russian pogroms at the end of the 19th century. On 30 April 1944, she became the first Jewish woman to qualify as a solicitor in Ireland.

Ireland's first Jewish female solicitor

Beatrice Mushatt was born in Ireland on 9 June 1916. Known as Betty, she was the youngest of eight siblings who grew up in the Liberties in Dublin 8. A warm, kind-hearted girl who was loved by everyone, she was always community minded, doing voluntary work from a young age.

After attending Wesley College, a school that prided itself at the time on educating

“girls who desire to secure such training as will fit them for professional and business careers”, Beatrice secured a five-year legal apprenticeship with Andrew J O’Flynn of Gort, Co Galway. A letter from the firm in 1935 shows that her mother paid the apprenticeship fee of IR£240 (a huge amount at that time, roughly equivalent to more than €10,000 in real terms today).

First court appearance

On 30 April 1944, she received the news that she had passed her final for the solicitors’ exams for the Incorporated Law Society of Ireland. Her BA in law from Trinity meant that she became “the first Jewish woman to qualify as a solicitor in Ireland” – a fact that was marked in the *Jewish Chronicle* on her 28th birthday.

Another newspaper, the *Evening Mail* (17 April 1945) subsequently noted her first court appearance – representing a man who was facing a fine for not having a working lamp or reflectors on his bicycle at night: “District Justice Walter Malony welcomed Miss Beatrice Mushatt BA, who was making her first appearance in court as a solicitor. Wishing her luck in her profession, he hoped that he would see her often in his court ... She won her case.”

Working mother

After marrying pharmacist Arthur Elyan in 1948, Beatrice moved to Cork, where she started her own family. That same year, she graduated with an MA in law from Trinity. The mother of three continued to practise law, working from home on a case-by-case basis.

On 11 February 1967, Beatrice passed away, at the age of 50. She was so well-respected within the community that, prior to her funeral, her memory was honoured at a special service in her honour at Cork synagogue. 



Beatrice (Betty) Mushatt graduated with an MA in law from TCD in 1948

Source: Beatrice’s daughters – Simone Baron, Estelle Freeman, and Alanna Freeman. This abridged extract first appeared in Celebrating a Century of Equal-opportunities Legislation – The First 100 Women Solicitors, published by the Law Society of Ireland.

Palles – The Legal Legacy of the Last Lord Chief Baron

Oonagh B Breen and Noel McGrath (editors). Four Courts Press (2022), www.fourcourtspress.ie. Price: €49.50 (hardback, incl VAT).

● This book of essays by Irish legal academics provides a broad overview of the judicial career of one of Ireland’s greatest judges, Christopher Palles, who was appointed Lord Chief Baron of the Court of Exchequer in 1874 and sat on the bench for the next 42 years. The essays focus on the judgments handed down by Palles throughout his career in various fields – with the sole exception of Thomas Cope’s essay on the background to Prime Minister William Gladstone’s grudging appointment of Palles as Chief Baron.

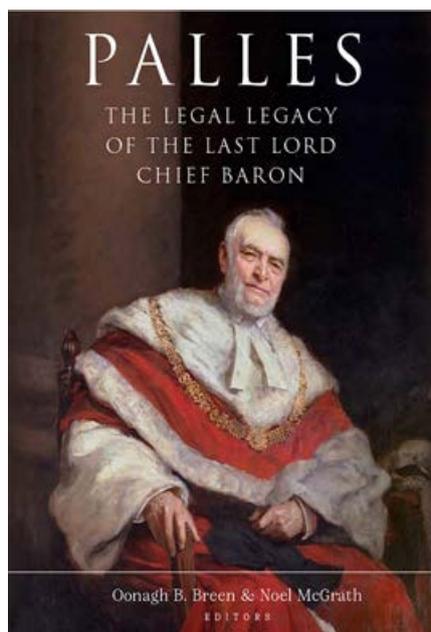
Terence Dooley discusses two decisions by Palles at the height of the Land War during the 1880s that drew down the wrath of nationalists on him, while also discussing how his decisions could be a thorn in the side of the government that appointed him.

Oonagh Breen discusses his judgment in *O’Hanlon v Logue* (1906) that the public-benefit merits of charitable gifts for religious services should be judged according to the tenets of the religion itself. She charts how the decision influenced courts as far afield as the United States and Malaysia, and how its influence continues in modern charity legislation.

Mark Coen discusses Palles’s scathing dissent in *The King v Peter Dolan and others* (1907), a case of contempt taken against the MP Walter Long for comments he made about the defendants in a criminal trial where the jury had disagreed and where there was due to be a retrial. Palles’s dissent, holding that actual intention to prejudice the retrial was immaterial, has been cited approvingly throughout the common-law world, from Canada to Sri Lanka and from England to Kenya.

Steve Hedley reviews the development of the law of tort in Ireland and highlights Palles’s innovative identification of the ‘neighbour principle’ as the key to liability for negligence in *Doyle v Hort* (1879), as well as his famous 1890 decision on nervous shock in *Bell v Great Northern Railway*, a decision cited throughout the common-law world – most recently in Australia in 2002.

Other essays discuss the influence of



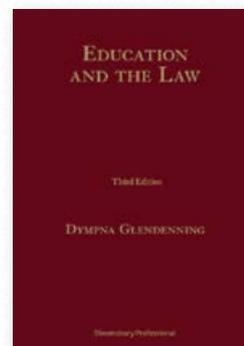
Palles’s judgments in fields as varied as the impact of the *Judicature Act*, company law, judicial review, defamation, and criminal law.

The range of his influential judgments (due no doubt to the fact that, at that time, judges of the superior courts also heard cases on assize) is remarkable, and the essays pay frequent tribute to what seems to be a common hallmark of a great judge – not least in the case of Palles – which is clear and elegant writing, with the writers noting his “admirable clarity” and “meticulous precision”.

The essays themselves are blessedly free of academic jargon and are a pleasure to read. The facts of the cases discussed provide a fascinating look at the turbulent period in Irish history spanned by Palles’s judicial career, a period that included the Land War, the literary revival, and the early years of the struggle for independence. They also show Irish society adapting to new technologies, ranging from the automobile to the railway, and even the humble postcard! As such, the collection is of interest not only to lawyers, but to anyone interested in Irish history. 

Brian McMabon is head of contentious matters in An Post’s Legal Department.

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2FAST 2FRIVOLOUS





A trend seems to be emerging of four categories of claims that the courts consider to warrant dismissal under the *Rules of the Superior Courts*. Eoin Pentony and Edward Murray gun the throttle

Under order 19, rule 28

of the *Rules of the Superior Courts 1986* (RSC), the courts may (among other things) order any pleading(s) to be struck out (or stayed) on the following grounds:

- The pleading(s) show no reasonable cause of action or answer, and/or
- The cause of action or defence being shown by the pleadings are ‘frivolous’ or ‘vexatious’.

From a review of the relevant case law – and within the scope of the wording of order 19, rule 28 regarding ‘frivolous’ and ‘vexatious’ claims – it seems that the courts may be amenable to granting relief to dismiss proceedings

where the claim falls into one of the following four (non-exhaustive) categories:

- There is no statutory or legal basis for the plaintiff’s claim,
- The doctrines of *res judicata* and/or *Henderson v Henderson* are applicable,
- The case/claim is statute barred,
- The case/claim is futile, misconceived, hopeless and/or irremediable.

Outside of order 19, rule 28, the court also enjoys an inherent jurisdiction to strike out pleadings/proceedings in some circumstances.

We are the road crew

Before considering these four categories for consideration, certain defining characteristics of the jurisdiction under both order 19, rule 28 and the inherent jurisdiction of the court should be considered.

Regarding ‘pleading’, the Supreme Court in *Aer Rianta cpt v Ryanair Ltd* determined that, on its plain wording, order 19, rule 28 applies only to the striking out of an entire pleading, such as a statement of claim or defence, and not part of a pleading “if the court is convinced a claim will fail”. Applications to strike out parts of pleadings would be brought pursuant to order 19, rule 27 of the RSC.

Order 19, rule 28 provides wide, but arguably vague, grounds for a defendant to bring an application to have proceedings dismissed that have been issued against him/her. The jurisdiction under order 19, rule 28 is invoked with reference solely to the pleadings. O’Higgins CJ, in *McCabe v Harding*, emphasised that, in order for the rule to apply, “vexation or frivolity must appear from the pleadings alone”. Costello J in *Barry v Buckley*, stated that “the court can only make an order under this rule when a pleading discloses no reasonable cause of action on its face”.

In contrast, and as to the inherent jurisdiction of the court, per Costello J in *Barry v Buckley*, “the court is not limited to considering the pleadings of the parties, but is free to hear evidence on affidavit relating to the issues in the case”.

Highway star

In *Hurley v Pepper Finance Corporation (Ireland) DAC*, Mr Justice Allen considered a matter that fell into this category of claim. The plaintiff issued a plenary summons on 27 January 2020, claiming, among other things:

- A declaration that, under a loan agreement dated 19 November 2001, he was a ‘consumer’ pursuant to the *Consumer Credit Act 1995*, and
- A declaration that a loan agreement dated 19 November 2001 and related mortgage were unenforceable by reason of section 38 of the 1995 act, which aims to prevent a creditor from enforcing a credit agreement and security unless the requirement of that part of the said 1995 act have been complied with. Section 30 of the 1995 act provides, among other things, that a credit agreement should contain a ‘cooling-off-period’ statement, while section 29 provides that part III applies to all credit agreements, other than ‘housing loans’.

The plaintiff delivered a statement of claim on 11 March 2020, and a request for particulars was raised and replied to. The claim included allegations that a loan agreement did not contain a statement in respect of the cooling-off period (which it did not). A defence was issued on 26 February 2021, which primarily objected to the

plaintiff's claim on grounds that the claim was bound to fail.

A motion was later issued by the defendant under order 19, rule 28 RSC and the inherent jurisdiction of the court. In considering it, Mr Justice Allen stated: "If ... the statement of claim discloses an arguable question of law, the true test is whether the argument has a reasonable prospect of success ... the onus is not on the [plaintiff] to demonstrate that he has a reasonable prospect of success, but on the defendant to show [that the plaintiff] does not."

Ultimately, the court was satisfied that the defendant had met the requisite threshold, concluding that, among other things, as the agreement concerned a 'housing loan', the provisions of part III of the 1995 act were not applicable. The defendant had demonstrated that the arguments raised by the plaintiff had "no reasonable prospect of success" and the proceedings were struck out.

Interestingly, in considering costs, Mr Justice Allen was critical of the defendant issuing the motion under order 19, rule 28 after the matter was set down for trial, stating that, "while *Pepper* identified a fundamental flaw in the action which was capable of being – and in the event was dealt with on a motion – [the defendant] nevertheless delivered a defence and waited until after the action had been set down for trial before issuing its motion and thereby added to its own costs as well, perhaps, as [the plaintiff's] costs".

Practitioners should take note of the courts' wide-ranging discretion on costs and be cautious not to delay in issuing a motion under order 19, rule 28 in order to avoid any adverse costs implications. Practitioners must strike a balance between progressing a claim to gather a plaintiff's frivolous pleadings (and thereby increasing the chances of success of an order 19, rule 28 motion) against the potential of adverse costs findings for a delayed order 19, rule 28 motion.

Souped-up Ford

The Court of Appeal recently considered the case of *KBC Bank Ireland Plc v Osborne*. The plaintiff had obtained judgment against the defendant on 21 December 2015. Mr Osborne did not appeal the judgment but rather issued separate plenary summons proceedings against the bank, which were dismissed by McGovern J by reason of their

being frivolous and vexatious and disclosing no cause of action – offending against the rule in *Henderson v Henderson*, and being barred by section 11 of the *Statute of Limitations 1957*.

Mr Osborne sought to challenge matters further, including issuing proceedings against a receiver and an application to the Court of Appeal for an injunction restraining the plaintiff from executing the judgment previously obtained. Osborne initiated a motion seeking, among other things, an order vacating the judgment already granted to the plaintiff on 21 December 2015, which motion was brought in breach of an undertaking previously agreed by Mr Osborne, via his counsel, not to bring any further motions against the plaintiff without first obtaining the leave of the President of the High Court. That application found its way to the Court of Appeal. Mr Justice Allen exercised the inherent jurisdiction, striking out the appeal as an abuse of process in circumstances where, among other things, a challenge to the judgment previously obtained was *res judicata* and such challenge was brought in breach of an undertaking not to do so.

In *Cunniffe v Cunniffe & Anor*, Mr Justice Allen in the Court of Appeal considered an appeal of a probate matter that had been struck out in the High Court under order 19, rule 28 RSC, where the case was found to be statute barred and a claim of fraud not substantiated. The Court of Appeal noted that it is "legislative policy of the *Statute of Limitations* to prevent the litigation of stale claims" and, in circumstances where the death of the parties' father had occurred nearly 30 years previously and the action commenced on 4 May 2016, the appeal was dismissed.

Highway to hell

In 2020, Mr Justice Allen considered an application under order 19, rule 28 in *Sheridan v AIB plc*. The details of the case went back 40 years, but the crux of it centred on an application for banking records of two companies (Emerald Contract Cleaner (Ireland) Limited and Emerald Contract Cleaners Limited) held by AIB. The plenary summons, dated 11 September 2018, claimed that the defendant had neglected to recognise the plaintiff's standing as executor of Pauline Sheridan, the administrator of the estate

of James Vincent Sheridan. The plaintiff claimed relief for an order directing Allied Irish Bank plc to release documents/records to the plaintiff as administrator of the estate of James Vincent Sheridan.

Later, in February 2019, the plaintiff delivered a form of statement of claim asserting an entitlement to all the accounting documentation of the two companies and seeking declarations that the defendant had refused to accept his legal standing and that the defendant had no duty of confidentiality to its customers.

Relying on *Barry v Buckley*, and although noting that "if there is a deficiency in the case pleaded that is capable of remedy by amendment, the action should be dismissed", Mr Justice Allen was satisfied that "the case is hopeless and that the statement of claim is irremediable". The court struck out the claim.

The plaintiff appealed the judgment to the Court of Appeal, with Haughton J delivering judgment on 23 June 2022. The Court of Appeal noted that, while the plaintiff/appellant did not bring an application in the High Court to amend his pleadings to "save his claim", he was seeking to introduce new evidence and amend the claim in the Court of Appeal. The court summarised the action as an "action solely for discovery". In considering the plaintiff/appellant's application to amend his claim in the Court of Appeal, the judge noted that, "as it requires exceptional circumstances to justify the court admitting of an amendment of the statement of claim to admit the claim in the first instance, it would seem to follow that most exceptional circumstances would be required to justify an amendment to save the claim at the appellate stage". As the original claim and the proposed claim were "fundamentally different", the court rejected the plaintiff/appellant's application to amend his claim. As to the frivolous and vexatious/abuse of power aspect of the appeal, the court relied on the judgments in *Barry v Buckley*, *Lopes v Minister for Justice, Equality and Law Reform* and the Supreme Court judgment in *Ewing v Ireland*, which outlined six indicia of vexatious proceedings:

- The bringing of one or more actions to determine an issue that has already been determined by the court of competent jurisdiction,



ORDER 19, RULE 28 PROVIDES WIDE, BUT ARGUABLY VAGUE, GROUNDS FOR A DEFENDANT TO BRING AN APPLICATION TO HAVE PROCEEDINGS DISMISSED THAT HAVE BEEN ISSUED AGAINST HIM/HER

- Cases where it is obvious that the action cannot succeed, or
- Cases where no reasonable person could reasonably expect to obtain relief,
- Where the action is brought for an improper purpose,
- Where the person instituting proceedings has failed to pay the costs of unsuccessful proceedings,
- Issues are rolled forward into subsequent actions repeated and supplemented.

Finding in favour of the defendant/respondent in circumstances where the claim the plaintiff/appellant was pursuing is frivolous and vexatious, Haughton J dismissed the appeal.

I drove all night

The issue as to when an application to dismiss can be brought was considered in *Byrne and Anor v National Assets Management Agency*. MacGrath J noted that the rule is silent as to the time within which such application can be brought. Relying on the Supreme Court decision in *SM v Ireland (No 1)* and noting that “undue delay may lead to an application to strike out being dismissed”, the court confirmed that it is not necessary for a defence to be filed in advance of bringing a motion under order 19, rule 28 RSC, stating “one of the purposes of the procedure envisaged under the order is to deal expeditiously and as inexpensively as possible”.

Built for comfort

The courts appear willing to strike out proceedings under its own discretion where the claim is bound to fail and/or no cause of action is disclosed. The courts may be amenable to dismiss proceedings should they fall into one of the four primary (non-exhaustive) categories listed at the start of this article (that is, there is no statutory or legal basis for the plaintiff’s claim; the doctrines of *res judicata* and/or *Henderson v Henderson* are applicable; the claim is statute barred; or the case is futile, misconceived, hopeless and/or irretrievable).

It is a common defence to order 19, rule 28 applications for plaintiffs to issue an application to amend proceedings

‘to save the claim’, and it would appear from the judgments discussed above that the courts are more likely to facilitate an amendment to a claim rather than strike out proceedings, if the amendment(s) could take the claim out of the scope of order 19, rule 28 and/or the four broad categories identified above.

It also appears that an applicant can bring a motion to dismiss successfully at any point of the proceedings, which could include early stages upon receipt of a summons, but that will depend on the facts of each particular case. Practitioners should bear in mind that, if a party delays in bringing an application to dismiss, the courts may take this into consideration when considering the issue of costs.

Eoin Pentony is a partner in Edward Healy Solicitors LLP, 30 Pembroke Street Upper, Dublin 2. Edward Murray is a Dublin-based barrister specialising in commercial, chancery, banking and finance law.

LOOK IT UP

CASES:

- *Aer Rianta cpt v Ryanair Ltd* [2004] IESC 23
- *Barry v Buckley* [1981] IR 306
- *Brennan v Ireland, the Attorney General, the Minister for Justice & Equality and Start Mortgages DAC* [2023] IEHC 107
- *Byrne and Anor v National Assets Management Agency* [2018] IEHC 526
- *Cunniffe v Cunniffe & Anor* [2022] IECA 272
- *Ewing v Ireland* [2013] IESC 44
- *Hurley v Pepper Finance Corporation (Ireland) DAC* [2022] IEHC 299
- *KBC Bank Ireland Plc v Osborne* [2022] IECA 274
- *Lopes v Minister for Justice, Equality and Law Reform* [2014] IESC 21
- *McCabe v Harding* [1984] ILRM 105
- *Sheridan v AIB plc* [2020] IEHC 141; [2022] IECA 139
- *SM v Ireland (No 1)* [2007] IESC 11

LEGISLATION:

- Order 19, rule 28 of the *Rules of the Superior Courts 1986*

Gentle on my mind

Ginger Lerner-Wren is judge of the Misdemeanour Mental-Health Court in Broward County, Florida.

The guest speaker at this summer's Law Society Human Rights Lecture, she spoke to Mary Hallissey about her innovative role



s the presiding judge of America's first mental-health court, Judge Lerner-Wren seeks to divert defendants identified as mentally ill or developmentally disabled, who have been charged with non-violent misdemeanour (summary) offences, into community-based treatment as an alternative to incarceration.

The Misdemeanour Mental-Health Court in Broward County, Florida, USA, follows a defined human-rights strategy and prioritises dignity and restorative justice goals. Established in 1997, this lower-level criminal court was the first such county court in the country and has diverted over 20,000 people from incarceration. Its efforts have been recognised by The Hague



ALL PICS: MICHAEL J. HOLMES PHOTOGRAPHY

Institute for Innovation of Law at its 'Innovating Justice Awards'.

Judge Lerner-Wren was also appointed by President George W Bush to the New Freedom Commission on Mental Health, where she chaired the Criminal Justice Subcommittee from 2001 to 2003.

Hers is a renowned court with a uniquely human-rights framework in the US – despite that country not having ratified the *UN Convention on the Rights of Persons with Disabilities*.

“I don’t think we value and understand the application of human rights in the same way as other parts of the world,” Judge Lerner-Wren explains. “The work I did from the protection and advocacy vantage points, that’s human rights really. It’s all civil rights.”

Shared vision

When she first came to the court, Lerner-Wren had to design a system from scratch that could divert defendants away from an inappropriate system of care, including jail, and to “get the sickest of the sick to hospitals”.

“Mostly, it was the transportation factor that we had to really make work. It was very complicated,” Judge Lerner-Wren says. “The challenge was to link people to services, care, and housing. But from desperation comes innovation,” she muses.

A small group of highly concerned citizens came together and, through creative collaboration and identifying the problems that needed to be solved in a very precise way, came cultural change.

“We did it all with shared vision.

That’s how hungry this community was for justice,” she explains. “When you’re in communities like ours, that are so underfunded, under-resourced, and highly fragmented, it’s tough,” she adds.

The judge describes her determination not to witness those before her spending their lives revolving in and out of jail and getting trapped.

Lerner-Wren says that she’s looking forward to speaking at the Law Society’s Annual Human Rights Lecture in June. She has warm feelings for Ireland – she met her husband here when she was a keynote speaker at the 2008 annual conference for the National Disability Authority. “Ben oversaw jail diversion for all New South Wales, and they flew him over to Ireland for a work group. Six months later, he migrated



THEY ARE TARGETING HOMELESS PEOPLE BASED ON MENTAL ILLNESS AND SAYING IF THEY DON'T TAKE THEIR MEDICATION, THEY'RE GOING TO LOSE THEIR CIVIL RIGHTS. YOU CAN'T COERCE PEOPLE INTO GETTING CLEAN

to Florida, and we have been married for 14 years!" she laughs. They live in Fort Lauderdale, 40 minutes north of Miami.

Finding the right fit

She describes graduating from law school during the recession years and says that she always had a very strong leaning towards working for the public interest and in the civil-rights arena.

"Because of the recession, a lot of those jobs just weren't available at the time. And I really must tell you, because it's great to tell law students, I just couldn't find my fit," she explains.

While practising real-estate law, she got a call: "There's a job that I think you would be really interested in," the person on the line said. "He never called me before, but, you know, he called me, and it was a job that was a perfect fit for me," she explains. The role was with the Office of Public Guardian, and the programme was for adults who had been declared incapacitated. They had no family members to act as their



legal guardians, to take care of their finances, make medical decisions, or find them housing in the community.

"All of these people in this programme were indigent," Judge Lerner-Wren explains. She was put in charge – with some support staff and three "wonderful" social workers – of getting their benefits, securing housing, and making all the decisions, even death arrangements, similar to the Irish system of wardship.

Problem-solver

"I'm a real problem-solver. I love collaboration. I love to enhance access to care, to programmes, to services wherever I can. That's been one of my niches.

"I took my own caseload of clients, for example, even though I wasn't a trained social worker, but we had statutory legal limits on our ratios. We couldn't have more than, let's say, a 40-to-one social worker. So, I took my own caseload of people in addition to directing the office and all my responsibilities, so I could expand the service model of this pilot programme," she explains.

The job partly came about because Judge Lerner-Wren had got involved in a campaign against the closure of a huge regional psychiatric hospital. "This state psychiatric hospital, South Florida State Hospital, which had been around since the 1950s, had been privatised. Its catchment area was literally almost the entire bottom-half of Florida – 3,200 beds that institution had," she says.

She gave a speech to policymakers in the state legislature, describing how important it was not to close the hospital because the inpatients were going to end up homeless.

Serendipity

"That's one thread of what was happening while I was serving as public guardian. You know, there was a lot of serendipity to do with the development of the court. I wasn't a mental-health expert back then. I was a young lawyer, and I got this job as a public guardian," she says.

Judge Lerner-Wren's reputation was growing and members of the public started to come to her for help with family members with schizophrenia and other problems.

"I was trying to figure out how to give them some hope – you cannot believe the level of

FOCAL POINT LECTURE FROM PIONEERING US JUDGE

The annual Law Society Human Rights Lecture will take place online on 7 June. The Human Rights and Equality Committee, in partnership with Law Society Professional Training, will host Judge Ginger Lerner-Wren, who will speak about her experience in presiding over the first US mental-health court.

The lecture will be chaired by Council member Gary Lee, who is chair of the

Human Rights and Equality Committee. Gary has extensive experience in disability and mental-health law and has chaired mental health tribunals for the past 16 years. He is also a former chair of the Disability Federation of Ireland.

Registration is now open (search for 'Annual Human Rights Lecture 2023' at lawsociety.ie for details). Attendance attracts one CPD point.

distress, anxiety, and fatigue. They are out of their minds with worry that a crisis is going to occur and that their mother or daughter or son with serious mental illness is going to end up with a fatal diagnosis.”

Her job at the Mental Health Court followed a federal class institutional action that had been filed against South Florida State Hospital. “They had been negotiating for years and finally reached a settlement agreement. But they needed somebody to oversee the implementation of that agreement in the institution on behalf of the residents,” she explains.

“They wanted what they called a plaintiffs’ monitor – not a court monitor – who was objective and independent and who, therefore, serves the court. This position serves the plaintiffs, the residents of the hospital,” she adds. “I had to get trained. I really didn’t know all that much about mental illness at the time,” she says.

Abuse watchdog

The US has a protection and advocacy system that is a federally funded abuse watchdog, allowing subpoenas of any institution under the law.

“I got trained and they had put together one of the most innovative expert legal teams in psychiatric rehabilitation and systems of care and consumer rights – including patient rights, legal rights, and treatment orientation,” she adds.

This training, which would be outside the scope of most law schools, enhanced her expertise on the bench, the judge believes: “I’m probably the only judge in the world who practically lived for a year-and-a-half in a psychiatric hospital.

“From an advocacy vantage point, you really need to know the law if you’re going to advocate for clients who can’t advocate for themselves. You need a very strong understanding of what their rights are under the law. Remember, all these individuals are indigent, and living in group-care environments. This is America and, if you don’t have healthcare insurance, you’re in trouble. A lot of my people were able to get on Medicaid.

“To make matters worse, Florida is at the bottom of the rung of the 50 states in terms of mental-health funding,” she notes.



When she was appointed to the bench, Judge Lerner-Wren also came up against the problem of overcrowding in the jail system: “There were several precipitating problems in our jail system,” she explains. “There was an overrepresentation of people being arrested with mental illness. There were no services.”

Ginger cookies

A year-and-a-half into her advocacy role, Judge Lerner-Wren decided to run for judicial office, having always been politically active. On the hustings, she handed out ginger cookies to potential voters, making a virtue of her unusual first name and ensuring her campaign stood out with the electorate.

The Florida model has been copied in other states, but Judge Lerner-Wren is critical of what she describes as a level of coercion in mental-health courts in California: “They are targeting homeless people based on mental illness and saying if they don’t take their medication, they’re going to lose their civil rights. You can’t coerce people into getting clean.

“There is a lot of mandatory outpatient care around the country, but the evidence base is not so good. From a human-rights vantage point, there are ways of engaging people in a really dignified way, to really build that trust factor. And we know readiness is a very personal thing.”

She describes doing a deep dive into the community and dealing with people with disabilities, the elderly, the homeless, and with healthcare abuse and neglect: “You’re working across all of these disciplines – it is fascinating,” she concludes. **g**

“WHEN SHE FIRST CAME TO THE COURT, JUDGE LERNER-WREN HAD TO DESIGN A SYSTEM FROM SCRATCH THAT COULD DIVERT DEFENDANTS AWAY FROM AN INAPPROPRIATE SYSTEM OF CARE, INCLUDING JAIL, AND TO ‘GET THE SICKEST OF THE SICK TO HOSPITALS’

Mary Hallissey is a journalist at the Law Society Gazette.

JUST ANOTHER VICTIM



Two recent High Court judgments highlight the need for a comprehensive overhaul of the Criminal Injuries Compensation Scheme. Liam O'Driscoll lays out the case for victims of crime



he judgments of Holland J in *Bowes and Brophy v Criminal Injuries Compensation Tribunal and Ors* and Ferriter J in *Earls v Criminal Injuries Compensation Tribunal* call into question decision-making procedures at the tribunal and underscore the need for comprehensive reform.

In Budget 2023, the Government announced an additional €2 million in funding for the Criminal Injuries Compensation tribunal. This additional allocation is to be welcomed, as it will contribute to more efficient decision-making at the tribunal, along with improving victims' experiences of the application process.

The Government's announcement is in keeping with their recent commitment to improving service provision for victims of crime at the tribunal. In 2021, the number of decision-makers at the tribunal doubled from seven to 14, allowing decisions to be taken in a more efficient manner.

Furthermore, the text of written decisions has generally become more detailed, with the reasons for refusals or reductions in awards being set out in a clearer manner in recent years. Despite these much needed improvements, the two recent High Court judgments highlight the need for further and more comprehensive reform.

Bowes and Brophy

Bowes and Brophy concerned two applicants to the tribunal who were subjected to separate violent assaults and suffered serious injuries as a result. In these proceedings, Bowes and Brophy challenged the legality of a change made to the scheme, which restricted the tribunal's discretion to consider applications submitted after the three-month time limitation from the commission of the violent offence giving rise to the injuries.

Under a rule introduced in 2021, the tribunal's discretion to consider late applications was limited to a two-year timeframe from the commission of the offence. Up until this point, the tribunal had had an unlimited discretion to admit such applications where 'exceptional treatment' was deemed appropriate.

The introduction of this change removed the possibility of Bowes submitting an application and it being admitted by the tribunal under their 'exceptional treatment' discretion. Indeed, Bowes did submit an application, but the tribunal declined to consider it as it was received outside the new two-year timeframe. The tribunal also refused Brophy's application for the same reason. While he had five days to submit his application within the two-year timeframe once the change was introduced in 2021, Holland J held that this fact did not materially make a difference for the purposes of the proceedings.

EU law breached?

Both Bowes and Brophy challenged the tribunal's refusal to consider their applications as a result of the new two-

year timeframe. They challenged the refusals on the basis that the scheme, in implementing the EU law right to compensation under Directive 2004/80/EC, breached the EU-law principles of effectiveness and equivalence by putting in place the two-year timeframe in a retrospective manner and without an appropriate transition period.

On the principle of effectiveness, based on a number of Court of Justice authorities, Holland J held that, when new legal rules are introduced that, in this instance, shorten the relevant limitation period, the relevant applicants must be given an "opportunity, via transitional provisions, to adapt to new legal circumstances" in order for their EU right to compensation to be practically realised. As the change made to the scheme in 2021 did not allow Bowes and Brophy to do so, Holland J concluded that the new two-year timeframe breached the principle of effectiveness.

In relation to the principle of equivalence, Bowes and Brophy argued that, as the two-year timeframe in respect of the scheme provides applicants with a significantly reduced limitation period in comparison with the six-year timeframe available in respect of tort claims for assault and battery, the principle of equivalence was breached, as similar domestic actions had "less favourable" procedural rules. This argument failed to persuade the High Court, and Holland J dismissed this element of the proceedings, since claims for criminal-injuries compensation at the tribunal and claims in respect of tort and battery in the courts are significantly different types of action in both purpose and form, as confirmed by the Court of Justice.

Correcting the position

Separately, Holland J also commented that the State was wrong to wholly characterise the holding by the Court of Justice that member states of the EU must ensure the financial viability of national compensation schemes as meaning that the financial burden on the State must be limited by virtue of strict procedural rules, such as the two-year timeframe.

Instead, Holland J corrected the position and stated that the holding of the Court of Justice in relation to the financial viability of schemes meant also that member states must properly fund the schemes to ensure that "fair and appropriate compensation" for victims of violent crime is available.

Holland J further stated that, despite his finding in relation to the principle of effectiveness, "relatively short time limits" are permissible in the context of the scheme. While Holland J did not offer guidance on the meaning of the term 'relatively short time limits', he did state that the 'exceptional treatment' discretion under the scheme's time limit must be "interpreted in a broad, liberal and generous manner responsive to the particular circumstances of the victim of crime in each case". Holland J's comments are interesting in this respect, as it is clear that such a standard is in place concerning some tribunal decisions, but is not in place in respect of others.

Ignorance of the scheme

Finally, Holland J stated that, while "ignorance of the scheme will not automatically constitute exceptional circumstances, it cannot be excluded that it may do, depending on the circumstances". This is despite the fact that it is clear that ignorance of the scheme has regularly been said not to be an excuse amounting to applications warranting 'exceptional treatment'. This is particularly problematic in light of the fact that victims of violent crime have a right to information

IS IT TO BE PRESUMED THAT MODERN CRIMES THAT CAUSE INJURY TO PERSONS, BUT THAT DO NOT STRICTLY MEET A PREDEFINED AND LIMITED DEFINITION OF VIOLENCE – SUCH AS ONLINE GROOMING OF CHILDREN OR CYBERSTALKING – ARE EXCLUDED FROM THE SCOPE OF THE SCHEME?

in relation to how to apply for compensation from the State under both Directive 2004/80/EC and the *Victims' Rights Directive 2012*, along with the *Criminal Justice (Victims of Crime) Act 2017*.

Holland J's findings and comments highlight a number of problems present at the tribunal, primarily the presence of an unfair two-year time limit. Additionally, from reading the judgment, it is reasonable to conclude that such a restrictive time limit was put in place with the express purpose of excluding vast numbers of potential claimants who otherwise would have benefited from compensation under the scheme. This conclusion calls into question the State's commitment to supporting victims in the aftermath of violent crime.

Earls and 'crime of violence'

Similar conclusions can be drawn in the context of separate judicial review proceedings in *Earls v Criminal Injuries Compensation Tribunal*. This case concerned the scope of the tribunal's definition of a crime of violence under the scheme. Here, the relevant incident occurred in 1995, where a firework (set off down a public road by an 11-year-old boy) exploded in the face of a 13-year-old girl, causing significant injuries, including sight loss.

The tribunal application was submitted in 1996, but the first-instance decision was not made until 2015, with the appeal decision taken in 2021. The delay in this case was caused partly by a decision taken by the girl's legal advisers not to progress the application until she was an adult, and also because the tribunal refused to make a preliminary decision on whether the incident itself constituted a crime of violence for the purposes of the scheme.



At both first instance and appeal, the tribunal held that the incident did not constitute a crime of violence under section 20 of the *Offences Against the Person Act 1861* and sections 79 and 80 of the *Explosives Act 1875*. The crux of the applicant's argument in these proceedings was that the tribunal incorrectly applied a subjective – not objective – test in respect of section 79, which provided that the throwing of a firework in a public place was an offence if “reasonably calculated to endanger” the public's safety and “was committed wilfully” by the accused person.

Subjective versus objective

As a subjective test was applied, the applicant contended that the tribunal's decision was too focused on the actions of the perpetrator, which did not suggest, in and of itself, that the requirements of the offence under section 79 was met.

The applicant further contended that, if an objective test were applied, the statements of several witnesses present at the time of the incident would have been taken into account, leading to the incident clearly coming within the scope of section 79 and, therefore, being within the definition of a ‘crime of violence’. These witness statements describe that the perpetrator saw the applicant when the firework was launched and therefore, under an objective standard, the launching of the firework could reasonably be calculated to put the public in danger.

Overall, Ferriter J agreed with the arguments of the applicant and held that the tribunal erred in applying a subjective test. Furthermore, Ferriter J stated that the six-year delay as between the first-instance decision and the appeal decision was a breach of

BOTH BOWES AND BROPHY CHALLENGED THE TRIBUNAL'S REFUSAL TO CONSIDER THEIR APPLICATIONS AS A RESULT OF THE NEW TWO-YEAR TIMEFRAME ON THE BASIS THAT THE SCHEME, IN IMPLEMENTING THE EU LAW RIGHT TO COMPENSATION UNDER DIRECTIVE 2004/80/EC, BREACHED THE EU-LAW PRINCIPLES OF EFFECTIVENESS AND EQUIVALENCE BY PUTTING IN PLACE THE TWO-YEAR TIMEFRAME IN A RETROSPECTIVE MANNER AND WITHOUT AN APPROPRIATE TRANSITION PERIOD



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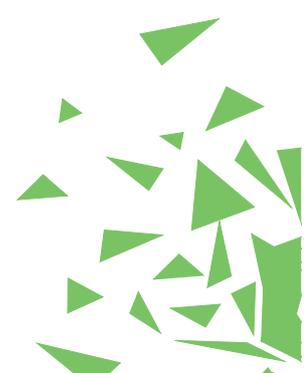
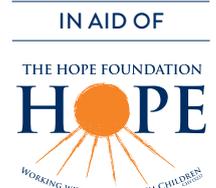
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FERRITER J STATED THAT THE SIX-YEAR DELAY AS BETWEEN THE FIRST-INSTANCE DECISION AND THE APPEAL DECISION WAS A BREACH OF THE TRIBUNAL'S OBLIGATION, UNDER THE PRINCIPLES OF CONSTITUTIONAL JUSTICE AND ARTICLE 6 OF THE *EUROPEAN CONVENTION ON HUMAN RIGHTS*, TO MAKE DECISIONS WITH 'REASONABLE EXPEDITION'

the tribunal's obligation, under the principles of constitutional justice and article 6 of the *European Convention on Human Rights*, to make decisions with 'reasonable expedition'. Unfortunately, Ferriter J did not make any declarations in this regard, but warned that the courts in future proceedings would have very good grounds to do so if such delays continued.

Decision-maker guidance

In stating that an objective test would lead the tribunal to properly include the other witness statements in their determination, Ferriter J held that, if a decision-maker is relying on particular material in support of their decision in a given case, this must be expressly set out in the decision itself – it cannot be presumed that the decision-maker is doing so. Ferriter J's comments point to a significant issue at the tribunal in that, in the past, the text of tribunal decisions did not always set out in sufficient detail the reasons for decisions in particular cases.

As stated above, improvements have been made in this regard and, indeed, *Earls* demonstrates the benefit of the tribunal now providing such comprehensive reasons – that is, so that the courts can examine the tribunal's reasoning and determine whether such reasons for refusal are correct or not in law. Overall, however, while *Earls* demonstrates improvements in the decision-making process, it also reveals the strictness of the procedural and eligibility rules present in the scheme.

If launching a firework and causing severe injuries to a person does not constitute a crime of violence, is it to be presumed that modern crimes that cause injury to persons, but that do not strictly meet a predefined and limited definition of violence – such as online grooming of children or cyberstalking – are excluded from the scope of the scheme?

The voice of victims

It is clear, therefore, that more comprehensive reform of the scheme is needed. Last year, the Law Reform Commission published their consultation paper on the issue and made very welcome preliminary recommendations on how the scheme could be improved.

As part of this reform process, it is vital that the voices of victims and those who have experienced the tribunal process are listened to in terms of how best to improve the scheme. Furthermore, it is critically important that victim-support workers and legal professionals with experience of the tribunal process set out their experiences of assisting victims in making applications under the scheme. If such voices can be heard, there is hope that future reform measures taken by Government will result in better experiences and outcomes for all victims of violent crime.

Liam O'Driscoll is a PhD researcher in the School of Law and Government at Dublin City University. His research is funded by the Irish Research Council.

LOOK IT UP

CASES:

- *Bowes and Brophy v Criminal Injuries Compensation Tribunal & Ors* [2022] IEHC 703
- *Criminal Injuries Compensation Authority v First-tier Tribunal & CC, RN v First-tier Tribunal & Criminal Injuries Compensation Authority* [2022] UKUT 103 (AAC)
- *Earls v Criminal Injuries Compensation Tribunal* [2022] IEHC 679

LEGISLATION:

- Council Directive 2004/80/EC (29 April 2004)
- *Criminal Justice (Victims of Crime) Act 2017*
- *Explosives Act 1875*
- *Offences Against the Person Act 1861*
- *Victims' Rights Directive* (Directive 2012/29/EU)

THE FIRM

Firms need to prioritise the fundamental organisational and structural issues that make work good for people's mental health and wellbeing, writes Desi Vlahos

awyers who feel they have psychological support have greater job attachment, commitment, and performance – as well as satisfaction, loyalty, and retention. There are, however, some circumstances where work has undesirable effects on health and wellbeing.

'Psychosocial hazards' are factors in the design or management of work that increase the risk of work-related stress and can lead to psychological or physical harm. This may be because of the way the tasks or jobs are designed, organised, managed, or supervised, or the hazard may be inherent to the actual task or job.

'Psychosocial hazards' can include:

- Job demands,
- Low job control,
- Poor support,
- Lack of role clarity,
- Workplace bullying,
- Violence,
- Isolation,
- Harassment (including sexual harassment),
- Poor change management,
- Conflict or poor workplace relationships,
- Poor physical environment,
- Poor organisational justice, or
- Traumatic events or material.



Tom cruisin' for a psychosocial bruising'

The terms ‘psychosocial hazard’ and ‘psychosocial risk’ are sometimes used interchangeably, and ‘stress’ is often defined as a psychosocial hazard rather than a consequence of the hazard. The ‘risk’ is the likelihood or probability that a person will be harmed or experience negative physical or mental-health effects from being exposed to a psychosocial hazard.

Risky business

Psychosocial risk management is the application of a risk-management framework to the prevention of psychological harm due to a lawyer’s exposure to psychosocial hazards. An individual psychosocial risk assessment is not effective in isolation, but should be an iterative process fitting within a safety-management system monitoring severity, frequency, and duration of a risk before implementing a control.

Psychosocial risk management is a four-step process:

- Identify psychosocial risk and hazards that can have an impact on lawyers. Find out what could cause harm, considering recognised psychosocial hazards.
- Assess what could happen if lawyers are exposed to the identified hazards. Understand the nature of the harm that could be caused by the psychosocial hazards, the likelihood of it happening, and the amount of harm that could be caused.
- Control where possible and eliminate the risk. Minimise the risk if elimination isn’t possible, and implement the most effective control measures that are reasonably practicable in the circumstances.
- Review hazards and control measures when necessary to ensure they are working as planned.



It is critical that this four-step process is underpinned by leadership commitment and effective consultation through sharing information and providing staff with reasonable opportunities to express views, taking those views into account, and advising on consultation outcomes.

Minority report

Organisations will often ask ‘where to start?’ Integrating psychosocial safety pragmatically within an organisation’s existing safety structures will be familiar, flexible, and more likely to be sustainable, so the process need not be built from scratch. This can be achieved by tailoring off-the-shelf workplace mental-health programmes to suit an individual organisation’s maturity level, needs, culture and terminology, with managers checking in regularly with employees about how the workplace affects their mental wellbeing.

Evaluation surveys and focus groups will be viewed cynically unless there is confidence that the organisation will respond seriously to any issues uncovered. Many psychosocial risks are obvious and can be addressed through senior-management competencies, such as redesigning business functions or individual roles.

Connecting different business teams – from executive leadership, to people and culture, to health and safety – is critical in developing an integrated approach that sustains a culture of wellbeing. This ensures links to environmental and societal factors, including work design, workforce, and the workplace. Rather than imposing top-down solutions, design-thinking approaches are recommended, involving each stakeholder to actively engage in identifying problems – and remedies – in the process. A systems-approach to strategy results in solutions that are the product of a collaborative, thoughtful, and iterative effort from various perspectives.

Collateral

Psychosocial hazards do not necessarily reveal the causes of work-related stress, but are rather specific to the employee, work, or workplace. Stress by itself does not lead to, or cause injury; however, frequent or prolonged stress can cause mental or physical exhaustion and harm. When lawyers are exposed to a hazard, they can also sustain a delayed response. For example, if lawyers are frequently exposed to graphic material in the workplace, they can experience stress or trauma as a result.

Psychological harm or injuries from psychosocial hazards include conditions such as anxiety, depression, post-traumatic stress disorder, and sleep disorders. Physical harm or injuries from psychosocial hazards include musculoskeletal injury, chronic disease, and physical injury following fatigue-related workplace incidents. Other risks to the health and safety of employees at work may include reduced job satisfaction and productivity, increased absenteeism, conflict, and risk of substance use.

The IBA’s *Mental Wellbeing in the Legal Profession* report cited competing demands, long hours, workload control, and unrealistic time and target pressures, coupled with inability to take breaks, as the most reported hazards experienced by lawyers.

Findings from the Law Society of Ireland’s *Dignity Matters* report indicated that one in two men and one in three women experienced bullying, while one in two women and one in nine men experienced harassment, which were impacting factors on mental health and wellbeing, and a contributing factor to leaving the workplace.

In the IBA report, early career lawyers, women, culturally and linguistically diverse individuals, and persons with disabilities reported the most significant wellbeing issues. One in six lawyers with disabilities



CONDUCTING A THOROUGH RISK ASSESSMENT OF PSYCHOSOCIAL HAZARDS IN THE WORKPLACE IS NO LONGER AN OPTION FOR LEGAL ORGANISATIONS – IT'S A MUST. LAWYERS WANT TO WORK FOR ORGANISATIONS WHERE INDIVIDUALS THRIVE

experienced suicidal thoughts because of work-related mental-wellbeing issues. Most respondents felt unable to cope or perform, made careless mistakes, or started looking for alternative employment.

Despite increasing acknowledgment, individual legal professionals do not perceive firms and organisations as responding effectively to issues affecting mental wellbeing, citing lack of funding, data collection, or evaluation for wellbeing-related work. Leaders may also lack the skills necessary to tackle the issues once they have been identified. Unlike well-established systems to document physical-injury risks, assessing the impact of the workplace on mental health is uncharted territory for many legal organisations. The IBA report indicated that, while 73% of law firms have wellbeing initiatives in place, only 29% measure the initiative impact, and only 27% collect wellbeing data to begin with.

The others

The World Health Organisation estimates that over €930 billion in productivity is lost every year due to mental ill-health. The effects of COVID-19 on mental health have also been reported in the recent 2022 *Workplace Mental Health Survey*, carried out by Mental Health Ireland. The survey of 900 respondents found that 90% of employers had noticed an increase in mental-health challenges in the workplace since the pandemic.

Globally, workplace mental health is receiving unprecedented attention, with collective recognition that individual-based interventions (including employee assistance programmes, mental-health first-aid, and building individual resilience) are not addressing a fundamental consideration for

lawyer mental health – the role of work.

International best practice from the World Health Organisation, the International Labour Organisation, and the International Organisation for Standardisation now include recommendations for employers to protect employee psychological health in the same way that physical health is protected. This means applying a risk-management framework in understanding psychosocial hazards and their risks to employees, and addressing them systematically through cycles of continuous improvement.

In Australia, workplace health-and-safety regulation is also undergoing considerable reform to elevate psychological health and safety to the same level as physical health and safety. The new provisions to manage psychosocial risks are broad and require consideration of not only the physical work environment, but also psychological and social context in the workplace. This involves the requirement to conduct a risk assessment of the workplace, a review of whether current risk-control measures are adequate to control psychosocial hazards, and the development and implementation of proper control measures.

Given the international and domestic calls to adopt psychosocial risk management as part of a holistic and integrated approach to mental health at work, now is the time to ask whether your organisation is ready.

A few good men

Conducting a thorough risk assessment of psychosocial hazards in the workplace is no longer an option for legal organisations – it's a must. Lawyers want to work for organisations where individuals thrive. While there has been

a lot of emphasis on the benefits of workplace mental-health initiatives, regulations do drive behavioural change in organisations. As talent acquisition and talent retention are notable drivers for adoption of risk management, reduced psychological injuries, increased social impact, and ethical business practices are all identified as key business drivers. A strong, supportive workplace – with a sense of shared purpose, clear objectives, manageable workload, and responsive leadership – can help people thrive in their personal lives as well as their careers. The long-term success of legal organisations may depend on whether they can rise to this challenge.

Desi Vlabos is an Australian legal practitioner and mentor of practical legal training at the Leo Cussen Centre for Law, Victoria, Australia. She is also the CEO and founder of Wellceum, a workplace consultancy supporting legal and professional services to help manage psychosocial risk, improve employee resilience, and create visible social impact.

LOOK IT UP

- *Dignity Matters* (Law Society of Ireland, 2021)
- *Guidelines on Mental Health at Work* (World Health Organisation, 2022)
- *ILO/WHO Joint Policy Brief: Mental health at Work* (International Labour Organisation, 2022)
- *Mental Wellbeing in the Legal Profession* (International Bar Association, 2021)
- *Workplace Wellbeing Framework* (Mental Health Ireland, 2022)

Legal services' potential to be **key export**

The attorney general has said that legal services are poised to make a significant contribution to Ireland's strong multinational offering by ensuring access to high-quality, competitive legal services. Mary Hallissey reports

IRELAND FOR LAW FIRST EMERGED IN THE WAKE OF EXPECTED BREXIT DISRUPTION, BUT IRELAND OBVIOUSLY NOW WISHES TO TAKE ADVANTAGE OF THE OPPORTUNITIES THAT BREXIT BRINGS

Attorney General Rossa Fanning says that Ireland has situated itself at a confluence of multiple streams of commercial activity and inward investment, out of which has grown a robust legal-services sector.

Speaking at the Ireland for Law Summit, hosted by the Law Society on 28 February, the attorney general stated that Irish lawyers have developed considerable experience and expertise in catering for key industries that have established themselves at scale here.

He added that legal services could make an important contribution to Ireland's already strong offering in aviation finance, funds, insurance, technology, pharmaceutical, and life sciences by ensuring that companies based here could access high-quality legal services and resolve disputes efficiently and effectively.

Ireland for Law seeks to leverage this expertise to attract companies to direct their legal work through Ireland, whether by choosing Irish law for contracts or resolving disputes through the Irish courts. Legal services also had the potential to be a key export that would further support the growth

of the Irish economy, the AG added.

The Law Society is supporting this Government initiative and continues to work with Government departments and other stakeholders, including the Bar of Ireland and major

legal firms, to promote the use of Irish legal services at national and international level.

Multinational impact

Mr Fanning pointed out that active participation in international trade and collaboration



ALL PICS: CIAN REMOND

Rossa Fanning – 'Promoting Irish legal services will assist the Irish legal economy to realise its full potential'



At the Ireland for Law Summit on 28 February at Blackhall Place were speakers (front, l to r): Abigail St John Kennedy (Elavon), Mr Justice David Barniville, Law Society President Maura Derivan, Rossa Fanning (attorney general), Sinéad Power (Stripe), and Mark Garrett (Law Society director general); (back, l to r): Killian Kiely (DCC plc), Liam Kennedy (A&L Goodbody), Rory Flynn (Wells Fargo Bank International), Ciaran Healy (CDB Aviation), and Elaine Fox (TikTok)

with businesses all over the world had tangibly improved living standards and opportunities for Irish people, as well as bolstering public finances.

Last December, a total of 301,475 people were recorded as being directly employed by multinational companies in Ireland – an increase of 9% on the previous year, he said. A large quotient of the ever-expanding legal services’ economy was dependent on this sector, the AG added.

The Government was acutely aware of the importance of international trade. That was demonstrated by its commitment to Ireland for Law and its strategy for international legal services, he commented. “This strategy seeks to promote

Irish law, the Irish legal system, and Irish legal services to a wider audience and to assist the Irish legal economy realise its full potential.

“The strength and credibility of the domestic legal system is an extremely important consideration for the multinational sector in weighing up the attractiveness of doing business in any jurisdiction.

“A central part of the Ireland for Law message is that this country is not only a beneficiary of international trade, but that it has a great deal to offer to global businesses,” the AG said.

Opportunities

Ireland for Law first emerged in the wake of expected Brexit disruption, but Ireland

obviously now wishes to take advantage of the opportunities that Brexit brings.

“While it is led by Government, Ireland for Law is a collaborative project with assistance from across the public and private sectors – including various Government departments, IDA Ireland, my own office, the Bar of Ireland, and the Law Society,” the AG stated.

“It is not just about mimicking London or acting as its surrogate,” the AG commented, “but it is about building a sustainable strategy for Ireland to attract and retain investment.”

As a politically stable, English-speaking jurisdiction with a common-law legal

IRELAND UNIQUELY COMBINES CULTURAL, LINGUISTIC, AND LEGAL LINKS TO THE US AND THE REST OF THE ANGLOPHONE WORLD WITH EU MEMBERSHIP



EU & INTERNATIONAL AFFAIRS COMMITTEE

STAGE INTERNATIONAL A PARIS 2023

OCTOBER – NOVEMBER 2023



Every year the Paris Bar organises an International *Stage* in Paris and invites a limited number of lawyers from each jurisdiction to participate. The *Stage* is a fantastic opportunity for lawyers to discover and practise French law in the heart of Paris.

The stage takes place during the months of October and November and entails: one month attending classes at the *l'Ecole de Formation du Barreau*; and one month of work experience in a law firm in Paris. The programme also includes a visit to Brussels to the European institutions.

The Irish participant will be selected by the EU & International Affairs Committee of the Law Society of Ireland.

Candidates must:

- Be qualified in Ireland and registered in the Law Society,
- Have a good knowledge of French,
- Be under 40 years of age,
- Have insurance cover (for accidents and damages).

Tuition is fully covered by the Paris Bar; candidates must be willing to cover other expenses (travel, accommodation, meals).¹

INTERESTED?

To apply, please send your CV and a letter explaining your interest in the *Stage* (in both English and French) to: Megan Murphy Byrne (M.MurphyByrne@LawSociety.ie).

APPLICATION DEADLINE: Friday, 28 April 2023

¹ The EU & IA Committee will sponsor the participant with €3,500.

system and a highly educated workforce, Ireland was uniquely well-placed to provide market access with a familiar ecosystem and strong public administration, he continued. Legal services could make a very welcome working contribution to Ireland’s already strong offering, the AG said.

Ireland uniquely combines cultural, linguistic, and legal links to the US and the rest of the Anglophone world with EU membership – including access to the vast internal market and its 447 million consumers, he said. These were factors that gave Ireland significant advantages over other possible destinations for companies seeking to move from, or scale down, their operations in Britain.

“We are therefore uniquely positioned to combine market access with a familiar legal system and public administration,” he said.

Competitive legal services

The Government was committed to making the Irish legal system an attractive environment for business and ensuring that Irish legal services would be competitive in the longer term, he said, with action to ensure that the infrastructure would be in place – including an impending substantial increase in the numbers of judges.

“The Government acknowledges the importance to business of swift and decisive dispute resolution, and judicial resources are a key part of this,” the AG said.

Judicial resources have been

pledged for a new specialised division of the High Court – the Planning and Environmental Law Court – that will seek to accelerate the resolution of planning disputes to facilitate the development of physical infrastructure to support business, he added.

Public interest

General counsel surveyed by the Law Society have stated that the process of litigation must become more efficient, without compromising on the quality of decision-making.

The measures set out in the Kelly review of the administration of civil justice would be acted upon by the Government, the AG said – including an increased use of technology to make litigation more efficient, the introduction of reforms

to costs rules, and changes to procedures to ensure more timely hearings and reduced delays.

The measures adopted as part of Ireland for Law were also of public interest in a more fundamental way, Mr Fanning continued: “Ensuring that disputes can be resolved in Irish courts fairly, expeditiously, and at reasonable cost is not something that just assists international, and indeed domestic businesses, but it is also something that is in the interests of the ordinary citizen as well,” he concluded.

For more information, visit www.irelandforlaw.com. If your firm would like to get involved, email IFL@lawsociety.ie.

Mary Hallissey is a journalist at the Law Society Gazette.

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‘Diversity is a fact; inclusion is a choice’

The Law Society marked International Women’s Day on 8 March by launching its centenary commemorations of the admission of the first women to the Roll of Solicitors in Ireland. Mary Hallissey reports



An International Women’s Day event at the Law Society on 8 March also marked the launch of centenary commemorations of the admission of the first women to the Roll of Solicitors in Ireland.

Speakers on the theme, ‘Reflecting on the past 100 years – navigating the next 100’, were Ms Justice Eileen Roberts of the High Court, Law Society President Maura Derivan, Irish Women Lawyers’ Association chair Aoife McNicholl, and

Law Society Law School ambassador Jade Bakare.

President Maura Derivan said that, as a woman, she had never felt constrained in making a contribution to public life in Ireland. Her mother had been a teacher who worked outside the home, so she always had a positive role model for what women could achieve. She paid tribute to the many inspiring women in Irish life and their wonderful achievements, including the

late Vicky Phelan and Ruth Morrissey, who had campaigned tirelessly on behalf of the victims of defective cervical-cancer screenings.

She warned, however, that there was now a move to restrict the right of access to justice for victims, particularly those involved in medical-negligence cases: “Section 60 of the *Patient Safety (Notifiable Incidents and Open Disclosure) Bill 2019* proposes a significant restriction that clearly states that medical



ALL PICS: CIAN REDMOND

Michelle Ní Longáin, Geraldine Clarke, Elma Lynch, Valerie Peart, Maura Derivan, Susan Martin, Sonia McEntee, Kate McKenna and Michele O’Boyle



Jade Bakare

audits shall not be disclosed,” she said.

“If the bill is passed in its present form, it will result in a situation where the late heroines, Vicky Phelan and Ruth Morrissey, would never have been able to gather the evidence necessary to highlight their tragic situations and to bring their circumstances into the public domain, ensuring the protection in the future of the lives of many others.”

President Derivan warned against any move to stigmatise medical-negligence victims, adding that it was wrong and unfair to blame the present state of the health service on claims made by such victims.

The president then launched the centenary commemoration celebration, pointing towards the commemorative display that featured the first 100 women solicitors. She referred to the six women presidents of the Law Society to date – five of whom were present. She paid tribute to the first woman president, the late Moya Quinlan, who had, in fact, sponsored the incumbent president as a Council member.

President Derivan spoke of the path that had been taken by the first “brave and courageous” female solicitors, Mary Dorothy Heron and Helena Early, for others to follow. That path had grown into a laneway, then subsequently a roadway and had now become a highway. “It is for the next generation to expand it into a motorway in order to achieve true equality, diversity and inclusion,” she said.

Huge dividends

Ms Justice Eileen Roberts – the second female solicitor to be appointed to the High Court – said that having a supportive husband sharing the family workload had been a critical factor that had enabled her to continue her career while bringing up two children. She commented that it could be difficult to maintain client loyalty nowadays in law firms. It was also challenging for women to rebuild their practices on their return from maternity leave. Women needed support in this, she said, but if offered, it paid significant dividends.

Challenging phase

During her time as a practising solicitor in A&L Goodbody, she said that reducing her working week had helped her to keep going during a challenging phase. She became an equity partner shortly afterwards. The firm took the “unusual and progressive step” of amending their partnership deed to allow this to happen, Roberts said. She became a four-day-a-week equity partner and, subsequently, head of the litigation practice – and eventually chair of the firm.

“If that sounds like a smooth career path, I want to assure you that, during that period, I often felt overwhelmed and was always exhausted,” she revealed. “I drafted more than one resignation letter,” she added, but her boss refused to open the one that she gave him. “He was right – I felt better on the Monday. But that is how tight the margins are when you’re trying to balance everything,” she said.

In small things, employer support can make a big difference, she added, and

DIVERSITY IS A FACT, BUT INCLUSION IS A CHOICE WE MAKE EVERY DAY. AS LEADERS, I URGE YOU TO PUT OUT THE MESSAGE THAT YOU EMBRACE – AND NOT JUST TOLERATE – DIVERSITY



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women should get whatever help they need in order to keep going. The most difficult aspect was to maintain balance and observe boundaries, the judge said. That challenge was even more difficult today, given the ubiquitous reach of email.

“Be flexible, patient, and realistic,” she advised the attendees. “Your career will not travel in a straight line – and the most difficult times can often be when one is learning the most.”

Taking opportunities

Aoife McNicholl, chair of the Irish Women Lawyers’ Association, encouraged the large attendance to take every opportunity offered to them.

‘Opportunity’ and ‘authenticity’ were her watchwords, she commented – from her legal education at the University of Ulster, to her current legal career as a criminal-defence lawyer with Sheehan and Partners.

McNicholl added that she had been mentored and inspired by many remarkable women, who had encouraged and supported her along the way: “Back yourself and have confidence in your own ability,” she said, “and always learn from your mistakes.”

Being the first

Jade Bakare (Law School ambassador and Dentons’ real-estate associate) said that she preferred not to identify as a first-generation child of African immigrants, but that was her reality.

“Being the first in a family to attend university inevitably came with its challenges. I had nothing to compare it to, no mentor, and no point of reference. So, like the Irish do, I just got on with it,” she said. “I knew I had a battle in front of me when I realised not only that I was the only black person in my entire law class of 400 but, in fact, the only person of colour in the faculty of law.

“I wish I could say it has been easy sailing from there. Being the only person who looks like me in a firm is difficult – and still is. Unless a partner takes the time to mentor you, you can forget it,” she continued.

‘Diversity’ buzzword

“It is imperative that the generations after me are better afforded the opportunities to build their careers in a space where their treatment is not based on a pecking order of how dark their skin is, how thick their accent is, or whatever society has deemed ‘less than’,” she said.

Diversity had become a buzzword, she noted, but was often relegated to nothing more than a marketing tool.

“We saw how quickly the world could adapt to change when forced to during COVID. We, too, can adapt our mindsets and work together to make diversity and inclusion more than a box-ticking exercise. After all, a diverse mix of voices leads to better discussions, decisions and outcomes,” she said.

“To my knowledge, there are no black senior associates or partners in the top-20 firms. That is a telling fact,” Jade said.

“It is impossible to have firms who want to be innovative and not have diversity in their workforce – it just does not work,” she continued.

“Diversity is a fact, but inclusion is a choice we make every day. As leaders, I urge you to put out the message that you embrace – and not just tolerate – diversity,” she concluded.

Law firms and in-house and public-sector legal teams may pledge their names to the Law Society’s Gender Equality, Diversity, and Inclusion Charter and avail of useful diversity and inclusion resources at www.lawsociety.ie. 

Mary Hallissey is a journalist at the Law Society Gazette.

IN SMALL THINGS,
EMPLOYER
SUPPORT CAN
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AND WOMEN
SHOULD GET
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ORDER TO KEEP
GOING

Flick of the switch

The General Court of the EU has confirmed the power of the EU Agency for the Cooperation of Energy Regulators to make decisions on cross-border energy issues.

Alan McCarthy plugs it in



PICTURE: SHUTTERSTOCK

THIS DECISION UNDERSCORES THE CONTINUED ROLE AND FUTURE INFLUENCE OF ACER IN MAKING DECISIONS TO INTEGRATE AND COMPLETE THE EU INTERNAL ENERGY MARKET

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

The European Union Agency for the Cooperation of Energy Regulators (ACER) was established in March 2011 as an independent body to foster the integration and completion of the EU internal energy market for electricity and natural gas.

ACER is a decentralised agency and is distinct from the other EU institutions. As with other decentralised agencies, ACER is set up as a separate legal entity to perform specific technical and scientific tasks that help EU institutions and member states to implement policies and take decisions. ACER's headquarters are in Ljubljana, Slovenia.

Ruling confirmed

On 15 February, the General Court of the EU confirmed that ACER has the power to make individual decisions on cross-border energy issues (see Cases T-606/20 and T-607/20).

ACER can alter proposals of transmission-system operators (TSOs) to ensure compliance with EU energy laws without being bound by any agreements made between national regulatory authorities.

Regulation 2017/2195 on electricity balancing provides for the implementation of several EU platforms for the exchange of balancing energy. Those platforms include (a) the EU platform for the exchange of balancing energy from

frequency-restoration reserves with automatic activation (aFRR platform), and (b) the European platform for the exchange of balancing energy from frequency-restoration reserves with manual activation (mFRR platform).

Annulments sought

TSOs submit common methodology proposals for the implementation of the aFRR platform and the mFRR platform for approval by national regulatory authorities (NRAs). Following a joint request by NRAs, ACER took a decision on these proposals.

Austrian Power Grid and others brought an action to the ACER board of appeal against those ACER decisions. After having been dismissed, they brought two actions before the General Court seeking annulment of the decisions of the board of appeal of certain provisions and methodologies of the ACER decisions.

Actions dismissed

The General Court dismissed the actions for annulment. It ruled that, under article 6(10) of Regulation 2019/942 (which recasts the original 2009 regulation that established ACER) and article 5(7) of Regulation 2017/2195, ACER can adopt decisions on the aFRR methodology and the mFRR methodology and attach the methodologies to them.

Also, the General Court noted that ACER has specific decision-making powers that ensure the efficient functioning of EU internal markets in electricity and natural gas. In that way, ACER can amend the proposals of the TSOs to ensure their compliance with EU energy law.

This decision underscores the continued role and future influence of ACER in making decisions to integrate and complete the EU internal energy market for electricity and natural gas – including in Ireland. 

Alan McCarthy is a partner in A&L Goodbody LLP and a member of the EU and International Affairs Committee.

LOOK IT UP

CASES:

- *Austrian Power Grid AG and Others v ACER* [Case T606/20; Case T607/20, 15 February 2023]

LEGISLATION:

- [Regulation 2017/2195](#) of 23 November 2017 establishing a guideline on electricity balancing
- [Regulation \(EU\) 2019/942](#) of the European Parliament and of the Council of 5 June 2019 establishing a European Union Agency for the Cooperation of Energy Regulators (recast)

Are you ready?

EU member states have until 16 June 2024 to transpose the CSRD into their national laws, says Richard Kelly

The EU's *Corporate Sustainability Reporting Directive* (CSRD) entered into force on 5 January and will require detailed qualitative and quantitative sustainability disclosures from a substantially expanded universe of companies. Member states have until 16 June 2024 to transpose the CSRD into their national laws, with CSRD reporting then phasing in over a number of years.

The CSRD applies to:

- *Large EU companies* – EU entities or an EU consolidated group that exceeds at least two of the following three thresholds: (a) a balance sheet total of €20 million; (b) net turnover of €40 million; and/or (c) an average of 250 employees during the financial year,
- *Non-EU undertakings with a substantial EU turnover* – a non-EU undertaking that meets the following two threshold requirements: (a) over €150 million in EU annual turnover for the trailing two financial years; and (b) at least one subsidiary that is a large undertaking (or listed entity that is not a micro undertaking) or EU branch that generated net turnover of more than €40 million in the prior financial year,
- *Listed SMEs* – small and medium-sized undertakings with securities admitted to trading on an EU regulated market (excluding micro undertakings).

The scope of the CSRD is substantially broader than the EU's existing *Non-Financial Reporting Directive* (NFRD). The European Commission estimates that approximately 49,000 undertakings will be required to comply with the CSRD, compared with 11,600 for the NFRD.

New reporting requirements

CSRD reporting will require sustainability information across environmental, social and human-rights and governance (ESG) factors to be included, alongside financial information in directors' annual reports.

The term 'sustainability' was specifically used in the CSRD rather than 'non-financial' (as had been used in the NFRD), as the commission sought to emphasise that sustainability issues can have an impact on the financial performance of companies.

The sustainability information must be included in a clearly identifiable dedicated section and must cover the impact of sustainability factors on the company's business, as well as the external impacts of the company's activities on people and the environment.

The information must cover the undertaking's business model and strategy, sustainability due diligence, and sustainability risks. In particular, EU undertakings must report on the resilience of their business models and strategy in the

face of sustainability risks, the opportunities afforded by sustainability factors, and the plans of the undertaking to ensure its business model is compatible with the transition to a sustainable economy and with limiting global warming to 1.5°C in line with the *Paris Agreement* and the objective of achieving climate neutrality by 2050.

Timeline for compliance

The CSRD will phase-in as follows:

- *Financial years starting on or after 1 January 2024* – public-interest entities that are large undertakings or parent undertakings of a large group, and that on their balance-sheet date have an average of more than 500 employees during the financial year,
- *Financial years starting on or after 1 January 2025* – other EU large undertakings and parent undertakings of a large group,
- *Financial years starting on or after 1 January 2026* – listed SMEs (other than micro undertakings) and certain small and non-complex credit institutions and captive insurance and reinsurance undertakings (however, for financial years starting before 1 January 2028, these SMEs may opt out of sustainability reporting if they briefly state in their management report why sustainability information has not been provided),



PICT: SHUTTERSTOCK

- *Financial years starting on or after 1 January 2028* – non-EU undertakings meeting the turnover requirements under the CSRD.

The commission is required to adopt delegated acts that set out in detail the European sustainability reporting standards. These standards are being developed by the European Financial Reporting Advisory Group. It is expected that the first set of standards will be adopted in June 2023.

Those companies affected must now take operational steps to ensure compliance with the new rules. In particular, the audit process will need to be updated to ensure that sustainability factors are measured and reported on in a way that is robust and can be independently assessed by external auditors. This may prove challenging in the short term, as the sustainability reporting requirements are still under development, but given the scale of the work needed, companies should start the process sooner rather than later. 

Richard Kelly is a partner in the finance and capital markets department at Matheson LLP.

Money talks

Consumer contracts for legal services based on time may be void, warns Duncan Grehan

IF THE COST TERMS ARE ASSESSED AS UNFAIR BY THE NATIONAL COURTS, THE COST CONTRACT TERMS MUST BE DISAPPLIED

Legal-fees contracts are only valid if the terms are in plain, intelligible language.

In Case C-395/21 (12 January), it was found that a term in a contract for the provision of legal services concluded between a Lithuanian lawyer and a consumer, which set the price based on an hourly rate without including any further details, did not satisfy the requirement of being drafted in plain, intelligible language.

In this case, the CJEU held that legal-fees contracts between a lawyer and a ‘consumer’ on an hourly basis with no further details does not meet the requirement to be drafted in plain, intelligible language (compliant with Council Directive 93/13/EEC on unfair consumer contracts).

Detail about the lawyer’s costs in transparent, plain, intelligible language must be provided in good faith before the contract is entered into, to enable the consumer to assess the approximate total cost of those lawyer’s services, so that the consumer can take a prudent decision as to whether to retain that lawyer.

It is for the national courts on a case-by-case basis, not the CJEU, to assess whether this requirement is fulfilled. If the cost terms are

assessed as unfair by the national courts, the cost contract terms must be disapplied.

This raises many issues EU-wide, and each EU member state regulator needs to assess and address the model contracts suggested so that each lawyer contract in whatever language between lawyers and consumers of various nationalities with different languages is to be compliant, binding, and enforceable. Should our current model section 150 notices again be reviewed, shortened, and composed in lighter legalese? Interestingly – and yet to be judicially determined – although barristers must also issue section 150 notices before engagement, are their instructing solicitors classed as ‘consumers’?

Secondly, on the day of this ruling, the last sentence of the official press release summary (see curia.europa.eu) significantly stated: “The court rules that, if the invalidity of the contract in its entirety would expose the consumer to particularly unfavourable consequences, EU law does not preclude the national court from remedying the invalidity of that term by replacing it with a supplementary provision of national law or a provision of national law applied by mutual agreement of the parties. On the other hand, EU law precludes the national court from replacing the unfair term that has been annulled with a judicial assessment of the level of remuneration due for the services provided.” So how does the latter sentence, cited from the summary, affect the role of

our statutory-costs adjudicator, formerly the taxing master?

And thirdly, how does this limit the judicial sovereignty of Ireland’s courts, as laid down in our Constitution, by which justice is to be administered by them? In *Costello v Ireland and Others*, the Supreme Court, on 11 November 2022, decided that a ratification by Ireland of the *Comprehensive Economic and Trade Agreement* (CETA) between Canada and the EU would breach the Constitution, as CETA empowers its ‘investor tribunals’ to administer justice parallel to state courts.

So, the CJEU has apparently highlighted another limit on national judicial sovereignty under EU law by precluding any member state’s courts from replacing an annulled lawyer-costs term found by them to be unfair. 

Duncan Grehan is a member of the EU and International Affairs Committee.

LOOK IT UP

CASES:

- *Case C-395/21, DV v MA (Honoraires d’avocat – Principe du tarif horaire)* (Court of Justice, 12 January 2023)
- *Costello v Ireland and Others* [2022] IESC 44

LEGISLATION:

- *Comprehensive Economic and Trade Agreement*
- *Council Directive 93/13/EEC of 5 April 1993 on unfair consumer contracts*



PIG:ALAMY

REPORT OF LAW SOCIETY COUNCIL MEETINGS 20 JANUARY AND 10 MARCH

Committees' Handbook

The Council agreed amendments to the *Committees' Handbook*.

Business Recovery Report

Having considered a report on the issue, the Council agreed to communicate the Society's work in the area to the profession and to investigate the apportionment of CPD points, where appropriate.

Executive team

The Council received reports from the director general, the director of education, and the director of regulation on priority issues in their respective areas of responsibility.

IORP II

Following consideration of the challenges presented by *IORP II*, the Council authorised engagement with the Pensions Authority to work to mitigate potential consequences for beneficiaries of contingent-benefit pension adjustment orders.

Co-option to Council

The Council co-opted Fiona McNulty to fill a vacancy on the Council.

Four jurisdictions

The president updated the Council on the February 2023 meeting that focused on legal aid and the future of small practices.

Centenary celebrations

In reporting to the Council on recent celebrations of both the centenary of the first women to be admitted as solicitors and International Women's Day, the president urged Council members to engage with bar associations to ensure that all available photographs of female lawyers over the centenary could be included in the Law Society's collection, which was on display in Blackhall Place.

Law Society strategy

The Council received a project update from Genesis Ireland.

Personal injuries

Following consideration of issues that emerged at a recent PIAB Users' Group meeting, the Council agreed to engage with PIAB, as a matter of urgency, to highlight difficulties that proposed changes to personal-injury procedures would present for practitioners and members of the public.

Annual conference

The president updated the Council on the event and sought the support of Council members for what would be the first 'President's Conference'.

Equitable briefing

The Council agreed to continue to engage on the initiative, which was concerned with gender diversity in legal briefings.

Ireland for Law

The Council was updated on a recent general counsel summit and agreed to consider whether it should be made an annual event.

LSRA complaints

The Council agreed to further consider the current position, whereby any member of the public could complain to the Legal Services Regulatory Authority about any solicitor, and any amendments necessary to the existing framework.

E-conveyancing

The Council agreed to prioritise the *eConveyancing Project*. 



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4 May	Midlands General Practice Update , Midland Park Hotel, Portlaoise			€150
25 May	Essential Solicitors' Update , Carrick-on-Shannon, Leitrim			€150
1 June	Essential Solicitors' Update , The Strand Hotel, Limerick			€150
8 June	North West General Practice Update , Lough Eske Castle Hotel, Donegal			€150
IN-PERSON AND LIVE ONLINE				
19 April	Irish Sign Language in the Legal Setting Law Society of Ireland	5 Management & Professional Development Skills (by Group Study)	€363	€300
20 April	Assisted Decision Making Update Live Zoom Webinar	See website for details		
20 April	International Arbitration in Ireland: Enforcement, Challenge & Set-Aside of Arbitration Awards in Ireland Live Zoom Webinar	2 General (by eLearning)		See website for details
25 April	MS Excel Level 2 – Intermediate , Live Zoom Meetings	3 Management & Professional Development Skills (by eLearning)	€175	€150
21 & 26 April	Creating Engaging PowerPoint Presentations	10 Management and Professional Development (by Group Study)	€350	€315
3 May	IMRO and Law Society Annual Copyright Lecture Law Society of Ireland	1.5 General (by Group Study)		Complimentary
10 May	Assertiveness & Dealing with Difficult Work Situations Law Society of Ireland	3 Management & Professional Development Skills (by Group Study)	€176	€150
10 May	In-House and Public Sector Panel Discussion 2023 Law Society of Ireland	2.5 Management & Professional Development Skills (by Group Study)		€65
7 June	Human Rights & Equality Committee Lecture 2023 Online via Zoom Webinars	1 General (by eLearning)		Complimentary
7 June	Difficult Conversations with Vulnerable People Law Society of Ireland, Live Zoom Webinar	3 Management & Professional Development Skills (by Group Study)	€175	€150
ONLINE, ON-DEMAND				
Available now	Legaltech Talks Hub	See website for details		Complimentary
Available now	Effective Advocacy for Young People	See LegalED Talks CPD Training Hub		Complimentary
Available now	Suite of Social Media and Website courses	Up to 4 Management & Professional Development Skills (by eLearning)	€175	€150
Available now	Legislative Drafting masterclass	3 General (by eLearning)	€280	€230
Available now	New Laws Applicable to Technology Use and Creation Conference.	2.5 General (by eLearning)	€198	€175
Available now	Property Law Update 2022	3.5 General (by eLearning)	€198	€175
Available now	Employment Law Masterclass – New Developments 2022	6 Hours General (by eLearning)	€280	€230
Available now	International Arbitration in Ireland Hub – suite of courses	See website for details	€125	€110
Available now	GDPR in Action: Data Security and Breaches	1 Regulatory Matters (by eLearning)	€125	€110
Available now	Construction Law Masterclass: The Fundamentals	10 General (by eLearning)	€470	€385
Available now	Pre-Contract Investigation of Title	3 General (by eLearning)	€125	€110
Available now	Safety, Health & Welfare at Work Masterclass	See website for details		Complimentary
Available now	LegalED Talks CPD Training Hub	See website for details		Complimentary

GUIDANCE NOTE

CONVEYANCING COMMITTEE

REMINDER: RESIDENTIAL ZONED LAND TAX

● Practitioners are reminded that the Residential Zoned Land Tax (RZLT) was introduced in the *Finance Act 2021*. This is a new tax aimed at increasing housing supply by activating zoned, serviced residential development lands for housing, and it applies at a rate of 3% of the land's market value.

The Conveyancing Committee is presently drafting an explanatory memorandum and new requisition to deal with this tax but, in the meantime, practitioners are reminded that:

● Each local authority has published a draft

residential-zoned land tax map on its website, showing the lands that shall be subject to RZLT. Supplemental maps are to be prepared by 1 May 2023 and final maps by 1 December 2023. The final maps are to be revised annually from 2025 onwards.

- The liability date for RZLT is 1 February annually, commencing in 2024, and the owner of a relevant site on the liability date must pay the tax on or before the return date for the relevant year, which is 23 May in that year.
- Particular care should be taken if acting

for vendors or purchasers of land that is zoned as being suitable for residential development and is serviced. In appropriate circumstances, practitioners should advise their client to check whether or not the said lands are contained in the draft, supplemental, or final residential-zoned land tax map, and be in a position to advise their client accordingly.

It is hoped that the explanatory memorandum and new requisition will be issued to the profession in the coming weeks. 

REGULATION: 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 Linda Whelan, a solicitor previously practising as Ramsbottom Solicitors at College Street, Carlow, Co Carlow, and in the matter of the *Solicitors Acts 1954-2015* [2019/DT37]**

Law Society of Ireland (applicant)

Linda Whelan (respondent solicitor)

On 13 October 2022, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of professional misconduct in that she failed to ensure that there was furnished to the Society a closing accountant's report, as required by regulation 33(2) of the *Solicitors Accounts Regulations* (SI 516 of 2014) in a timely manner or at all, having ceased practice on 30 November 2016.

The tribunal ordered that the respondent solicitor:

- 1) Stand advised and admonished,
- 2) Pay the sum of €100 to the compensation fund,
- 3) Pay the sum of €2,274 as a contribution towards the whole of the costs of the applicant.

In the matter of James Walsh, solicitor, of Keaveny Walsh & Co, Solicitors, Headford Place, Kells, Co Meath, and in the matter of the *Solicitors Acts 1954-2015* [2021/DT04]

Law Society of Ireland (applicant)

James Walsh (respondent solicitor)

On 20 October 2022, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of professional misconduct in that he failed to comply with an undertaking furnished on 16 October 2007 to a named bank on behalf of his named client and borrower and a property at Slane, Co Meath, in a timely manner or at all.

The tribunal ordered that the respondent solicitor:

- 1) Stand censured,
- 2) Pay the sum of €5,000 to the compensation fund,
- 3) Pay the sum of €2,262 as a contribution towards the whole of the costs of the applicant. 



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- The ADMA 2015 as amended is finally in: what it means for us in practice, re Wardship, Advanced Directives and the new EPA's.
- When the problem is the Legal Personal Representative and how to "get around" that.
- When all else fails and the need for a Grant to an

independent solicitor arises – the pro and cons of such work.

- The type and nature of surviving spouses disputes and how best to deal with same and trust disputes between Trustees themselves and with beneficiaries.

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WILLS

Brady, Adrienne (née Green) (deceased), who died on 11 December 2022, late of 156 Mourne Road, Drimnagh, Dublin 12 (formerly of 105 Mourne Road, Drimnagh, Dublin 12). Would any person having knowledge of the whereabouts of any will made by the above-named deceased, or if any firm is holding same, please contact Lisa Brady; tel: 085 156 5355, email: lisabradyr@gmail.com

Butler, Peter (deceased), late of 76 Bayside Boulevard North, Sutton, Dublin 13, also possibly formerly of 16 Casana View, Howth, Dublin; 7 Bayside Boulevard North, Sutton, Dublin 13; Salaheen Castle Park, Carrickon-Suir, Tipperary; 10 Riverview Apts, Hazelhatch, Dublin Road, Celbridge, Co Kildare; 28 Lees Hill, Bristol, BS154TN, England; 4 Capel Court, Capel Street, Dublin 1; and 129 Bayside, Boulevard North, Dublin 13, who died on 31 December 2022. Would any person having knowledge of a will made by the above-named deceased, or if any firm is holding same or was in recent contact with the deceased regarding his will, please contact Patrick F O'Reilly & Co, Solicitors, 9/10 South Great Georges Street, Dublin 2; tel: 01 679 3565, email: cieran.oshaughnessy@pforeilly.ie

Cafferkey, Thomas (deceased), late of 135 Ryefields Village, Arena Gardens, Warrington, WA2 7GD, England, and formerly of Cashel, Achill, Co Mayo, who died on 8 February 2023. Would any person having knowledge of the whereabouts of any will made by the above-named deceased, or if any firm is holding same, please contact Patrick J Durcan and Company, Solicitors, James Street, Westport, Co Mayo; DX 53002 Westport; tel. 098 25100, email: admin@patrickjdurcan.ie

Carey, Kathleen (Kathy/Catherine) (deceased), late of 8 Beech Hill Court, Beech Hill Avenue, Dublin 4, formerly of Castledrum, Castlemaine, Co Kerry, and Ashborough Lodge, Milltown, Co Kerry. Would any

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

- **Wills** – €163 (incl VAT at 23%)
- **Title deeds** – €325 per deed (incl VAT at 23%)
- **Employment/miscellaneous** – €163 (incl VAT at 23%)

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ALL NOTICES MUST BE PAID FOR PRIOR TO PUBLICATION. ALL NOTICES MUST BE EMAILED TO catherine.kearney@lawsociety.ie and PAYMENT MADE BY ELECTRONIC FUNDS TRANSFER (EFT). The Law Society's EFT details will be supplied following receipt of your email. **Deadline for May 2023 Gazette: 18 April 2023.**

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

person having knowledge of any will made or purported to be made by the above-named deceased, who died on 17 September 2022, please contact Pdraig J O'Connell Solicitors LLP, Glebe Lane, Killarney, Co Kerry; DX 51020; tel: 064 663 3278, email: poconnell@fastmail.fm

Cotter, Patrick (Pat) (deceased), late of Rockhill, Bruree, Co Limerick. Would any person having knowledge of a will executed by the above-named deceased, who died on 13 December 2022, please contact Colbert Solicitors, Old Limerick Road, Charleville, Co Cork; tel: 063 30759, email: reception@colbertsolicitors.com

Cusack, Ann Marie (deceased), late of Low Road, Bunratty, Co Clare, who died on 27 October 2022. Would any person having knowledge of the whereabouts of any will made by the above-named deceased, or if any firm is holding a will or was in contact with the deceased regarding her will, please contact Sarah Skelly, Crimmins Howard Solicitors, Dolmen House, Shannon, Co Clare; tel: 061 361 088, email: sskelly@crimminshoward.ie

Flannery, John Augustine (o/w Jack) (deceased), late of 43 Albany Park Avenue, Enfield, Middlesex, NW3 5NT, England, and Hollybrook, Claremorris, Co Mayo, who died on 20 January 2023. Would any person having knowledge of a will made or purported to have been made by the above-named deceased, or if any firm is holding same, please contact P O'Connor & Son, Solicitors, Swinford, Co Mayo; tel: 094 925 1333, email: law@poconsol.ie

Goucher, John (deceased), late of Moyadd, Wolfhill, Co Laois, and 98 Drumgullion Avenue, Newry, Co Down, who died on 9 April 2022. Would any person having knowledge of the whereabouts of any will executed by

the above-named deceased please contact Simon McElwee, Farrell McElwee Solicitors LLP, 1 Maryborough Street, Carlow; tel 059 917 3247, email: simon@fmce.ie

Hannan, Noel (deceased), late of 100 Glasgow Park, Limerick, and formerly of Hyde Road, Prospect, Limerick, who died on 21 December 2022. Would any person holding or having the knowledge of a will made by the above-named deceased please contact William O'Donnell, Solicitors, 6 The Crescent, Limerick; tel 061 529 529, email: bill@williamodonnell.ie

Hayes, Terence (deceased), late of 7 Marymount, Ferrybank, Waterford, who died on 1 March

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2023. Would any person having knowledge of the whereabouts of a will made by the above-named deceased please contact Thomas Carroll, MW Keller & Son, Solicitors LLP, 8 Gladstone Street, Waterford, email: thomascarroll@mwkeller.ie

Hollywood, Thomas (deceased), late of 42 Botanic Avenue, Drumcondra, Dublin 9. Would any person having knowledge of any will made by the above-named deceased, who died in January 2023, please contact Neil Maguire, solicitor, Maguire McErlean Solicitors, 78 Upper per Drumcondra Road, Dublin 9; tel 01 836 0621, email: neil@magmce.ie

Kelly, Marian (deceased), late of 63 Edenmore Park, Raheny, Dublin 5, who died on 9 January 2020. Would any person holding or having knowledge of a will made by the above-named deceased please contact Gaffney Halligan & Company, Solicitors, 413 Howth Road, Raheny, Dublin 5; tel: 01 831 4133, email: info@gaffneyhalligan.com

Kinsella, Paul (deceased), late of 91 Seaview Avenue, East Wall, Dublin 3, who died on 24 December 2022. Would any person having knowledge of the whereabouts of a will made or purported to have been made by the above-named deceased, or if any firm is holding same, please contact O'Donohoe Solicitors, 11 Fairview, Dublin 3; ref: MOD/AML; tel: 01 833 2204, email: amcloughlin@odonohoes.com

McCarthy, David (deceased), late of 18 Beresford Avenue, Griffith Avenue, Dublin 9, who died on 29 December 2022. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Thomas Rowley, Rowley Law Solicitors, 56 Main Street, Rathfarnham, Dublin 14; tel: 01 490 6577, email: tom.rowley@rowleysolicitors.ie

McCarthy, Esther (deceased), late of 110 Shrewsbury Park,

Ballsbridge, Dublin 4, formerly of 31 Seabury Apartments, Sydney Parade Avenue, Sandymount, Dublin 4, and formerly of Kilmurry, Feenagh, Co Limerick, who died on 1 December 2022. Would any person having knowledge of the whereabouts of any will executed by the above-named deceased please contact Emer Foley, Reidy & Foley Solicitors, Parliament House, Parliament Street, Kilkenny; DX 27004; tel: 056 776 5056, email: efoley@reidyandfoley.com

McEvoy, Anthony (deceased) (otherwise Michael McEvoy, otherwise Antoine MacAodhabhuidhe), late of 125 Mount Merrion Avenue, Blackrock, Co Dublin, who died on 13 December 2013. Would any person having knowledge of any will made by the above-named deceased please contact Peter Nugent, Peter Nugent & Company, Solicitors, 28 Fitzwilliam Street Upper, Dublin 2; tel: 01 662 2088, email: peter@nugentlaw.ie

Nivelles-Posschier, Stephen (otherwise Stefan) (deceased), late of 'The Stables', Rattin, Milltownpass, Co Westmeath, and formerly of Clonegal, Wexford, and Clonegal, Carlow, who died on 26 October 2022. Would any person having knowledge of the whereabouts of any will executed by the above-named deceased please contact Hamilton Sheahan and Company, Solicitors, Main Street, Kinnegad, Co Westmeath; DX 235001 Kinnegad; tel: 044 937 5040, email: roisin@hamiltonsheahan.ie

Nolan, Rose (deceased), late of 14 St Aongus Green, St Aongus Estate, Tallaght, Dublin 24, who died on 4 August 2022. Would any person having knowledge of the whereabouts of any will executed by the above-named deceased please contact Michelle Collins, O'Brien Redmond Solicitors, 129 Capel Building, Mary's Abbey, Dublin 7; tel: 01 878 8649, email: info@obrlaw.ie

O'Donoghue, Nora (deceased), late of Polleeney, Furbo, Spiddal, Co Galway, who died on 16 December 2022. Would any person having any knowledge or whereabouts of any will made by the above-named deceased please contact Marie Tuffy, Bambury & Company, Solicitors, New Antrim Street, Castlebar, Co Mayo; tel: 094 904 1020, email: marie@bamburysolicitors.com

O'Sullivan, Timothy (deceased), late of 14 Crestfield Mews, Hazelwood, Glanmire, Co Cork, who died on 19 November 2022. Would any person having knowledge of any will executed by the above-named deceased please contact Finian Dullea, TJ Hegarty LLP Solicitors, 58 South Mall, Cork; DX 2021 Cork; tel 021 427 0351, email: fdullea@tjhegarty.ie

Power, Declan (deceased), late of 3 Clonmel Road, Mitchelstown, Co Cork, and formerly of Ballincolly, Charleville, Co Cork. Would any person having knowledge of a will executed by the above-named deceased, who died on 30 January 2023, please contact Colbert Solicitors, Old Limerick Road, Charleville, Co Cork; tel: 063 30759, email: reception@colbertsolicitors.com

Ryall, Joseph (deceased), late of 31 De Lacy Crescent, Trim, Co Meath. Would any person having knowledge of a will made by the above-named deceased, who died on 13 December 2021, please contact Bannon Solicitors, 3 The Paddocks, Main Street, Dunshaughlin, Co Meath; tel: 01 801 7871, email: info@bannon-solicitors.ie

Shanahan, Eileen (deceased), late of Killough, Moycarkey, Thurles, Co Tipperary. Would any person having knowledge of the whereabouts of any will made by the above-named deceased, who died on 20 February 2023, please contact Butler Cunningham & Molony Solicitors, Slievenamon Road, Thurles, Co Tipperary; DX 40006 Thurles; tel: 0504 21857, 22315, email: info@bcmthurles.ie

BAILEY, MICHAEL (DECEASED), late of 4 Old Road, Kilcarn Bridge, Navan, Co Meath, who died on 5 February 2023. Would any person having knowledge of any will made by the deceased please contact Newman Doyle Solicitors, email: smithell@newmandoyle.ie

Wiseman, Anna (otherwise Anne) (deceased), late of 94 The Cloisters, Terenure, Dublin 6W, who died on 28 January 2023. Would any solicitor holding a will or title deeds for the above-named deceased please contact O'Mahony Farrelly O'Callaghan, Solicitors, 12 Barrack Street, Bantry, Co Cork; tel: 027 50132, email: dleahy@omahonyfarrelly.com

MISCELLANEOUS

Long-established legal practice in South Midlands seeks expression of interest from persons interested in joining the firm with a view to partnership or purchase. Replies to David Walsh, O'Neill Foley, Accountants; email: dwalsh@onf.ie

TITLE DEEDS

Kyne, Garvan (deceased), who died on 13 February 2022. Would anyone having information with respect to missing title deeds of 4 Park Terrace, Dungarvan, Co Waterford, X35 TF62, please contact McCullagh Higgins & Co LLP, Solicitors, 1/2 Cois Mara, Dungarvan, Co Waterford; tel: 058 44166, email: info@mc-cullagh-higgins.com

In the matter of the Landlord and Tenant (Ground Rents) Acts 1967-2019 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978 and in the matter of an application by the Commissioner of Public Works in Ireland and in the matter of the heredita-

ments and premises situate at and known as Moneygall Garda Station, Co Offaly

Take notice any persons having an interest in the freehold or intermediate estates in the above property that the Commissioners of Public Works in Ireland intend to submit an application to the county registrar of the county of Offaly for the acquisition of the freehold interest and all intermediate interests in the aforesaid property, and any person asserting that they hold any superior interest in the property are called upon to furnish evidence of title to the premises to the below-named solicitors within 21 days from the date of this notice.

In particular, any persons having an interest in a lease dated 17 November 1926 and made between Alice Maud Josephine Holmes (lessor) of the one part and the Commissioners of Public Works in Ireland (lessee) of the other part, wherein the premises therein described, and the subject of this application, and in consideration of the rents, the premises was demised unto the lessee for a term of 99 years from 1 October 1926 ('the term'), subject to the yearly rent of £3 sterling to be paid by two half-yearly payments thereby reserved and the covenants and conditions on the part of the lessee therein contained ('the 1926 lease'), should provide evidence of their title to the below-named solicitors. Furthermore, any persons having any estate or interest in any interest superior to that of the grantor of the above-mentioned lease and/or in the fee simple interest in the above property should provide evidence of their title to the below named solicitors within 21 days from the date of this notice.

In default of any such information being received, the applicant intends to proceed after the expiry of 21 days from the date of this notice with the application before the county registrar for the county of Offaly to purchase the fee simple and any intermediate interests in the said property and such directions as may be appropriate on the basis that the person or persons entitled to

the superior interests, including the freehold interest, in the said property are unknown and unascertained.

Date: 7 April 2023

Signed: Chief State Solicitors Office (solicitors for the applicant), Osmond House, Little Ship Street, Dublin 8, D08 V8C5

In the matter of the Landlord and Tenant Acts 1967-2019 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978 (as amended) and in the matter of the hereditaments and premises comprising a plot of ground upon which three small houses stood, situate in the lane off Catherine Street and now forming part of the Glentworth Hotel, Glentworth Street, Limerick: an application by Highgrove Property Limited (company no 628761)

Take notice any person having any interest in the freehold estate or intermediate interest(s) of the hereditaments and premises comprising a plot of ground upon which three small houses stood, situate in the lane off Catherine Street and now forming part of the Glentworth Hotel, Glentworth Street, Limerick, being all of the property demised by an indenture of lease dated 3 July 1905 and made between Mary Anne McCarthy and John Joseph Kenna, Patrick Joseph Kenna, and Thomas George Kenna for a term of 99 years from 25 March 1905, reserving a yearly rent of £11 sterling and subject to the covenants and agreements therein contained, and take notice that the applicant, Highgrove Property Limited (company no 628761), being the person entitled to the lessee's interest under the said lease, intends to apply to the county registrar for the county of Limerick for the acquisition of the freehold and any intermediate interest(s) in the said premises, and any party or parties asserting that they hold a superior interest in the premises are called upon to furnish evidence of title to the premises to the below named within 21 days from the date of this notice.

In default of any such notice being received, Highgrove Property Limited (company no 628761) 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 such orders or directions as may be appropriate on the basis that persons entitled to superior interest(s) in the premises are unknown or unascertained.

Date: 7 April 2023

Signed: McMahon O'Brien Tynan (solicitors for the applicant), Mill House, Henry Street, Limerick (ref: POB/NPR/H11856/1)

In the matter of an application by Black Earth Limited to acquire the fee simple interest in a property situate at Strand Road, Portmarnock, in the county of Dublin

Take notice any person having any interest in the freehold estate (or any intermediate interest) in the property all that and those the piece or plot of ground known as Portmarnock Service Station, Strand Road, Portmarnock, in the county of Dublin, and formerly known as St Helen's and as The Pavilion, and forming part of the lands of the borough of Portmarnock, in the barony of Coolock and county of Dublin, held under an indenture of lease dated 27 November 2009 and made between Chevron (Ireland) Limited as lessor and Black Earth Limited as lessee, for a term of 200 years from 29 September 1852, subject to a yearly rent of €1 and the covenants and conditions contained therein.

Take notice that Black Earth Limited intends to submit an application to the county registrar for the county of Dublin for the acquisition of the fee simple and any intermediate interest in the said property, and any party asserting that he or she or they hold a superior interest in the said premises is called upon to furnish evidence of title to the said premises to the below-named solicitors within 21 days from the date of this notice, and take notice that James Howard, Reverend Michael Doyle, and Catherine

Elizabeth Daniel demised the said premises to Patrick Neill by indenture dated 20 September 1853, and the freehold interest in the premises may now vest in their heirs and assigns, and that Laurence O'Neill, deceased, died possessed of an interest in the premises on or about 28 July 1943, which said interest was subsequently demised by his personal representative Helena M Earley by three separate indentures of sublease dated 11 October 1945, one of which was in favour of Charles Dillon, one in favour of Noel Fogarty, and the third in favour of Brendan Fogarty, and take notice that Black Earth Limited has been unable to identify any person or persons entitled to the ultimate freehold interest in the premises, or to any intermediate interests in the premises, save for one such interest.

In default of any such notice being received, Black Earth Limited intends to proceed with this application at the end of 21 days from the date of this notice and will apply to the county registrar for the county of Dublin for such directions as may be appropriate, on the basis that the persons beneficially entitled to the superior interest including the freehold reversion (and any intermediate interest) in the premises are unknown, dissolved, or unascertainable.

Date: 7 April 2023

Signed: Vincent & Beatty LLP (solicitors for the applicant), 67/68 Fitzwilliam Square, Dublin 2

In the matter of the Landlord and Tenant Acts 1967-2019 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978 and in the matter of an application by Durkan (Mountjoy Street) Limited

Any person having a freehold estate or any intermediate interest in "all that and those that plot of ground on the east side of Mountjoy Street, lying between the houses and premises in possession of Fetherston H Briscoe Esquire and St Mary's Place, bounded on the north by the said Fetherston H Briscoe's holding, on the south by St Mary's Place, on the west by

Mountjoy Street, and on the east by Paradise Place, containing in front to the west 69 feet, on the north 195 feet, on the east 116 feet, and on the south 166 feet, be the said several admeasurements or any of them more or less, as particularly described in the map or terchart thereof hereunto annexed”, being the entirety of the premises the subject of an indenture of lease dated 24 October 1870 between William Cowper Temple and Alexander Buchanan of the first part and John Arnott, James Fitzgerald Lombard, and Edward McMahon of the other part for a term of 500 years from 28 October 1870 at a rent of £15 or €19.05 per annum and which is currently held by Durkan (Mountjoy Street) Limited as lessee under the said lease.

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

In default of any such notice being received, Durkan (Mountjoy Street) Limited intends to proceed with the application before the Dublin county registrar at the end of 21 days from the date of this notice and will apply to the Dublin county registrar for such directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interests including the freehold reversion in the

aforesaid property are unknown or unascertained.

Date: 7 April 2023

Signed: *Ogier Leman LLP (solicitors for the applicant), 8 Percy Exchange, Percy Place, Ballsbridge, Dublin 4*

RECRUITMENT

Conveyancing/probate solicitor required for busy general practice in Carrick-on-Shannon, Co Leitrim. Ideal candidate to have experience in relation to all aspects of sale/purchase/mortgage of residential/commercial/development property and also in relation to sale/purchase of farmland and forestry. To have good knowledge of all related taxation issues. The applicant should have good experience in relation to drafting of wills, advising on CAT implications, and tax planning in the context of succession, extracting grants of probate/administration, and the winding-up of estates. The applicant should have excellent computer skills and have good communication skills and be able to deal with clients in a professional and caring manner. The applicant should have the ability to handle a varied caseload and be comfortable with all aspects of general practice, to include civil litigation. Early opportunity of advancement/partnership for the successful applicant. Please email your CV and covering letter to info@georgelynch.ie

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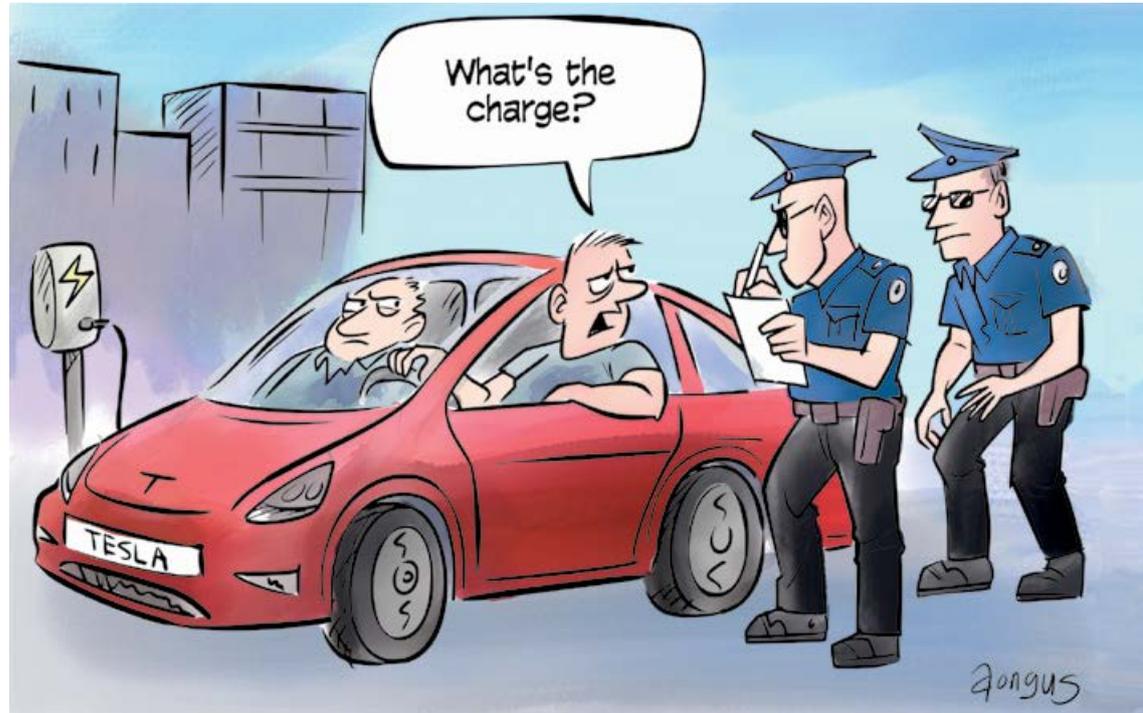


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Together in electric dreams

● Two masterminds who stole gaming systems and electric toothbrushes worth \$8,000 from a store in Georgia, USA, fled the scene in a Tesla – and were found ten miles down the road after stopping to charge the electric car, *Fox5 Atlanta* reports. Police recovered the gaming systems, toothbrushes, and several guns.

This isn't the first time that criminals have been thwarted by a Tesla battery. In 2019, a woman in Arizona tried to steal a Model S, but it ran out of charge as she drove away. In 2020, a 21-year-old attempted to carjack a Model 3 in California but, when the driver got out, he remotely locked the would-be thief inside the vehicle, using his iPhone.



Japanese invader suffers lethal legal blow

● A Welsh householder affected by Japanese knotweed that invaded his garden from adjoining council land has won a significant legal victory in a case that could lead to a surge in claims from people affected by the invasive plant.

The Court of Appeal ruled that engineer Marc Davies could recover £4,900 in damages from Bridgend



Council in south Wales for a loss of value of his property due to an invasion of Japanese knotweed – regardless of whether it had been treated.

The *Mail Online* reports that the case will cost the council around £300,000 in legal bills and could affect thousands of other homeowners who have been invaded by the knotweed.

Now you see it, now you don't

● Ford Motors is seeking a patent for tech that would allow 'self-driving' vehicles to lock out owners if they fall behind on repayments, *The Drive* reports.

The vehicle would be able to drive itself to another location to make repossession easier and less confrontational. Or, if the finance providers reckoned that it would be cheaper to scrap the car, the vehicle could drive itself to a breaker's yard.

A Ford spokesperson confirmed the concept to NPR, but added that the company had no plans to implement the idea.

Open and clothes case

● Harbans Kaur (83), a widow whose husband of 66 years excluded her and their four daughters from his will, has won a High Court case in London for a share of an estate worth more than £1 million, *The Irish News* reports. Karnail Singh, who died

in 2021, had left everything to their two sons, wishing to "leave his estate solely down the male line" after writing his will in 2005.

Mr Justice Peel said evidence showed that Kaur had played a "full role" in the marriage and

worked in the family clothing business. He ruled that she should get 50% of the net value of the estate, saying it was clear that "reasonable provision" had not been made for Kaur, whose income consisted of state benefits of around £12,000.



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