



Tour de force

New legislation on the sale of alcohol at manufacturers' premises coming soon



The sound of music

IMRO and the Society team up to entice a new generation of lawyers into the music industry



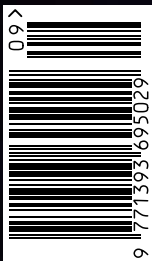
Data protection

Is the GDPR likely to lead to a deluge of complaints and litigation by claimants?

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LAW SOCIETY

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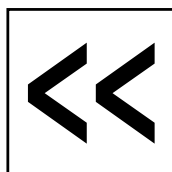
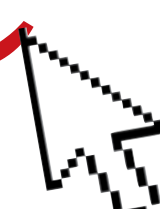
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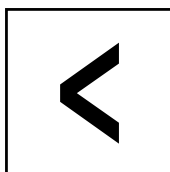
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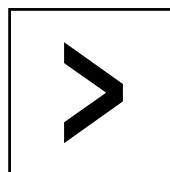
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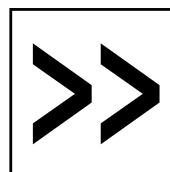
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Does your client have a claim eligible for ASR Hip ADR?

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

How it works

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

- Claimants in the ADR Process do not have to prove liability; only causation and quantum are relevant
- There is no fee to submit a claim to the ADR Process
- If necessary, McCann FitzGerald will collect the claimant's medical records where written authorisation has been provided
- Evaluators are senior counsel or retired Superior Court judges
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Claimants may avail of the ADR Process if:

- Proceedings have issued
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- The claim is not statute barred
- Revision surgery was not exclusively due to dislocation; trauma; infection; fracture of the femoral head; or any issue related to the femoral stem

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



BRINGING IT ALL BACK HOME

I attended the American Bar Association annual meeting in Chicago with director general Ken Murphy recently. The meeting covered many topics, including artificial intelligence, women in the law, and wellness. Part of this meeting discussed firms providing wellness programmes, including fitness programmes for staff.

In light of a recent decision of the Labour Court here, as employers and employees we all have a duty to ensure that we are not in breach of working-time regulations. As lawyers, we are too quick to read emails at all times – not only in the office, but at dinner with the family, or at sporting events. Instead, we need to be aware of the benefit of switching off from working.

At the Society's last parchment ceremony at the end of July, our guest speaker, former tánaiste Mary Harney, recommended that the latest batch of qualified solicitors should not settle for anything less than work that is both enjoyable and rewarding.

She also expressed the hope that some of them might consider politics, which – although difficult – was a great career in terms of giving back to society and fighting injustice.

Challenging the status quo

She advised the newly minted solicitors not to be lazy, but to challenge the status quo. Stressing the importance of working with positive people who give back to society, she advised: "Don't think your voice isn't powerful – replace mediocrity with excellence, apathy with enthusiasm, and despair with hope."

Those who had done well owed it to society to help fight injustice, she said, not just in their professional lives but also in their private lives. One of the great hallmarks of Ireland was that many people were prepared to 'give back', rather than solely taking from society. We should never betray or become complacent about the trust given to us, she warned, which was both a privilege

and an onerous responsibility.

She pointed to the fact that, in the 176 years of the Law Society's history, only three women had become president. Addressing the new female practitioners, she hoped it wouldn't be long before another woman wore the chain of office.

Well-being agenda


One of the ambitions of my presidency has been to focus on the well-being of the profession, and to seek to introduce significant improvements where required. To this end, we have engaged Eoin Galavan and Thomas Millane from Psychology at Work as consultants to the Law Society. They will conduct a full objective review of existing mental-health and well-being supports offered by the Society to its members. We await their independent, comprehensive report. Eoin and



“ONE OF THE AMBITIONS OF MY PRESIDENCY HAS BEEN TO FOCUS ON THE WELL-BEING OF THE PROFESSION”

Thomas will advise us where we're doing well, but, more importantly, will outline the best options for strengthening our support systems.

As part of their methodology, Psychology at Work will conduct focus groups, a survey, and telephone interviews with members. I encourage all members to engage with this extremely positive and important project for the benefit of the profession.

It goes back to what I said at the beginning of this message – as employers and employees, we all owe ourselves a duty of care to mind ourselves. 

MICHAEL QUINLAN,
PRESIDENT



gazette

LAW SOCIETY

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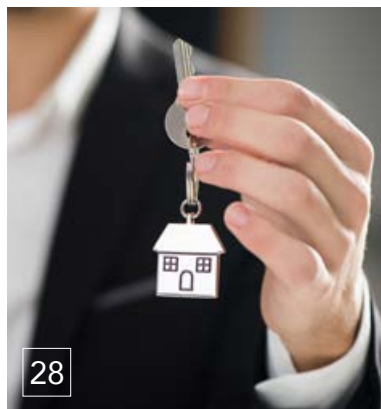
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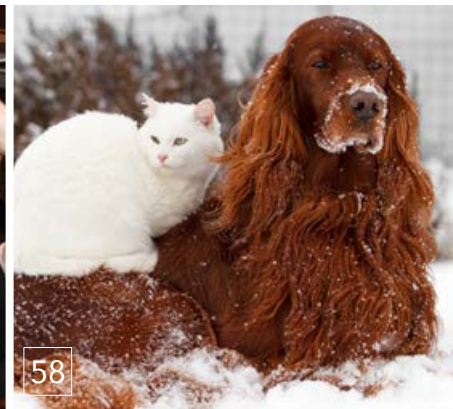
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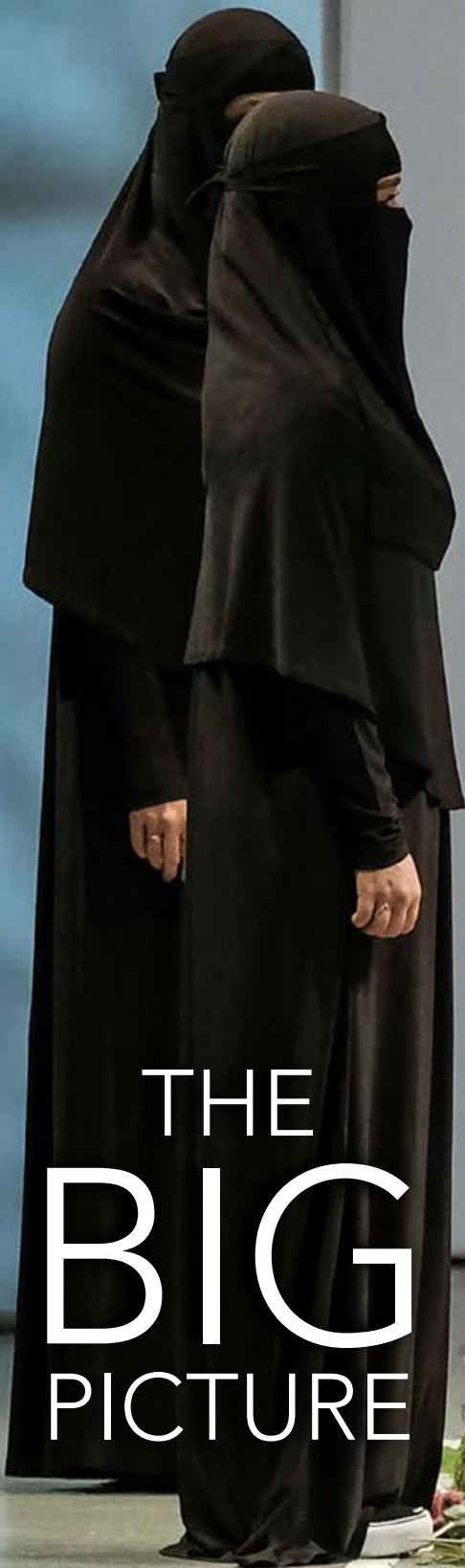
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THE BIG PICTURE



BURQA BOILER

Iranian-born Danish designer Reza Etamadi of label MUF10 staged a protest against the Danish burqa ban during the showing of his spring/summer 2019 collection at Copenhagen Fashion Week on 8 August 2018. "No man should be the judge of what a woman chooses to wear," he said. "We should not sanction a woman who neither threatens nor inflicts damage on others, simply because of her garments." At the end of the show, niqab-wearing women presented bunches of flowers to models wearing police uniforms. Within a short time of the ban, Denmark had fined a 28-year-old woman 1,000 kroner (€134) for "wearing a garment that hides the face in public". This led to public protests



SOUTHERN DELIGHT



PIC: GEORGE MAGUIRE PHOTOGRAPHY

At the meeting of the West Cork Bar Association (WCBA) at Dunmore House Hotel, Clonakilty, on 26 June 2018, were: Conrad Murphy, Florence Murphy, Frank Purcell (PRO, WCBA), John Collins, Tony Greenway, Florence McCarthy, Lorna Brooks, Kate Hallissey, Catherine O'Brien, Diarmuid O'Shea, Jim Brooks, Maeve O'Driscoll, Elizabeth Murphy, Mary Jo Crowley, Paul O'Sullivan (CPD officer, WCBA), Karen Crowley, Rhoda Hendy, Eileen Hayes, Roisin Cahill, Jim Long, Laetitia Baker, Denis O'Sullivan, Michelle Corcoran, Malachy Boohig, Phil O'Regan, Kevin O'Donovan (president, WCBA), Michael Quinlan (president, Law Society of Ireland), Donna Wilson, Siun Hurley (honorary secretary, WCBA), Roni Collins, Ken Murphy (director general), Vivienne Ring, Veronica Neville and Helen Collins

GRADUATES OF THE DIPLOMA IN NOTARIAL LAW AND PRACTICE



PIC: TUTOR PRINT

At the recent graduation ceremony for candidate notaries of the Diploma in Notarial Law and Practice at Blackhall Place were Chief Justice Frank Clarke, Michael V O'Mahony (dean of the Faculty of Notaries Public in Ireland), Mary Casey (deputy dean), E Rory O'Connor (dean emeritus), Dr Eamonn G Hall (director of education of the faculty and director of the Institute of Notarial Studies), Michael Moran (secretary), members of the governing council of the faculty, and graduates



LIMERICK LEADERS

PICS: BRIAN ARTHUR



Members of the Limerick Solicitors' Bar Association (LSBA) at their 25 June 2018 meeting with Michael Quinlan (president, Law Society) and Ken Murphy (director general) at the Savoy Hotel, Limerick



Ken Murphy (director general), Stephanie Power (president, LSBA), Michael Quinlan (president, Law Society) and Derek Walsh (secretary, LSBA)



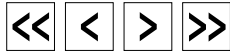
Ellen Twomey, Sonya Morrissy Murphy, Jerry Twomey, Catherine Dundon Callanan and Frances Twomey



Andrew Darcy, Paddy Dalton, Mairead Doyle, Catherine and St John Dundon



Tommy Dalton, Michael Quinlan, Donal Creaton and Rob Laffan



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DUBS GET A KERRY WELCOME



Attending the Kerry Law Society seminar on 25 June 2018 were Brian O'Connor, Miriam McGillycuddy, Michael Quinlan (president, Law Society), Angela O'Connor and Michael Lane



Eoin Brosnan (Killarney), Gearóid Ryall (Tralee) and Liam Ryan (Killarney)

ALL PICS: JOE HANLEY



Carmel Greenan (Kenmare), Mary Twomey (Castleisland) and Deirdre Quinn



Donal Browne, Barbara Liston, Ken Murphy (director general) and Nuala Liston



Rory O'Halloran and Helen Fitzgerald (Tom O'Halloran Solicitors, Tralee), Deirdre Flynn (Deirdre Flynn, Tralee) and Pat Diggin (Dingle)



Risteard Píerse (Tralee), Orla Deegan (Lees, Listowel) and Michael O'Donnell (Baily Solicitors Tralee)



ANNUAL DINNER FOSTERS SENSE OF WELL-BEING



Michelle Ní Longáin (junior vice-president), Patrick Dorgan (senior vice-president), Chief Justice Frank Clarke and Michael Quinlan (president)



Mary Keane (deputy director general), Minister Josepha Madigan, Frances Fitzgerald TD and Patricia Golden (director of corporate services, National Gallery of Ireland)



Sara Moorehead and Ciara Murphy



Michele O'Boyle and Rosemarie Loftus

ALL PICS: LENS MEN



Minister for Justice Charlie Flanagan, Michael Quinlan and Senator Catherine Noone



Catherine Tarrant, Michael Quinlan, Michelle Ní Longáin and Sonia McEntee



Frances Fitzgerald TD and Ken Murphy (director general)



Mary Keane and Judge Martin Nolan





HOW MUCH CAN YOU BENCH?

There were five nominations for judicial appointments over the summer, including three solicitors. Michael Quinn (former partner in the litigation department of William Fry) has been nominated to the High Court, past-president of the Law Society James McCourt will join the Circuit Court, while Eirinn McKiernan heads to the District Court.

Teresa Pilkington SC has been appointed to the High Court, while Senan Allen SC has been nominated to the High Court. The High Court vacancies follow the exits of Justice Marie Baker, Justice Brian McGovern and Justice Patrick McCarthy, who are all moving to the Court of Appeal.

James McCourt has been appointed to the Circuit Court on the retirement of Judge Michael O'Shea at the end of July. Cavan solicitor Eirinn McKiernan has been appointed



Past-president James McCourt

to the District Court, filling the vacancy created by the untimely death of the late Judge Gráinne O'Neill.

Justice Minister Charlie Flanagan said the nominations underlined the Government's determination to fill judicial vacancies in a timely manner and ensure access to justice. In the last two years, there have been 39 judicial appointments, with 14 in 2016, 16 in 2017, and 15 to date in 2018.

SOLICITOR TO HEAD UP AAJ

Kildare solicitor Liam Moloney has been elected as chairman of the International Practice Section of the American Association for Justice (AAJ). His election took place at the organisation's recent annual convention in Denver, which was attended by over 3,000 delegates.

The AAJ is the world's largest trial bar, with over 23,000 members worldwide. It works internationally to improve and develop individual countries' legal procedures and systems to ensure proper compensation for victims of accidents caused by the negligence of others.

Moloney was elected to the board of governors of the AAJ in 2017. He is one of only two



Liam Moloney

board members representing Ireland and Britain. The AAJ held a week-long conference in Powerscourt, Co Wicklow, during the summer – the first time the organisation has held a seminar in this country.

JUSTICE DEPARTMENT TO SPLIT IN TWO



The Department of Justice will undergo radical reform, with the move from a 'traditional' to a 'functional' model of governance and with a new secretary general (Aidan O'Driscoll) to oversee the change.

The shake-up is the result of recommendations by a review group that conducted a forensic review of the department (see the *March Gazette*, p18).

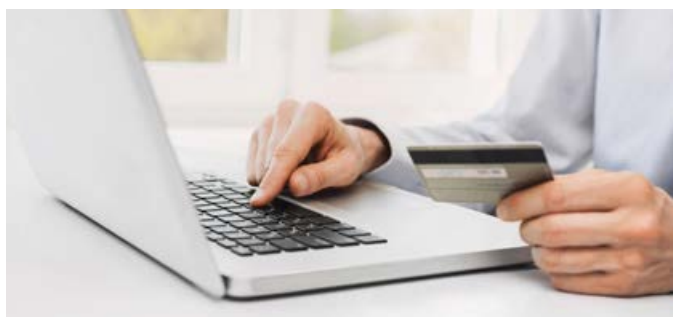
Two new divisions will form: Justice and Equality, and Home

Affairs. A second deputy secretary general will be appointed to join deputy secretary general Oonagh McPhillips.

Home Affairs will be responsible for crime, policing and immigration, with Justice and Equality responsible for civil law reform, courts, equality and integration.

Under the functional model, the work of each division will be split across five units: policy, governance, legislation, transparency and operations.

GOODBYE TO THE CHEQUE, MATE



The Property Registration Authority is moving all of its payments online from 1 October 2018. The body says the move is driven by the benefits of enhanced security, reduced transaction fees, and a strength-

ened audit trail. Land registry payments offer three options – card payment, direct debit or deduction from existing account balances.

No more cheques will be accepted after October.



'YOU CAN'T AMEND IF YOU DON'T ATTEND'

"The legal practitioner who thinks that they can avoid EU law is self-delusional," Chief Justice Frank Clarke told an audience at the Law Society's annual dinner on 13 July.

The truth is that the reach of EU law is now wider than it ever was, and is now a matter for every lawyer, rather than just specialists, the Chief Justice said. "The *Victims Directive* is going to come to a summary trial in the District Court near you any day soon."

Expanding on the theme of the growing scope of EU law, he said: "You can't amend if you don't attend."

Common law voice

If the common law voice was not represented at negotiations, Justice Clarke continued, then we could not complain when decisions were made – and three years later they turned out not to be particularly attractive from a common law point of view.

Irish judges were now frequently replacing British ones on European judicial bodies, and that this was placing a burden on the relatively small Irish judiciary. While Ireland in the



Chief Justice Frank Clarke: 'Brexit will almost certainly be negative for Ireland'

past had depended on Britain to fight the common law corner, we would now have to intervene in cases before the European courts.

"Brexit will almost certainly be negative for Ireland," the Chief Justice said, but he believed that we could mitigate the areas that were going to be problematic, while exploiting the areas with potential for expansion, such as internationally traded legal services.

Centre of excellence

He welcomed the programme launched by the Law Society,



Michael Quinlan: 'The very things that attracted us to professional life could lead to our undoing'

the IDA, the Bar Council and the Department of Justice to promote Ireland as a centre of excellence, post-Brexit, for the conduct of international litigation. The collective will of the professions, the Government and the judiciary was necessary to show that Ireland was open for that kind of business, he said. "A relatively small slice of what London might lose could be very valuable from an Irish perspective," he pointed out.

He warned, however, that he had heard rumblings at international meetings that downplayed Ireland's chances of taking this work. The rumours suggested a lack of resources and scale, and of judges of sufficient quality and qualifications to be able to handle a great increase in this type of litigation.

This emphasised, more than ever, the importance of a high-quality judiciary that Ireland could 'sell' internationally as "every bit as good as those in London", Clarke said.

He remarked that Ireland was not the only country eyeing the loot of the London commercial litigation market. "Amazingly, the French have now set up a commercial court that is pre-

pared to have pleadings in English. The idea that the French are actually allowing people to plead a case in their courts, in English, shows how hungry mouths are out there, trying to bite."

"We start with an advantage because we naturally speak the language. But there are other contenders – the Dutch, the Germans – so we will have a fight on our hands."

Presidential priorities

Law Society President Michael Quinlan spoke about the high personal cost of striving for success in professional life and said he was encouraged by the new openness he had seen in lawyers who were willing to talk about life's pressures and stresses.

"We are all professionals, but more importantly and more fundamentally, we are all people. Our training means we are comfortable taking charge, reliable in a crisis, always the rescuer – never the rescued.

"Our professional persona requires us to be learned, competent, in control and unflappable," he said, pointing out that, without the appropriate scaffolding of psychological and emotional support, the very things that attracted us to professional life could lead to our undoing.

"Our culture traditionally lent itself to self-medication, or perhaps most commonly of all, to over-working," he warned.

He urged solicitors not to forget the things that make life better, such as friendships, passions, family time, regular working hours and weekends – and especially, picking up the phone to each other.

"I hope this is the beginning of an additional way that the Law Society can engage supportively with its members," he concluded.

DIPLOMA CENTRE'S AUTUMN SCHEDULE

Five new programmes have been added to the Law Society's new autumn Diploma Centre schedule:

- Diploma in Advocacy Skills,
- Certificate in Writing and Drafting Skills,
- Certificate in Agribusiness and Food Law,
- Certificate in Construction Dispute Mediation,
- Certificate in Immigration Law and Practice.

A complimentary copy of this academic year's prospectus is included with this issue of the *Gazette*. If you would like another copy, please contact diplomateam@lawsociety.ie.

The full autumn programme is now available to view and book online at: www.lawsociety.ie/diplomacentre.

Early bookings are encouraged, as many courses are in high demand.



FOUR COURTS RESTAURANT CLOSED

The public restaurant in the Four Courts has been permanently closed, with effect from 31 July. Practitioners and members of the public reacted with shock when they were given just one week's notice of the closure.

On 25 July, the Law Society wrote to the Minister for Justice, requesting him to intervene to prevent the closure.

In the letter, director general Ken Murphy said: "This is an invaluable facility for the members of the public, many hundreds of whom have business in the Four Courts on every working day on which the courts are sitting.

"It is, unfortunately, in the nature of the operation of court lists that a great deal of time is spent by individuals with business before the courts – parties, witnesses of fact, expert witnesses, friends and supporters of litigants – waiting for cases to commence hearing in front of the courts. The waiting and delays in this regard can last hours, days or, in some instances, weeks.

"Great progress has been made, in the public interest, in improv-



Ken Murphy: 'This act of indifference to the public should not be allowed to proceed'

ing facilities in the courts across the country in recent years," he added. "This act of indifference to the public should not be allowed to proceed."

As well as writing to Minister Flanagan, the Society wrote to Minister of State Kevin 'Boxer' Moran, and to Chief Justice Frank Clarke in his capacity as chair of the Courts Service Board, strongly opposing the closure.

An *Irish Times* article on 30 July reported that Minister Flanagan planned to raise the matter with the chief executive of the Courts



Brendan Ryan: 'The Courts Service was not in any way involved in the decision'

Service, Brendan Ryan.

In a response to the Law Society's correspondence, Ryan said that "the Courts Service was not in any way involved in the decision to close the restaurant, as the contract was a matter between the Office of Public Works and the operator of the restaurant. Indeed, I understand that it was a decision of the operator to cease trading and was made purely for commercial reasons and not for any other reason."

The chief executive added that the space had then been offered

to the Courts Service, which intended to use it "to support the administration of justice by accommodating those staff who provide essential support and research for the judiciary".

The Four Courts campus was operating at capacity level, he continued. The relatively recent establishment of the Court of Appeal had required a major reorganisation of space in the Public Records Building and in Aras Úí Dhálaigh to create facilities for the Court of Appeal and the other courts displaced in the process.

In addition, the closure of outlying courts during the recession had "complicated matters" and had brought more business into the Four Courts. The appointment of additional judges – including four new judges for the Court of Appeal – had also put a strain on all the buildings in the Four Courts campus.

He concluded: "The additional accommodation offered to us by the Office of Public Works will be fully utilised to support the courts and the judiciary and greatly assist in ensuring that cases can be dealt with as expeditiously as possible."

CLRG RINGS IN THE CHANGES

A list of new members, including a new chair, has been announced for the [Company Law Review Group \(CLRG\)](#), by the Minister for Business, Enterprise and Innovation.

The CLRG was established in 2000 and put on a statutory footing in 2001. It was largely responsible for the design and drafting of what is now the [Companies Act 2014](#). Since its establishment, it has been chaired by [Dr Tom Courtney](#) of Arthur Cox, who stepped down as chair earlier this year. As well as being head of the

firm's company compliance and governance practice, Courtney is the author of several textbooks, including the leading work [The Law of Companies](#), most recently published in its fourth edition.

The CLRG comprises 30 members, 15 of whom are solicitors. Of these, five – including the new chair [Paul Egan](#) (Mason, Hayes & Curran) – have been nominated by the minister, another five by nominating bodies, four from the State or State agencies, and one from academia.

Egan is a member of the Law



New CLRG chair, Paul Egan

Society's Council. Responding to the news of his appointment, he said: "The CLRG is a hugely valuable body, gathering the practical experience of all who deal with company law most frequently. It is no accident that half of the members are solicitors, being those who navigate the law most often. The reforms brought about by the [Companies Act 2014](#) are a direct result of its work. Tom Courtney has been an outstanding founder and chair of the CLRG – I can't think of a tougher act to follow."



'SETANTA' SAGA – THE ACCOUNTANT OF THE COURTS OF JUSTICE RESPONDS

In the *Gazette* (June 2018 issue, p13), we published an article entitled 'Further twist in Setanta saga', written by Stuart Gilhooly. The article related to the latest application made on behalf of the Accountant of the Courts of Justice to the President of the High Court for payment to Setanta claimants from the Insurance Compensation Fund.

The *Gazette* has been contacted by the Office of the Accountant, requesting a right of reply to the contents of the article. In particular, the accountant is concerned that the article provides "a one-sided and misleading account of the events surrounding the application" and that it leaves readers with "an incorrect impression" of those events.

The accountant has rebutted some specific points, as follows: "Firstly, in relation to the accountant's proposed method of sending cheques directly to claimants, rather than to their solicitors, [the author] wrote: 'The Accountant's Office was unable to proffer any real reason for this new policy, other than that it had received legal advice to do so.' The accountant's position is that this statement is incorrect. Rather, his position is that his office 'did provide reasons for adopting this proposed method of payment, namely that an ordinary reading of the legislation governing such applications (namely the *Insurance Act 1964, as amended*), dictated that this is how payments should be made and, further, that adopting two different payment methods could potentially delay payments to claimants".

"Secondly, in support of the Law Society's preferred method of payment, namely sending cheques to solicitors for claimants, Mr

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NEWS

June 2018 13



FURTHER TWIST IN 'SETANTA' SAGA

The Setanta saga, which finally looked to have come to an end with the Government confirmation of full compensation for all victims, has taken a further twist, writes Stuart Gilhooly. Upon finalisation of the litigation last May in the Supreme Court, the liquidator set about applying for payment of all settled claims from the Insurance Compensation Fund. This process is handled by the Office of the Accountant of the Courts of Justice, which brings an application to the President of the High Court no more than twice a year.

The first such application was last July and, so far as we are aware, several hundred payments were authorised, many of which were compensation payments for personal injuries by claimants represented by solicitors. This application was made without any notice to those solicitors or to the Law Society.

The Accountant's Office then proceeded to send the cheques for compensation directly to claimants, bypassing the solicitors in the process. We are aware of at least one case where the claimant had moved address and the cheque had to be reissued.

The Law Society first became aware of this unprecedented policy of payment only when contacted by shocked colleagues who, in turn, had been informed by mystified clients. As president at the time, I was alarmed at this development, which would have repercussions for claimants and their solicitor.

Dangers
We sought a meeting with the Accountant's Office, which took place in September last year, and we made submissions on the dangers of this policy. We explained that, in every other case, including cases where lodgements are made to the same Accountant's Office, cheques are made payable to the claimants and sent to their solicitor's office. This is done for a number of reasons, among them:



The Society applied to the President of the High Court seeking to be heard on the issue of payment of settled claims from the ICF

- To ensure that the cheque arrives safely and securely to an address where it will be handled in a confidential manner.
- To safeguard undertakings given by the solicitor, and
- To arrange payment of outlays such as those due to hospitals, or already discharged by the solicitor.

The Accountant's Office was unable to proffer any real reason for this new policy, other than that it had received legal advice to do so. Protracted legal correspondence over the course of a number of months involving myself, current president

and he agreed to approve the payments, but delay the distribution of the cheques until he had heard both parties' submissions on 11 May.

In the interim, following negotiations between the Society's solicitors and the Accountant's Office solicitors, it was agreed that, where the claimant was represented by a solicitor, cheques would be made payable to the claimant, but sent to the solicitor's office. In other words, precisely what we had sought last September. It is disappointing that so much effort and time had to be expended on what should have been a simple matter.

In the meantime, the next tranche of payments are due to be approved in October.

The *Insurance Amendment Bill 2017*, which will allow for 100% compensation to be payable (and we believe will end the dispute as to whether 100% costs are payable under the current scheme), is due for publication very soon and, we hope, will commence the legislative process before the summer recess.

STRATEGIC REVIEW OF SOLE PRACTITIONERS

The challenges facing sole practitioners and smaller practices are to come under the spotlight in a review ordered by the Law Society.

Management consultancy Crowe Horwath has been commissioned to examine the operating environment for sole practitioners and smaller practices. The report will outline the steps necessary to plan for the future of this sector.

Law Society President Michael Quinlan said that this independent strategic assessment will enable small firms to better position themselves for the future. He urged all those invited to participate in a forthcoming survey to engage fully with the process in order to gather meaningful data for analysis.

Crowe Horwath will report with practical recommendations by the autumn.

Gilhooly referred to a concern over the potential for cheques to go missing due to inaccurate

postal addresses of claimants, stating that: 'We are aware of at least one case where the claimant had

moved address and the cheque had to be reissued'."

The accountant has informed the *Gazette* that he outlined to the Law Society that difficulties could similarly arise where cheques were issued to solicitors, including where a claimant had ceased instructing that solicitor or where the solicitor had ceased to practise. Further, he has pointed out that not all claimants have solicitors on record.

"Lastly, in relation to Mr Gilhooly's reference to 'shocked colleagues' and their 'mystified clients', the accountant wishes it be noted that, equally, his office has been contacted by claimants who were unhappy at the prospect of their cheques being sent to their solicitors, rather than directly to them."

The accountant wishes to make clear that his objective and the objective of his office "has always been to act within the legislation governing such applications and to ensure that Setanta claimants receive the payment due to them from the Insurance Compensation Fund as quickly as possible".

PIC REPORT WILL ADDRESS ISSUE OF DAMAGES AWARDS

The second report of the **Personal Injuries Commission (PIC)** is to be published on 18 September and is expected to ask the nascent **Judicial Council** to draw up indicative guidelines for judges on the issue of damages awards.

Chaired by Mr Justice Nicholas Kearns, the PIC was established to examine the rates of damages for **whiplash-type soft-tissue injuries**. The **Judicial Council Bill** is



Chair of the Personal Injuries Commission, Mr Justice Nicholas Kearns

expected to be enacted by year end. If the new **Judicial Council** accepts the task, it will draw up the non-binding guidelines for judges. It is believed that the new award levels will be benchmarked in line with international standards.

The PIC anticipates that the resources of the **Personal Injuries Assessment Board** will also be available to the judiciary in drawing up the guidelines.



ENDANGERED LAWYERS WALEED ABU AL-KHAIR, SAUDI ARABIA



PICTURE: LINDA DAVIDSON/GETTY IMAGES

Waleed Abu Al-Khair

The recent expulsion of the Canadian ambassador from Saudi Arabia has drawn attention again to the situation in the kingdom for human rights (HR) defenders, and the rights they seek to defend. Canada's diplomatic department tweeted about the detention of two more activists in early August, Waleed Abu Al-Khair and Samar Badani.

"Canada is gravely concerned about additional arrests of civil society and women's rights activists in Saudi Arabia, including Samar Badawi," it posted. "We urge the Saudi authorities to immediately release them and all other peaceful human rights activists."

A young lawyer, **Waleed Abu Al-Khair** (now 39) came to the attention of the Saudi authorities in 2007, when he represented the **Jeddah Reformers**. In 2008, he founded one of the few HR organisations operating in the country. He provided legal representation to many victims of HR abuses. In 2009, he was banned from representing specific defendants in court, but continued to be active.

He was the lawyer for his brother-in-law **Raif Badawi**,

who made international headlines when he was publicly flogged in 2015 for running a website promoting debate on social and political topics. Raif is the brother of **Samar Badawi**.

Waleed is serving a 15-year prison term imposed in 2014 for 'terrorism-related crimes', created by a new law made during his trial – making him the first person to be convicted and sentenced under it for:

- Disobeying the ruler and seeking to remove his legitimacy,
- Insulting the judiciary and questioning the integrity of judges,
- Setting up an unlicensed organisation,
- Harming the reputation of the state by communicating with international organisations, and
- Preparing, storing and sending information that harms public order.

He has another 11 years to go.

Alma Clissmann is a member of the Law Society's Human Rights Committee. This is the first in her new series on endangered lawyers around the world.

RULES OF PROCEDURE

The *Solicitors (Amendment) Act 1994* provides that the Law Society, with the concurrence of the President of the High Court, may make rules of procedure in relation to complaints received by the Society under sections 8 (complaints of inadequate services) and 9 (complaints of excessive fees) of the act.

The Complaints and Client Relations Committee has decided to formulate such rules of procedure and invites submissions

from interested members of the profession on the content of the proposed rules.

Submissions should be in writing and can be transmitted to the committee secretary by post or email to Linda Kirwan, secretary, Complaints and Client Relations Committee, Law Society of Ireland, George's Court, George's Lane, Dublin 7; email: l.kirwan@lawsociety.ie.

Closing date for submissions is 2 November 2018.

DAC BEACHCROFT'S NEW SIGNINGS



John Sheehy, Lisa Broderick, Aideen Ryan and Rowena McCormack

Lisa Broderick has been appointed managing partner of DAC Beachcroft Dublin, while Aideen Ryan has joined as a consultant (regulatory). Rowena McCormack (dispute resolution) and John Sheehy (injury risk) have been appointed partners.

Broderick said: "We continue to retain and attract talented and committed employees who work tirelessly to help our clients and colleagues continue to succeed.

I look forward to using these very strong foundations to continue our successful growth and reinforce our strong market position."

DAC Beachcroft Dublin is part of DAC Beachcroft LLP – an international law firm with more than 2,500 staff. With one of the highest staff retention rates in the industry, the firm has won the 'Gold Standard for Investors in People' award.



LET YOUR VOICE BE HEARD

The 2018 Communications Day is a CPD event open to all members and designed to empower practitioners to be advocates for the solicitors' profession. It will take place on Wednesday 26 September 2018 from 10.30am to 2pm at Blackhall Place, Dublin 7.

The event is free to members, though advance registration is required as places are limited.

This professional development and networking opportunity will teach you how to:

- Generate and pitch newsworthy ideas for local media outlets,
- Respond to interview requests on specific or complex topics,
- How the media operates and what journalists are looking for,
- How to become the 'go-to' person for relevant legal stories in local media,
- Prepare for media interviews (radio and print) and more.



Carr Communications, one of Ireland's longest-running communications companies, will provide a tailored seminar for solicitors. The day will include an engaging session with a distinguished journalist/radio producer to provide valuable and relevant insights.

Refreshments will be provided. CPD credits will be available – details to be confirmed. For more information or to register, email Kathy McKenna at k.mckenna@lawsociety.ie or visit www.lawsociety.ie/commsday.

HUMAN RIGHTS CONFERENCE TO ADDRESS CAPACITY

This year's annual Human Rights Conference will take place on 20 October 2018 at the Law Society from 10am until 2pm. The conference is presented by the Law Society Human Rights Committee in partnership with Law Society Professional Training and Family Carers Ireland.

It will offer a vital opportunity for legal practitioners, family carers, people with disabilities, policymakers and other interested stakeholders to come together to assess and discuss the various challenges involved in navigating the *Assisted Decision*

Making (Capacity) Act 2015.

Speakers will include Dr Éilíonoir Flynn (deputy director of the Centre for Disability Law and Policy, NUI Galway), Paul Alford (self-advocacy project worker, Inclusion Ireland), Moira Skelly (family carer) and Aine Flynn (director, Decision Support Service, Mental Health Commission).

The event is free of charge, and four CPD points (by group study) are available. Details and registration will be available shortly at www.lawsociety.ie/Courses--Events/cpd.

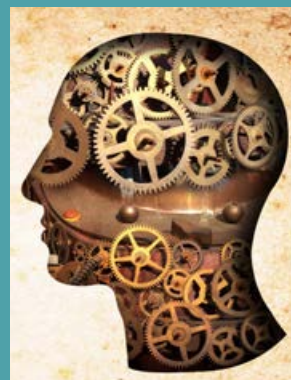
WORKPLACE WELL-BEING IT'S ALL IN YOUR HEAD – OR IS IT?

'It's all in your head' – a common catchphrase for anything we suspect arises from our imaginations and isn't easily proven. It's also the catchy title of a hard-hitting book by Irish consultant neurologist Dr Suzanne O'Sullivan, which is packed with stories from her 25-year career at the frontline of psychosomatic illness – from the blind woman with no medical basis for her lack of sight, to the young woman suffering repeated 'epileptic' seizures who, in fact, had no underlying brain disorder.

Dr O'Sullivan's work makes an important contribution to our understanding of illness with an emotional and psychological basis. The symptoms experienced by her patients are not 'less real' than those who have neurological conditions.

Of course, we all have simple everyday experiences of our bodies responding to our emotional states. Butterflies before an interview, palpitations on a date, brain fog during a presentation. These experiences can run to minor illness like developing a sore throat just as that court appearance is scheduled to run, 'flu on holidays when our body knows it's allowed to crash, or more persistent challenges like ulcers, raised blood pressure or chronic pain.

We are now, mostly, willing to accept that lifestyle, nutrition and stress impact on our general health and well-being. So, is it so hard for us to imagine that serious or unexplained illnesses might also be linked to our psychological and emo-



tional wellbeing? In one of his short stories (aptly called *A Painful Case*), Joyce wrote that the protagonist, Mr Duffy, "lived a short distance from his body". In professional life, we can all drift out of contact with our bodies, with our emotional and psychological health – and perhaps more treacherously, with the interrelatedness of the two.

As you prepare for the onslaught of autumn, your call to action is to pay attention to your internal experiences as much as to the pull of the external. We need to pay attention to all aspects of our selves – body, mind and feelings. Make room in your schedule for all three, and diary them as commitments. Not sure where to start? Talk therapy is the optimal place to integrate the less conscious aspects of the self. It offers a safe, professional space in which to unravel who you are in the world and explore how to be fully alive – and well – in every sense of the word.

Antoinette Moriarty is a psychotherapist and head of the Law School's counselling service.



FIRST WOMAN OF THE LAW SOCIETY

Readers of the *Gazette* will be aware that the Law Society is celebrating its 40th anniversary at Blackhall Place this year (see the July *Gazette*, p24). One of the chief drivers behind the development of the Law Society's headquarters was its first woman president, Moya Quinlan.

By the mid-1960s, the Solicitors' Buildings at the Four Courts were proving inadequate for the Society's expanding activities. According to *Law Society of Ireland 1852-2002: Portrait of a Profession*, a casual conversation over lunch between Dublin Corporation's assistant town planning officer Kevin I Nowlan and Law Society Council member Peter Prentice offered a solution. The King's Hospital School had been on the market for some time.

Peter Prentice brought the potential solution back to the Council, and a committee was appointed to investigate the



Deputy director general Mary Keane with Moya, who celebrated her 98th birthday on 27 June

proposal. It eventually recommended the purchase of the Blackhall Place premises.

At a special meeting of the Council on 3 July 1968, a motion proposed by Peter Prentice,

seconded by John Jermyn, was unanimously carried to purchase the King's Hospital for the sum of £105,000. Five years later, Peter Prentice was elected president of the Society, while in the

ALL PICS: LENS MEN

same year, Moya Quinlan was appointed chair of the Blackhall Place premises committee.

In their book, *New Lease of Life*, Sean O'Reilly and Nicholas K Robinson paid a remarkable tribute to Prentice and Quinlan for their achievements in securing Blackhall Place as the Society's headquarters: "It has not been easy; indeed the parallels with the 1770s are striking: it had been necessary for Peter Prentice, Moya Quinlan and their colleagues to demonstrate the same qualities of tenacity and fortitude that had carried the day for Sir Thomas Blackhall and the founding governors. Then, as now, not every compromise forced by financial considerations provided the best solution to aspects of the building; nevertheless, taken as a whole, they secured the future of Thomas Ivory's great building, and the old boys of the school, solicitors and Dubliners alike will be proud of it for generations to come."

Visiting Moya

It was fitting then that, during this year when Moya Quinlan's son Michael wears the chain of office as Law Society president, he and deputy director general Mary Keane should pay Moya a visit in Dún Laoghaire, Co Dublin.

On 13 August, Michael and the first woman president of the Law Society had some fun swapping the chain of office to celebrate Moya's remarkable achievements – not just in securing the future of the Blackhall Place premises, but for her selfless work on behalf of the legal profession and as a long-serving member of the Council, and on so many of its committees.



Michael Quinlan (President), Moya and Mary Keane

NEWS

LEARNING THE LINGO

A total of 36 lawyers from 11 European countries successfully completed the Law Society's Legal English and Legal Skills course at Blackhall Place on 20 July 2018.

All are practising lawyers in their native countries. The largest number of students came from Italy, followed by Spain, the Czech Republic, Slovakia, Hungary, Austria, Switzerland, Germany, Poland and France. One lawyer from Iraq practises in Spain.

The week-long course covered topics such as professional presentation, interviewing skills, client interviewing, civil law versus common law, negotiation skills, and legal ethics.

This course had its first outing in Sardinia in 2012, but has been taking place in Dublin for the past six years. It is administered by Katherine Kane (Law Society's education executive), Eva Massa and Colette Reid (course managers).

The participants were presented with their certificates by Law Society President Michael



Quinlan. He remarked that the Paris judiciary had already agreed to hold some courts through the English language, and he emphasised the importance of 'plain English' when dealing with clients. "In the context of Brexit, this course is important," he concluded.

Course participant Lucia Fabbri (from Siena, Italy) told the *Gazette* that she first took the Law Society's annual course four years ago. She has been coming back each year, describing the course as "fantastic" and "unique".

ENNIS WELCOMES HUGE TURNOUT FOR CLUSTER EVENT



Speakers and organisers of the Essential Practice Update 2018 in Ennis

Over 170 solicitors attended the Essential Practice Update 2018 in Ennis on 22 June, organised by Law Society Finuas Skillnet, in partnership with the Clare and Limerick bar associations. Experts covered civil litigation, conveyancing, data protection, family law and criminal law. Marina Keane (president,

Clare Law Association) said: "Clare and Limerick solicitors have been to the forefront in advising businesses and organisations about the impact of the recently introduced GDPR.

"Solicitors are key advisors in this area, and your local solicitor can help with GDPR advice."

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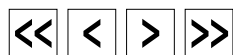
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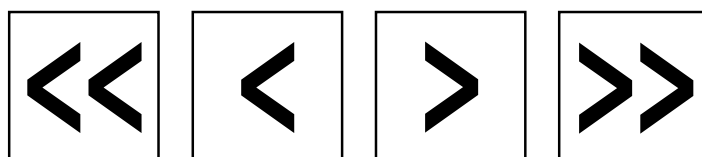
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CLARE

ON A CLARE DAY...



PIC: JOHN KELLY PHOTOGRAPHY

The Clare Law Association (CLA) recently hosted a summer drinks reception in Ennis to mark the sitting of the Limerick High Court personal injury list in Ennis. Ms Justice Mary Faherty and Mr Justice Michael Twomey were joined by local practitioners and members of the bar, including (front, l to r) Sinead Garry BL, Gwen Bowen (vice-president, CLA), Kate McInerney (secretary, CLA), Ms Justice Mary Faherty, Mr Justice Michael Twomey, Marina Keane (president, CLA), Pamela Clancy (treasurer, CLA), and Ashling Meehan; (middle, l to r) John Halpin, Angela Byrne, Miriam Rowe, Edel Ryan, Bernard Mullen, Isobel O'Dea, Greg Leddin, Sinead Nunan, Leona McMahon, Catherine Brennan, Pauline Kearns, Sinead Glynn, Helen Rackard and Billy Loughnane; (back, l to r) William Cahir, Joe Moloney, John Callinan, Conor Bunbury, John Shaw, Pat Whyms BL, Mary Nolan, Gerry Flynn, Loraine Burke, Sean Coffey and Paul Tuohy

CORK

SLA HONOURS SENIOR PRACTITIONERS



Pictured are (front) Edward O'Driscoll and Patrick O'Driscoll; (back, l to r) Dermot Kelly (SLA), Michael O'Driscoll, Don Murphy (SLA), Nicholas Hughes, John O Lee, Tom Tobin, Felicity Foley, Sean Durcan (treasurer, SLA), Joan Byrne (president, SLA), Tony Neville, Brian Russell, John Russell, Barry St J Galvin, Jim Baylor, Frank O'Flynn, Robert Flynn and Robert Baker (SLA)

Southern Law Association president Joan Byrne hosted a recent lunch at Hayfield Manor Hotel in Cork for practitioners with over 50 years of service. Seasoned veterans included broth-

ers John and Brian Russell, Tony Neville, Edward O'Driscoll and Patrick O'Driscoll. They were joined by 'newcomers' Barry Galvin, Tom Tobin and Michael O'Driscoll.

In her address, Joan compared legal practice in 1968 with 2018. As is customary, the eldest of the group, Edward O'Driscoll (with more than 65 years of service), responded on behalf of his col-

leagues and shared some amusing anecdotes of his own.

The next outing will take place in 2020, when, no doubt, the SLA will welcome another batch of new senior practitioners.



SHE SHOOTS, SHE SCORES

A quarter of the world-beating Irish women's hockey team has a legal background.

Mary Hallissey reports

MARY HALLISEY IS A JOURNALIST WITH GAZETTE.IE



AFTER A SCINTILLATING WORLD CUP RUN, BEATING INDIA ONE-NIL AND WORLD-RANKED NUMBER SEVEN US ALONG THE WAY, THEY ADVANCED TO THE WOMEN'S WORLD CUP FINALS, FOR THE FIRST TIME IN 16 YEARS

Nikki Evans, Deirdre Duke, Anna O'Flanagan and Lizzie Colvin are the legally trained quartet embedded at the heart of the Irish hockey team, which thrilled the nation over the summer.

After a scintillating World Cup run, beating India one-nil and world-ranked number seven US along the way, they advanced to the Women's World Cup finals, for the first time in 16 years.

A nail-biting semi-final penalty shoot-out against Spain saw the team through to the final where, despite a 6:0 defeat to the Netherlands on 5 August, the Irish girls won hearts with their winning mix of youth and experience and their joyful enthusiasm for the game.

Once again, A&L Goodbody proves itself a welcoming house for sporting talent. Twenty-six year-old mid-fielder Deirdre Duke was offered a traineeship at the Dublin firm after her summer internship while still a student at UCD. She also worked as a brand ambassador for the firm

while a student on the Belfield campus.

Clonskeagh-born Deirdre explains that, on leaving school, she began studying physiotherapy at UCD, then realised it wasn't for her. She spent a year studying science at North Eastern University in the US, where she honed her hockey skills, before returning to UCD and switching to a BCL, graduating in May 2017.

"I had always wanted to study law," she says, "and I really enjoyed the UCD facilities." Deirdre had the benefit of an Ad Astra Scholarship and supportive mentors who helped her balance the competing commitments, in terms of making essay deadlines and completing a rigorous training programme.

And law runs in the family. Dad Brendan is the principal at BR Duke and Co on Dublin's Harcourt Street. From a sports-mad family, Deirdre has Wexford hurler cousins on her mother's side in purple-and-gold stalwarts Mattie Forde

and Garrett Sinnott.

A natural athlete, Deirdre is almost six foot and enjoyed a strong playing career at south Dublin Gaelic stronghold Kilmacud Crokes, culminating at minor level. Ultimately, she plumped for hockey as her primary sport after a successful run at schools level with Alexandra College in Milltown, where fellow Ireland player Nikki Evans was a teammate.

"Alex is a huge hockey school and I loved the game for its speed," is how she explains her decision to focus on one sport, despite call-ups to the Irish under-15s and under-17s in soccer, where she also excelled.

A hectic past 12 months has seen Deirdre complete all of her FE1s as well as prepare for this year's hockey World Cup. She has now decided to postpone her traineeship for another year. She is taking off to Dusseldorf Hockey Club, where she will combine working in a legal practice with some high-powered hockey.

"I'm hugely excited to go to



Nikki Evans



Deirdre Duke



Anna O'Flanagan



Lizzie Colvin



ALL PICS: WORLD SPORTS PICS

Nikki Evans in action

Germany,” she says. “It’s a great opportunity to play abroad at the higher level of the international leagues.” And a law firm boss who is also chairman of Dusseldorf Hockey Club will be a huge help.

And as for her ability to combine high-level hockey with her studies, Deirdre says it’s all about time management and self-discipline: “It was a hectic schedule, and I had to be meticulous in my approach to both study and training.”

It’s a kind of magic

Midfield magician Anna O’Flanagan (28) studied law and economics at UCD, followed by a traineeship at McCann FitzGerald. The Muckross Park girl has 168 caps, and her goal is to reach the 2020 Tokyo Olympics. This year Anna is playing in Amsterdam with Pinoké.

Twenty-eight-year-old lawyer Nikki Evans, meanwhile, has 166 caps for Ireland and has taken a year out to play at UHC Hamburg.

Goal wizard Gillian Pinder (26) studied business and law at UCD, but has chosen the business route for her career. She played at schools level for St Andrew’s in Booterstown and had a key role in their 2010 all-Ireland win.

Midfielder Lizzie Colvin (28) is a qualified solicitor and also completed her training at A&L Goodbody before relocating to Belfast to be nearer her boyfriend and to work in employment law at DWF.

As with hockey, so also in the law: Armagh-born Lizzie finds the all-Ireland approach of working both north and south has only been beneficial to her career.

“The cross-jurisdictional element of practising law has been a

huge help in dealing with clients, many of whom have offices in the south. I work closely with our Dublin office,” Lizzie explains.

And Lizzie, who has been playing hockey since she was seven, echoes the need for an organised approach to both sporting and professional life in order to keep all the balls in the air.

Lizzie has known teammates Nikki and Anna since her mid-teens and found sharing their experiences in studying law while playing hockey a huge support.

And nothing matters more in her work life, she says, than the support of understanding bosses, which she has been lucky enough to have. “It’s very demanding. I’ve had eight weeks away from work this year, with early-morning gym sessions twice weekly and training and matches five

or six times a week.”

Lizzie believes that Irish hockey is moving into uncharted territory with its World Cup success. And while many on the team have an aspiration to play on a more full-time basis with increased contact days and compete continually with the best in the world, nothing can be done without the necessary funding in place.

“Many of the girls would have that aspiration to play hockey full time and compete with the best in the world, if the funding was in place,” Lizzie says. “It’s been an amazing achievement to get this far. We’re all trying to figure out what measures need to be put in place to achieve that goal.”

Maybe it’s time for some more enterprising sponsors in addition to SoftCo, to step forward to support this journey.



LAW SOCIETY AND IMRO HIT THE RIGHT NOTE

IMRO is teaming up with the Law Society to entice a new generation of lawyers into the music industry. **Mary Hallissey** discusses the value of music with singer-songwriter and IMRO chair Eleanor McEvoy

MARY HALLISSEY IS A JOURNALIST WITH GAZETTE.IE

IMRO'S WORK
IN PROTECTING
THE RIGHTS OF
IRISH MUSICIANS
IS BEING
ACHIEVED IN
CONJUNCTION
WITH SOLICITORS
AND BARRISTERS

"Twenty-first century artists are embracing technology, but the giant tech companies that fail to pay for creative content are doing damage to us all."

That's the position of singer-songwriter Eleanor McEvoy, who wears another hat as chair of the 12,000-member Irish Music Rights Organisation (IMRO).

McEvoy is leading the campaign to urge tech companies to properly reimburse creative artists for the content used on digital platforms. She is campaigning hard against the 'transfer of value' from creator to platform – a fight that she believes affects the whole creative and cultural industry.

"I make my music to share it. I

want my music online, but I want to be paid for it," says Eleanor. "The digital world is great, but it shouldn't mean that every law of copyright is thrown in the bin. I think we have forgotten the value of music in the digital age.

"Because the tech companies avail of what's called the 'safe harbour' loophole, they can get out of paying creators for their works, and this is doing significant damage," she says.

The 'safe harbour' rule was originally intended to protect internet companies from being sued by rights owners when customers of those companies infringed copyright. A rights owner could sue the individual customer for copyright infringement – but not the inter-

net company whose services they used. Artists worldwide now claim that safe harbour is a loophole that is being exploited, saying that it was never intended for the mass distribution of original, creative work, free of charge.

Video killed the radio star

McEvoy points out that this is unfair to the industry players who do pay artists, such as streaming service Spotify, which operates a subscription model (with the musician admittedly getting a minuscule cut per stream – Peter Dinklage [recently revealed](#) that, for 55 million plays of his global hit *Baby I Love Your Way* on various streaming sites, he earned just \$1,700).



Enjoying a rendition of *For the Avoidance of Any Doubt* by Eleanor McEvoy (chair of IMRO) were (l to r) Victor Finn (CEO of IMRO), Mary Keane (deputy director general, Law Society), Michael Quinlan (president, Law Society) and Dr Geoffrey Shannon (deputy director of education)



PICTURE: CIAN REDMOND

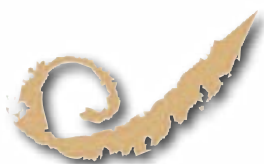


PICTURE: LENS MEN



Eleanor McEvoy and Michael Quinlan

THE DIGITAL WORLD IS GREAT, BUT IT SHOULDN'T MEAN THAT EVERY LAW OF COPYRIGHT IS THROWN IN THE BIN. I THINK WE HAVE FORGOTTEN THE VALUE OF MUSIC IN THE DIGITAL AGE



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PIC: LENS MEN

Geoffrey Shannon, Michael Quinlan, Mary Keane, Eleanor McEvoy and Victor Finn

“It’s very unfair to the good guys who are trying to do it right. Spotify isn’t operating on a level playing field because of the YouTube and Facebooks of the world.”

The EU *Copyright Directive*, specifically article 13, aims to harmonise copyright law across Europe. It closes the safe harbour loophole, whereby the tech firms escape their duty to pay copyright fees.

“Google spent €31 million fighting this,” McEvoy explains. “We’re up against the most powerful people on the planet.”

She is concerned that the music industry doesn’t have the same influence as the big internet players. And this is why the IMRO chair believes that Ireland needs a national music strategy.

“A national music strategy would be cost neutral,” she says. “We could get a huge advantage in the music industry by taking away things that are blocking our way. We need more education and training. We are lacking expertise in the area of music management.”

As she points out, in the music industry, everything starts with the song: “All the ancillary industries are based on the song. You don’t have a lighting company, a staging company, a sound company, photographers, music accountants, music lawyers, without somebody

who sat in their attic and wrote the song. If you don’t look after creators, you suffer as a society. That’s why we are angry.”

Roll over Beethoven

In response to this fast-changing online environment, IMRO has teamed up with the Law Society’s Education Department to create an IMRO adjunct professorship of intellectual property (IP) law. The role will be advertised in the autumn, with the successful candidate being announced shortly afterwards.

The position will be a key resource to the Society in broadening the knowledge base of students in the expanding area of IP and copyright law. The professor’s expertise will be used to create a new IP module at the Law School, and they will deliver an annual lecture. A part-time role, it is expected to be filled by an expert practitioner operating in IP and copyright law.

The expectation is that this solid grounding in an exciting field of law will entice a new generation of lawyers into the music industry.

Director of education TP Kennedy says: “IP is a growing area of practice because of the tech companies that have set up their headquarters in Dublin. IMRO’s work in protecting the rights of

Q FOCAL POINT

BABY I LOVE YOUR WAY

IMRO has commissioned a Deloitte report that shows the music industry contributes upwards of €700 million to the Irish economy annually and employs over 13,000 people. As well as being an essential part of the Irish psyche and national identity, music is also a vital economic driver, both directly and indirectly.

And that’s the backdrop to IMRO’s push for a national music strategy. McEvoy firmly believes that the elevation

intrinsic to music leads to less self-harm and less destructive behaviour in teenagers, because it helps regulate and manage emotions. Her song *Sophie* is used throughout the world in treatment centres for anorexia.

And the song illustrates the digital revenue gap. Despite significant Spotify streaming numbers for *Sophie*, it still hasn’t earned anything like the revenue for *A Woman’s Heart*, released in 1992.

Irish musicians is being achieved in conjunction with solicitors and barristers. It is lawyers who are spearheading the implementation of these rights, and therefore we need to train up the next generation of graduates.

“There is a generation of practitioners who have unique expertise in this area. The professorship will give one of them the opportunity to reflect on the development of the law in this field and to contribute to the formation of the next generation of lawyers.”

Having an endowed professorship paid for by an outside body will be a first for the Law Society. “This will encourage trainee solicitors to think imaginatively about areas they might practise in or other careers they might pursue,” Kennedy adds.

Eleanor McEvoy is delighted with IMRO’s groundbreaking liaison with the Society: “Lawyers can make an immense contribution to the creative industries. We want to encourage the next generation of Paul McGuinness and Louis Walsh-type music moguls to emerge. Lawyers have the perfect skillset to make that happen.”

IT IS LAWYERS WHO ARE SPEARHEADING THE IMPLEMENTATION OF THESE RIGHTS, AND THEREFORE WE NEED TO TRAIN UP THE NEXT GENERATION OF GRADUATES



FASTER, BETTER, CHEAPER?

Recent changes have streamlined the enforcement of determination orders issued by the Residential Tenancies Board in the private residential rental sector, making the process quicker and cheaper, says **Brendan Noone**

BRENDAN NOONE IS A SENIOR ASSOCIATE IN CONNELLAN SOLICITORS, LONGFORD. HE WISHES TO THANK GERARD CARTHY BCL FOR HIS VALUED INPUT AND ASSISTANCE WITH THIS ARTICLE



Property prices continue to rise throughout the country. This has had the knock-on effect of forcing people to save for higher deposits in order to get on the property ladder. The net result is that the number of people in rented accommodation continues to rise.

Unfortunately, monthly rent prices also continue to soar, and defaulting rental payments, among other issues, has meant that there is a significant number of disputes between landlords and tenants being reported.

Disputes between landlords and tenants are typically referred to the Residential Tenancies Board (RTB). Once the dispute is referred to the RTB, it will gather all of the required information and hold an adjudication hearing.

At the hearing, both the landlord and the tenant will be heard and are entitled to bring a representative with them. Typically, they will attend by themselves. However, in certain circumstances they will seek to have a solicitor or auctioneer represent them before the hearing.

Sometime after the hearing, the RTB adjudicator who conducted the hearing will issue his or her report. This report will give a synopsis of the hearing and will also set out the findings of fact and the RTB's determination.

This adjudication report is issued to both the landlord and

the tenant and, if the proposed determination in the adjudicator's report is not appealed by either side within ten working days of the date of receipt of the report, the RTB will issue the determination order under section 121 of the *Residential Tenancies Act 2004*. This is binding on both sides to the dispute.

Appealing

However, it should be borne in mind that it is open to either party to appeal the decision of the adjudicator to the tribunal of the RTB, provided that they do so within the ten days. The RTB appeal tribunal typically consists of a three-person panel. The tribunal hearing is essentially *de novo*, meaning that the tribunal can hear the case afresh, unless the parties agree to limit its scope to certain issues. It is important to note that the tribunal is also quite informal, and that the landlord and tenant are entitled to be heard themselves or have a representative speak on their behalf.

The tribunal will not issue its decision immediately after the hearing. Instead, it will notify the RTB of its decision, which will then issue a determination order to the landlord and tenant. The determination order may then be appealed within 21 days to the High Court. However, the appeal to the High Court can only be on a point of law.

Once the determination order is issued, whether it's from the adjudication hearing or from the tribunal hearing, it will be binding on both parties, unless it is appealed within the time frame permitted under the act.

Unfortunately, if either party refuses to comply with the terms of the determination order, the party seeking to enforce the determination order will have to bring enforcement proceedings to the court.

There are two options open in this regard. They can make an application for the RTB to take enforcement proceedings in the courts on their behalf, or they can take their own enforcement proceedings. Usually, the person seeking to enforce the determination order will issue their own enforcement proceedings, and again, more often than not, this is done with the assistance of a solicitor.

District Court proceedings

The enforcement proceedings were typically issued in the Circuit Court, which was a costly and cumbersome process. However, SI 69 of 2018 of the *District Court Rules*, which was signed on 26 February 2018, came into operation on 23 March 2018. It now permits enforcement proceedings of an RTB determination order to be brought in the District Court.

Order 93C of the *District*

SI 69 OF 2018 OF THE DISTRICT COURT RULES NOW PERMITS ENFORCEMENT PROCEEDINGS OF AN RTB DETERMINATION ORDER TO BE BROUGHT IN THE DISTRICT COURT



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Court Rules sets out the procedure that must be followed. Essentially, the application must be made by way of notice of application, and the proceedings must be brought in the court area in which the tenancy or dwelling concerned is or was situated.


The rules also stipulate that the applicant must give the respondent at least 21 days' notice of the application. The application must also be supported by a grounding affidavit. The grounding affidavit should set out and verify the facts relied

on in the application.

If the respondent intends to oppose the application, and the applicant is not the board, then the respondent must give notice of such an intention to oppose, and the grounds of opposition, to the board and the applicant no later than four days prior to the return date specified in the notice of application. The stamp duty on the new notice of application is €80, while the stamp duty on the grounding affidavit remains at €15.

This new procedure is far more

cost-effective and approachable than the historic Circuit Court enforcement procedure and should ensure that the procedure becomes more user-friendly. Most of all, it should, in theory, mean that justice can prevail at a significantly faster rate than if it were being brought in the Circuit Court.

It will also ensure that applicants who have already had to go down the route of going to the RTB will not have to come up with the finances necessary to sustain a Circuit Court action. 

THE ENFORCEMENT PROCEEDINGS WERE TYPICALLY ISSUED IN THE CIRCUIT COURT, WHICH WAS A COSTLY AND CUMBERSOME PROCESS



GET OFF OF MY CLOUD

Cloud With Me Ltd, a Dublin-based reseller of internet cloud services, has fallen foul of a class action in a US federal district court. **Daniel S Alter** offers some practical guidance on the evolving regulation of crypto-assets in the US

DANIEL S ALTER IS A SHAREHOLDER IN THE NEW YORK OFFICE OF MURPHY & MCGONIGLE PC AND IS A FORMER GENERAL COUNSEL FOR THE NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES



EVEN AS THE APPETITE FOR CRYPTO-ASSETS GROWS RAPACIOUSLY IN THE MARKETPLACE, THERE IS FRUSTRATION IN THE INDUSTRY OVER THE LACK OF REGULATORY CERTAINTY

I'm told there's an old Irish saying that states: "Pains and patience would take a snail to America". But a lawsuit might, too – and even more quickly.

In June, a class action was filed in the US federal district court in the State of Pennsylvania against Cloud With Me Ltd (Cloud), a Dublin-based reseller of internet cloud services (*Balestra v Cloud With Me Ltd*, Dtk no 18-cv-00804; WD Pa, 19 June 2018).

According to the complaint, Cloud violated US securities law by selling digital tokens in support of its start-up business through an initial coin offering, or ICO. The complaint alleges that Cloud is guilty under US law of illegally selling unregistered securities and seeks millions of dollars in monetary relief for all token purchasers.

Welcome to America.

Whether a US court has jurisdiction to haul Cloud from Dublin to Pittsburgh to litigate American securities claims remains to be seen. The complaint's allegations regarding Cloud's direct connections to the US, much less to Pittsburgh, are notably thin.

Given the international market for crypto-assets, however, and specifically the explosive growth of 'fintech' industries in Ireland, a US case will doubtless someday arise, implicating Irish entrepreneurs or investors. Consequently, the challenge right now for many internationally (and in the US)



is staying abreast of the evolving US regulatory standards governing crypto-assets. Easier said than done.

Spider and the fly

The US federal system of government has sired a complicated and at times conflicting regulatory structure. There are several financial regulators on the national level that have claimed direct authority over different categories of crypto-assets:

- The Securities and Exchange Commission (SEC) – issuance, trade, and custody of digital tokens,
- The Commodities Futures Trading Commission (CFTC) – cryptocurrencies and derivatives involving crypto-assets, and
- The Treasury Department's Financial Crimes Enforcement Network (FCEN) – cryptocurrencies and ICO transfers.

But even as the appetite for crypto-assets grows rapaciously in the marketplace, there is frus-

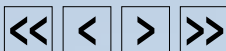
tration in the industry over the lack of regulatory certainty that these agencies have provided so far. Recently, two of my colleagues attended a programme in Washington DC on regulatory implications for blockchain technology that featured representatives from both the SEC and the CFTC.

The SEC official told the crowd that the agency is still gathering information and meeting with foreign regulators like the Financial Stability Board and the International Organisation of Securities Commissions, while the CFTC official stated that the agency was "innovatively using its authority to address the crypto space" – he just didn't say how. Not exactly balm for the risk adverse.

There are also other national regulatory bodies – such as the Federal Reserve, the Office of the Comptroller of Currency, and the Federal Deposit Insurance Corporation – that exert indirect authority by refusing to allow their regulated institutions to transact in crypto-assets. Many dealers in crypto-assets hold these agencies responsible for the scarcity of digital settlement and custody solutions that are critically necessary to support an expanding international market.

When the whip comes down

Then there is the independent regulatory power exercised by all 50 states, many of which have numerous agencies of their



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own. For example, following the crackdown by the SEC this past year on unlawful ICOs, the North American Securities Administrators Association (comprised primarily of state securities regulators) recently announced ‘Operation Cryptosweep’ – a coordinated effort beginning last May that resulted in over 100 state investigations and enforcement actions involving ICOs or cryptocurrencies.

Additionally, a large majority of the 50 states consider some aspect of the transfer and exchange of cryptocurrencies to be a form of regulated money transmission. And New York State, acknowledged by most to be the seat of American finance, has established its own regulatory scheme for ‘virtual currency businesses’, the full scope of which, in terms of crypto-assets covered, is not yet entirely clear.

Add to this challenging laby-

rinth the swelter of turf battles between and among federal and state agencies. These struggles inevitably arise because jurisdiction is power, and nature abhors a vacuum. Until the governing rules get sorted out in the United States, these conflicts will likely continue. In the meantime, no crypto-business wants to get caught in the crossfire.

Gimme shelter

So what’s a Celtic ‘cryptogenarian’ to do? Is the US regulatory terrain just too hostile for exploration by Irish fintech firms? Absolutely not. But it must be done carefully and compliantly.

I’m told there’s another old Irish proverb that says: “Love all men – except lawyers.” If you want to do business in crypto-assets with North Americans, however, you’ll have to forget that one! The one clear thing that the SEC did in 2017 was


to ‘stake the heart’ of regulatory arbitrage involving digital tokens. Crypto buyers and sellers must play by the rules – whatever those rules may ultimately turn out to be.

In the wake of that policy determination, it is equally clear that US regulatory agencies will be relying heavily on fintech innovators – and their lawyers – to build a new, efficient, and profitable marketplace. That need presents an enormous opportunity for entrepreneurs in this new sector. It should be embraced as a benefit, not shunned as a burden.

Here’s my advice. When considering entering the crypto-asset markets in the United States, be sure to seek qualified US counsel. Because the regulatory controls in this industry are still very much in flux, you’ll need a lawyer who can draw upon a wide array of expertise – including securi-

ties and commodities law, money transmission regulations, and rules governing secured transactions.

Of paramount importance, though, is counsel who has an historical relationship working closely with regulators. Having served as general counsel for the New York State Department of Financial Services, I know the extraordinary value that experienced regulatory lawyers can bring to their clients.

And in this time of technological advance, do not underestimate the human touch. US regulatory agencies, like their international counterparts, are comprised of professionals who share a mission and mindset. Counsel who fully appreciate those considerations, and are therefore trusted by regulators as honest advocates, can make the most headway. Without one, you might end up in Pittsburgh. 



WHO WILL BELL THE CAT?

Recent commentary and case law relating to unfair mortgage contracts may seek to limit the impact of the *Unfair Contract Terms Directive* in Ireland, says **Padraic Kenna**

DR PADRAIC KENNA IS A LECTURER IN PROPERTY AND HOUSING LAW AT NUI GALWAY



BARRETT J INTRODUCED EU CONSUMER LAW INTO THIS LEGAL ARENA. RIGHTLY REJECTING THE NOTION THAT IRELAND, AS A 'COMMON LAW' JURISDICTION, HAD ANY SPECIAL (OPT-OUT) STATUS IN THIS REGARD, HE POINTED OUT THAT EVEN THE DEMANDS OF PRECEDENT MUST YIELD TO THE SUPREMACY OF EU LAW

Almost two years ago, the *Gazette* covered EU consumer and human rights developments in mortgage possession cases ('Sixteen tons', November 2016, p42). European Court of Justice (CJEU) cases, such as *Aziz* (Case C-415/11), had reiterated the 'own motion' obligations on national courts to examine mortgage contracts for unfair terms, and strike out any such terms. Here, I examine how some recent commentary and case law may seek to limit the impact of the *Unfair Contract Terms Directive* (UCTD) in Ireland. It also considers the new focus on the role of the mortgagee's solicitor. Harmonising Irish and EU law norms in this area may yet require a reference to the CJEU for a preliminary ruling.

The context remains significant. Irish Central Bank managers predict that at least 14,000 households in mortgage arrears will lose their homes and suggest that sales of distressed mortgages are "legitimate and necessary". Yet new mortgage lending is at the maximum of Central Bank franchised levels and house prices are rising – all signs of lenders' confidence in Ireland's mortgage regime. Meanwhile, the level of mortgage possession cases shows no sign of decreasing, with an estimated 20,000 cases in the courts system.

No examination yet

Irish registrars and judges are dedicated to ensuring fairness for all parties, and Barrett J intro-

duced EU consumer law into this legal arena – which, of course, is applicable in all courts within the EU. He established in *AIB v Counihan* ([2016] IEHC 752) that a plenary – rather than summary – hearing, was the appropriate Irish forum for *ex officio* assessments for unfair terms. Rightly rejecting the notion that Ireland, as a common law jurisdiction, had any special (opt-out) status in this regard, he pointed out that even the demands of precedent must yield to the supremacy of EU law.

Yet, Irish courts have not recently carried any detailed 'own motion assessments' for unfair terms (except in the case on builders' stage payments for new homes in 2001). In the mortgage cases, where the issue has arisen, the reasons are varied: from situations where the lending corporation failed to provide all necessary documentation (*EBS v Kenehan* [2017] IEHC 604); the proceedings were *res judicata* (*Cronin v Dublin City Sheriff* [2017] IEHC 685); the borrowers had not pointed to any unfair terms and the court had not been able to discern one (*Bank of Ireland v McMahon* [2017] IEHC 600); and the borrowers had a solicitor acting for them (*AIB v Cosgrave* [2017] IEHC 803).

The role of solicitors

An article in *Commercial Law Practitioner*, pointing out that mortgagees are almost always represented by solicitors when executing mortgage deeds, is being reiterated in some recent

cases. Of course, loan offers and the deed of mortgage contain statements advising mortgagees to seek independent legal advice before signing – although the mortgage application contains standard terms, often accepted by the consumer before a solicitor is engaged. The offer letter refers to the lender's general and special conditions, its deed of mortgage and charge. In *EBS v Kenehan*, it was established that all these documents are within the purview of a court's 'own motion assessment' for unfair terms.

In *Ulster Bank Ireland v Costelloe* ([2018] IEHC 289), it was held that "the court has to take cognisance of the fact that the defendants had the benefit of a solicitor when executing the mortgage deed. Moreover, the offer document clearly advised the defendants to consult with their solicitor 'on the offer documents, the conditions and the security which will be taken over your home'."

The court also stated: "Notwithstanding that there are myriad other terms and conditions in the mortgage deed which the court has perused, it seems to me that, as far as the salient terms of the mortgage contract are concerned, and upon which the plaintiff relies to ground its application for possession, same cannot be deemed unfair given all of the forewarnings the defendants had, and given the fact that the defendants had the services of a solicitor at the time they accepted the loan monies and



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agreed to charge the premises in issue in these proceedings.”

In *Permanent TSB Plc formerly Irish Life & Permanent Plc v Fox* ([2018] IEHC 292), it was held that “the court cannot discount the fact that the defendants signed the letter of loan approval and, by doing so, confirmed that their solicitor had ‘fully explained’ the terms and conditions of the loan to them”.

The crux of the matter is that some courts and commentators are shifting the focus of these cases towards the duty of care

within the fiduciary relationship between consumers and their solicitor, in situations where consumers have accepted predetermined standardised, but possibly unfair, contract terms – or core terms that are not in plain, intelligible language. The implication is that this obviates the need for any curial *ex officio* examination of the main or other contract terms – despite the certificate of title system specifically referring to the UCTD regulations. But where signatures are ‘witnessed by a solicitor’, does this auto-

matically imply that advice on any unfair terms in the mortgage consumer contract was given?

Aziz established that national procedural rules cannot undermine the effectiveness of EU consumer law. In *Finanmadrid* (Case C-49/14) the CJEU has established that the principle of effectiveness is breached where a court registrar is restricted to checking compliance with formalities, precluding any assessment of potentially unfair terms. National procedural autonomy is now limited by the principles

of effectiveness, proportionality, and equivalence in EU consumer law cases – concepts that present some challenges for Irish common law development.

In Ireland, these issues have not really been addressed. A [recent study](#) by the Max Planck Institute on the equivalence and effectiveness of national procedural protection under EU consumer law identified Ireland as an outlier.

Since *Aziz*, the CJEU has ruled that, in mortgage cases where the UCTD is engaged, the EU *Char-*



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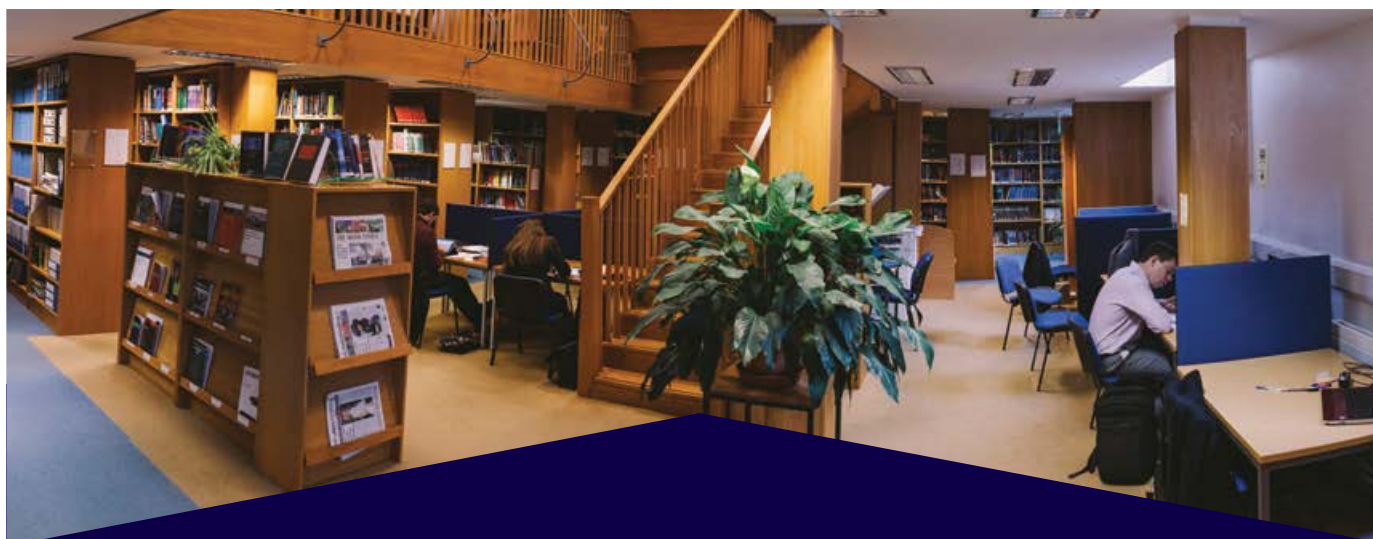
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ter of Fundamental Rights is also applicable. The case of *Sánchez Morcillo and Abril García* (Case C-169/14) clearly established article 47 of the charter – on the right to an effective remedy – and that fair procedures apply in these cases.


This year, the study *Access to Justice and the ECB: A Study of ECB Supervised and other Mortgage Possession Cases in Ireland* showed that 70% of distressed mortgagors are unrepresented before the courts – questioning the application of article 47 in Ireland. In *Kušionová* (Case C-34/13), the CJEU has also interpreted the application of the UCTD through the prism of article 7 of the charter – invoking the right to respect for the home into judicial reasoning.

In contrast to Irish courts, the CJEU has held in *Faber* (Case 497/13) that whether a consumer is assisted by a lawyer or not, this cannot alter the effectiveness of the protection of EU law. The scope of the principles of effectiveness and equivalence are independent of the specific circumstances of the case.



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Irish courts are not carrying out own motion assessments for unfair contract terms in mortgages, despite the prevalence of such terms – increasingly focusing on the core terms exemption. Neil Maddox (*Mortgages: Law and Practice*) points out that some pre-2009 acceleration clauses in mortgages could be vulnerable to challenge, and suggests that the issue will need to be resolved by a reference to the CJEU. Many mortgage clauses on sharing the personal data of borrowers would clearly breach EU and Irish law.

There seems to be a shift in focus onto the borrower’s solicitor and away from the drafters of standard form mortgage contracts and their supervisory agencies – the Central Bank of Ireland/ECB. These agencies have statutory powers to apply to courts to establish a list of unfair mortgage terms. This would avoid shifting these obligations towards borrowers’ solicitors, or the land registration system, and consequent potential liability. One thing is clear though – EU consumer law will continue to shape mortgage law in Ireland. 

CENTRAL BANK MANAGERS PREDICT THAT SOME 14,000 HOUSEHOLDS WILL LOSE THEIR HOMES, AND SUGGEST THAT SALES OF DISTRESSED MORTGAGES ARE ‘LEGITIMATE AND NECESSARY’

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A change is gonna come?

In November, the Government proposes to hold a referendum on removing blasphemy as a constitutional crime. **Jennifer Kavanagh** looks at the current law and how we have got to the referendum

DR JENNIFER KAVANAGH IS A LAW LECTURER AT WATERFORD INSTITUTE OF TECHNOLOGY AND THE AUTHOR OF *CONSTITUTIONAL LAW IN IRELAND* (CLARUS PRESS)



Blasphemy is currently an offence. The Constitution's freedom of expression guarantee, as part of article 40.6.1(i), includes blasphemy, sedition, and the publication of indecent matter as part of the constitutional crimes that would be punishable in accordance with law.

The issue of its proposed removal as such could be considered as one of the more symbolic referendums on the position of the Church and State in the Irish legal landscape.

There are two important time periods to be considered when assessing the law on blasphemy in the Irish context: pre and post-independence.

Respect

In pre-independence Ireland, the Church of Ireland was considered to be the established religion of the State until it was formally disestablished in 1869. Until the *Defamation Act 2009*, Irish law was based on the common law offence that only protected the official religion of the State, as in *R v Bow Street Magistrates* (1991), so we had a constitutional provision but no official religion to be protected.

In post-independence Ireland, the Catholic Church was the dominant religion in the State. Even though the original formulation of article 44 held the Catholic Church in a special position, it did not mean that it was the established church of the State. In *Corway v Independent Newspapers* (1999), the applicant sought leave to commence criminal proceedings against the Independent Group and the *Sunday Independent's* editor for blasphemous libel because of "offence and outrage by reason of the insult, ridicule, and contempt shown towards the sacrament of the Eucharist" from a cartoon published in the paper.

The cartoon caricatured three Government ministers rejecting the host and chalice being offered by a priest. This application was refused

COVER STORY



AT A GLANCE

- The Constitution includes blasphemy, sedition, and the publication of indecent matter as part of the constitutional crimes that would be punishable in accordance with law
- The *Defamation Act 2009* included provisions to clarify and strengthen the criminal law of blasphemous libel
- The proposed referendum is to remove the word 'blasphemous' from the Constitution but to retain the sections related to seditious and indecent matter

by Geoghegan J in the High Court, as in his opinion there was no *prima facie* case to be answered. Geoghegan J further stated that, even if there were a case to be answered, leave would not have been granted, as it was felt that there would be no public interest for such proceedings to take place – however, this was never fully explained.

In the Supreme Court, in a short application of the rules of blasphemy, all the judges agreed with the judgment of Barrington J. Even though "it was impossible to say what the offence of blasphemy consisted of", he was able to say that it did not occur in this case.

I say a little prayer

In light of the deficiencies of the law as highlighted in *Corway*, the *Defamation Act* (albeit at the last moments of its life as the *Defamation Bill*) included provisions to clarify and strengthen the criminal law of blasphemous libel. One of the main reasons given for the inclusion of the offence was the existence of blasphemy as a constitutional crime. However, section 35 of the *Defamation Act 2009* abolished defamatory libel, seditious

libel, and obscene libel, even though they are also constitutional crimes emanating from the same section of the Constitution.

The retention of the offence was deemed important, as it converged with the debate over freedom of expression and religious sensibilities, as highlighted by the publication of cartoons depicting the Prophet Muhammad in a Danish newspaper. The *Defamation Act 2009* was to take blasphemy from a constitutional offence without supporting legislation to a powerful criminal offence punishable by a fine of up to €25,000. Irish law went from a situation where blasphemy was a vaguely defined transgression to a criminal offence with a severe bite. Blasphemy, in section 36 of the act, is defined as the publication or utterance of matter that is "grossly abusive or insulting in relation to matters held sacred by any religion, thereby causing outrage among a substantial number of the adherents of that religion ... where that person intends, by the publication or utterance of the matter concerned, to cause such outrage".

Even though the offence does allow for a literary, artistic, political, scientific, or academic-value defence, the mere fact that such an offence is created in the statute books creates a chilling effect, whereby citizens may be afraid of exercising their constitutional right to freedom of expression because of the impact of blasphemy. The reason presented for the retention of the offence of blasphemy was due to its inclusion in the Constitution. However, in the preceding section of the *Defamation Act*, the offence of sedition was repealed, even though they are both stated as constitutional crimes in the same article – yet sedition was abolished and blasphemy reinforced.

Think

The Constitutional Convention was convened by the Fine Gael/Labour coalition to look at certain aspects of the Constitution that

THE RETENTION OF THE OFFENCE WAS DEEMED IMPORTANT, AS IT CONVERGED WITH THE DEBATE OVER FREEDOM OF EXPRESSION AND RELIGIOUS SENSIBILITIES, AS HIGHLIGHTED BY THE PUBLICATION OF CARTOONS DEPICTING THE PROPHET MUHAMMAD IN A DANISH NEWSPAPER



THERE ARE ALSO THOSE WHO WOULD ARGUE THAT THE PROVISIONS SHOULD BE RETAINED AS THEY ARE, TO PROTECT FOLLOWERS OF RELIGION FROM OUTRAGE TO THE TENETS OF THEIR RELIGION





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THE ISSUE OF ITS PROPOSED REMOVAL COULD BE CONSIDERED AS ONE OF THE MORE SYMBOLIC REFERENDUMS ON THE POSITION OF THE CHURCH AND STATE

were felt to be in need of revision. Unlike other groups that were convened to look at the Constitution, such as the [Constitution Review Group](#), the convention was comprised predominantly of members of the public, Oireachtas members, and members of the Northern Irish Assembly, to reflect the views of citizens. They heard from legal experts and representatives from various religions and perspectives on the issue in Ireland. The decision-making process was by deliberation and by trying to reach consensus on proposals for reform, which would then be voted on by the members of the convention.

Day dreaming

The members of the convention were balloted on four different questions on the position of blasphemy in the Constitution.

The first question asked if it should be retained in the Constitution, to which 61% of the members said it should be removed. In other questions, 53% stated that the current provision should be replaced with a new provisions, to include incitement to religious hatred, and 50% said that there should be no legislative provision for blasphemy, and that a new set of detailed legislative provisions should be created to include incitement to religious hatred. These details were sent to the Oireachtas as part of the report on the issue.

The proposal that will be put before the people in November, on the basis of the current legislation that is still undergoing scrutiny, is to remove the word ‘blasphemous’ from the Constitution but retain the sections related to seditious and indecent matter.

Therefore, it would amend the current statement that “blasphemous, seditious, or indecent matter is an offence which shall be punishable in accordance with law” as found as part of the construction of the limitations to the speech rights in article 40.6.1(i). The proposed article does not have any mention of protecting individuals from religious hatred, as recommended by the Constitutional Convention. This is in contrast to the

recommendations given by the convention in amending the article to strengthen protections against religious and racial hatred.

There are three different schools of thought on the issue of blasphemy in the Constitution and whether to retain, amend, or remove the provisions.

For those who would argue that the provision should be removed, they have a number of standpoints.

The first would be that the protection of the tenets of any religion is not a matter for the primary source of law in the land. The protection of the tenets of a religion in this manner does not represent the separation of Church and State that should be present in a modern liberal democracy. Furthermore, retaining the offences of seditious and the publication of indecent matter, in the Constitution, where the exercise of speech rights is already framed by issues of public order and morality, is going too far. The referendum, as proposed, will retain the constitutional crime of seditious libel, even though this has already been abolished in legislation through the *Defamation Act 2009*. The protection of public order and morality is already referenced in article 40.6.1(i), so the protection of the State is already secured within the confines of the article without reference to seditious.

For those who would prefer to see the article amended, they would point to the deliberations of the Constitutional Convention to support their argument that the provisions should be amended to protect followers of a religion from hatred as a means of strengthening the provisions of the *Prohibition of Incitement to Hatred Act 1989*, and that there is a place for such provisions in the Constitution to balance the constitutional speech rights in article 40.6.1(i). This is the option that is being favoured in the proposed amendment.

There are also those who would argue that the provisions should be retained as they are, to protect followers of religion from

outrage to the tenets of their religion. At the Constitutional Convention, some of the reasons for retention – which would probably resonate with any campaign against the change – are that the inclusion of blasphemy in the Constitution deters disrespect of religion and that the removal of the provision would downgrade religions as value systems worth respecting.

In the end, the Irish people in November will make the decision that they deem the best for their Constitution on terms that will be finalised by the Oireachtas. [E](#)

LOOK IT UP

CASES:

- [Corway v Independent Newspapers](#) [1999] 4 IR 485; [2000] 1 ILRM 426; [1999] IESC 5 (30 July 1999)
- [R v Bow Street Magistrates, ex parte Choudhury](#) [1991] 3 All ER 306

LEGISLATION:

- [Constitution of Ireland](#)
- [Defamation Act 2009](#)
- [Prohibition of Incitement to Hatred Act 1989](#)
- [Thirty-seventh Amendment of the Constitution \(Repeal of Offence of Publication or Utterance of Blasphemous Matter\) Bill 2018](#)

LITERATURE:

- Kealey, Michael, ‘Defame and fortune’, *Law Society Gazette*, Jan/Feb 2010, pp20-23
- Kealey, Michael, ‘Publish and be damned’, *Law Society Gazette*, April 2006, pp20-23
- [Sixth Report of the Convention on the Constitution: The Removal of the Offence of Blasphemy from the Constitution](#) (January 2014)



DATA:

set phasers to stun

Is the GDPR likely to lead to a deluge of complaints and litigation by claimants who allege their data protection rights have been infringed?

Deirdre Kilroy looks at the likely impact, through an Irish lens

DEIRDRE KILROY IS A PARTNER IN THE TECHNOLOGY AND INNOVATION GROUP IN MATHESON. SHE WISHES TO THANK MICHAEL FINN, A PARTNER IN THE LITIGATION DEPARTMENT, FOR HIS KIND ASSISTANCE WITH THIS ARTICLE



The *General Data Protection Regulation* (the GDPR) came into force on 25 May 2018, just 24 hours after the *Data Protection Act 2018*, resulting in the largest overhaul of Irish data privacy laws in over 20 years. The question at the forefront of

many practitioners' minds is whether there will be a deluge of complaints by claimants who allege their data protection rights have been infringed, and consequent litigation.

It has already been reported that there has been a significant number of data-breach notifications and complaints to the Data Protection Commission in Ireland since 25 May. While highly unlikely to be as ubiquitous as personal injuries litigation, practitioners will see activity in data protection litigation increasing significantly.

Potential civil claims are not

confined to classic data infringement disputes, but will also crop up as an additional heads of claim in all kinds of civil disputes, including employment disputes, contractual disputes, personal injuries, financial services claims, and breach of confidence actions.

AT A GLANCE

- There has been a significant number of notifications to the Data Protection Commission in Ireland since 25 May 2018
- Practitioners will see activity in data protection litigation increasing significantly
- Data subjects can authorise a not-for-profit organisation to lodge DP complaints on their behalf and to act on their behalf in breaches of DP laws
- Collective action mechanisms will assist data subjects to instigate litigation and to access legal assistance and knowledge in a novel way in Ireland

Claimants in the Irish courts?

Under the GDPR and the *Data Protection Acts 1988-2018* (DPA), for individual data subjects, the people identified or identifiable from the data that is processed (data subjects) are empowered to seek compensation if a breach of the GDPR has affected them (articles 79 and 82 GDPR).

With regard to collective actions, article 80 GDPR and section 117 DPA introduce different types of collective actions for data privacy breaches. Data subjects can authorise a not-for-profit organisation to lodge data protection complaints on their behalf, to act on their behalf in a



PICSHUTTERSTOCK

Lore and behold – Data protection

breach of data protection laws action, and to receive compensation on their behalf.

These collective action mechanisms will assist data subjects to instigate litigation and to access legal assistance and knowledge in a novel way in Ireland. The collective action mechanisms are likely to be used in large-scale data breaches, of which there have been plenty of examples,

nationally and globally, in recent years. However, there is no European collective action legal framework, so these actions will emerge on a state-by-state basis.

The Austrian registered not-for-profit organisation NOYB (an acronym for ‘None of Your Business’) was established by serial data protection litigant Max Schrems to facilitate funding and

identifying collective actions. NOYB filed complaints in Austria, Germany, Belgium and France against some global tech companies within hours of the GDPR coming into force. Complaints were also launched by French digital rights group La Quadrature du Net, also known as ‘La Quad’. Expect Irish activity in this area before long.

THE COLLECTIVE ACTION MECHANISMS ARE LIKELY TO BE USED IN LARGE-SCALE DATA BREACHES, OF WHICH THERE HAVE BEEN PLENTY OF EXAMPLES, NATIONALLY AND GLOBALLY, IN RECENT YEARS



Q FOCAL POINT

WHAT'S THE DAMAGE?

The question of what 'damage' means in a data protection context has been hotly debated for many years. Ruling on pre-GDPR law in the case of *Collins v FBD Insurance plc*, the High Court decided that the plaintiff alleging loss arising from a data protection infringement must establish there had been a breach, that they had suffered damage, and that the breach had caused the damage. In other words, a plaintiff could only secure an award of compensation for breach of data protection law on proof of actual loss or actual damage caused by the breach. Non-material loss was not recoverable.

This differed from subsequent British jurisprudence on the issue of damages for breach of data protection rights (see *Google Inc v Vidal-Hall*).

The GDPR and DPA, from an Irish

perspective, expand the concept of damage in the context of breach of data protection rights. Damage is now clearly defined as including physical damage (recital 75 GDPR, among others) and 'material and non-material damage' (article 82 GDPR and section 128 DPA). Material damage involves actual damage that is quantifiable, and non-material damage covers any non-financial damage, such as pain and suffering. It remains to be seen how the Irish courts will approach compensating a person for non-material damage, including in terms of defining the concept and in assessing the quantum of damages to be awarded. We may have to wait for a 'classic' data protection action before the courts' approach to compensation is fully understood in Ireland.

Article 82 of the GDPR also provides that 'any person' who has suffered material or non-material damage as a result of an infringement of the GDPR has a right to compensation. This will clearly cover data subjects, but may extend to others (for example, family members) affected by an infringement. This aspect of the GDPR is not fully dealt with in the DPA, so how this article will be dealt with by the Irish courts remains to be seen.

Who will be the defendants?

Actions for compensation and damage may be taken against controllers and processors. This is a significant shift from a position where, principally, controllers had

liability – now any organisation processing personal data has significant liability risks. The GDPR (article 82) provides that if more than one entity is involved in the same processing activity, and each is liable for infringement, then they are each responsible for the entire damage caused. If one entity pays out for the entirety of the damage, it can recover against the other party or parties. As a result, data subjects may choose the best 'mark' for litigation as the defendant, and it will need to tackle this joint liability provision by claiming from the other processors/controllers involved. This position will inevitably see secondary litigation between multiple actors involved in processing,

in terms of allocating fault and liability as a fall-out of the primary action for infringement.

What claims can a claimant make?

The DPA introduces a tort called a 'data protection action', which will be the most common type of claim made.

Article 77 GDPR grants data subjects the right to lodge complaints with a supervisory authority, alleging that the processing of their personal data infringes the GDPR. If the supervisory authority fails to handle any such complaints appropriately, article 78 GDPR also gives data subjects the right to an effective judicial remedy against a supervisory authority.

Ingredients of an action

Under section 117 of the DPA, a data subject must claim that his or her data protection right has been infringed and that the infringement is as a result of the processing of his or her personal data in a manner that is noncompliant with data protection laws.

The DPA (section 117) provides that data protection actions, including for compensation, may be taken by the not-for-profit bodies acting for claimants in collective actions (discussed above).

But what's the harm?

As a law that is focused on the protection of ordinary citizens, the GDPR itself states that breach of data protection rights may cause harm. Recital 85 (GDPR) lists a menu of harms that a GDPR infringement may cause, including "physical, material or non-material damage to natural persons, such as loss of control over their personal data or limitation of their rights, discrimination, identity theft or fraud, financial loss, unauthorised reversal of pseudonymisation, damage to reputation, loss of confidentiality

IRISH DATA PROTECTION ACTIONS CAN NOW INCLUDE CLAIMS FOR COMPENSATION FOR STRESS AND EMOTIONAL SUFFERING, WHEREAS PRIOR TO THE GDPR, ONLY COMPENSATION FOR FINANCIAL AND OTHER MATERIAL LOSS COULD BE RECOVERED IN IRELAND



THE GDPR AND DPA, FROM AN IRISH PERSPECTIVE EXPAND THE CONCEPT OF DAMAGE IN THE CONTEXT OF BREACH OF DATA PROTECTION RIGHTS. DAMAGE IS NOW CLEARLY DEFINED AS INCLUDING PHYSICAL DAMAGE AND ‘MATERIAL AND NON-MATERIAL DAMAGE’

of personal data protection by professional secrecy, or any other significant economic or social disadvantage to the natural person concerned”.

With the right set of facts, a claimant, such as an aggrieved employee, consumer, social media account holder, or contractor could allege to have suffered many of the harms in this non-exhaustive list.

Irish data protection actions can now include claims for compensation for stress and emotional suffering, whereas prior to the GDPR, only compensation for financial and other material loss could be recovered in Ireland.

The burden of proof

Where the GDPR has been infringed, there is liability unless a controller or processor can prove it is not the source of noncompliance (article 82 GDPR). Significantly, a litigant does not have to prove fault or negligence to initiate proceedings.

It is likely that data rights requests to controllers and complaints to supervisory authorities will be made to help ground and support any data protection actions taken. Expect to see complaints to supervisory authorities arise in parallel with legal actions.

Forum shopping

Proceedings against a controller or processor may be brought in the courts of the member state where the controller or processor has an establishment, or the courts of the member state where the data subject habitually resides (article 79 GDPR; section 117 DPA). This choice of forum provision means that claimants may tend to select member states based on differences in national laws (such as cost of litigation, and ease and speed of access to the courts)



Live long and litigate

that could have an impact on the number of cases appearing before the Irish courts. There is a *lis pendens* system requiring the courts to suspend proceedings if identical proceedings are before another court (article 81 GDPR).

In Ireland, the Circuit Court and High Court – but not the District Court – have jurisdiction to hear a data protection action and have the power to grant relief by way of injunction, declaration, or compensation for damage suffered by the data subject as a result of the infringement.

Where do we go from here?

The level of actions for breach of an individual’s data protection rights, seeking compensation, remains to be seen. It is equally unknown how the Irish courts will tackle the concept of awarding compensation for breach of data protection laws, especially for non-material damage. Certainly, the self-reporting of personal data breaches to data subjects (required when a personal data breach is likely to result in a ‘high risk’ of adverse effects to an individual’s rights and freedoms) is likely to increase visibility and awareness of data protection issues, and to increase complaints and claims.

Of course, the safest course of action

for controllers and processors is to ensure that appropriate procedures to achieve compliance with the GDPR and the DPA are in place. Compliance is the best defence, and efforts made to achieve compliance, even if these actually fail, are likely to influence the Irish courts when considering the topic of compensation. Compensation may, after all, not be the end goal in many data protection actions; often the data subjects simply want their rights to be honoured and for organisations to rectify behaviour. [E](#)

LOOK IT UP

CASES:

- [Collins v FBD Insurance plc](#) [2013] IEHC 137
- [Google Inc v Judith Vidal-Hall, Robert Hann, Marc Bradshaw v The Information Commissioner](#) [2015] EWCA Civ 311
- [NT1, NT2 v Google LLC v The Information Commissioner](#) [2018] EWHC 799

LEGISLATION:

- [Data Protection Act 2018](#)
- [General Data Protection Regulation](#)

LITERATURE:

- Elaine Edwards, *The Irish Times*, ‘DPC receives over 1,100 reports of data breaches since start of GDPR rules’ (30 July 2018)
- Pádraig Hoare, *Irish Examiner*, ‘Data watchdog deals with 1,300 GDPR queries’ (6 June 2018)
- *Privacy Laws & Business*, ‘First UK collective action cases in the pipeline’ (20 August 2018)



Who do you think you are?

Legislating for birth cert ‘fictions’ in cases of donor-assisted human reproduction will lead to human misery on a grand scale, child law experts believe.

Mary Hallsiey reports



MARY HALLISSEY IS A JOURNALIST WITH GAZETTE.IE

We are sleepwalking into the possibility of large-scale human tragedy and emotional devastation as the Government legislates for birth cert ‘legal fictions’ in cases of assisted human

reproduction. That’s

according to child law experts, aghast that birth certs will now sidestep the truth of a child’s origins in favour of naming ‘commissioning parents’, who have used donor material to conceive.

As parts 1 and 2 of the *Children and Family Relationships Act 2015* are due to be enacted, the Department of Employment and Social Protection confirmed to the *Gazette* that the format of Irish birth certificates will change. The words ‘mother’ and ‘father’ are expected to be replaced, as appropriate, with ‘parent one’ and ‘parent two’.

Part 9 of the *Children and Family Relationships Act 2015* will amend the *Civil Registration Act of 2004*, the legal framework for registration of birth. Under the new law, the registrar of births will hold ‘additional information’ on donor-conceived

children, which may be requested when that child reaches 18. In tandem, the *General Scheme of the Assisted Human Reproduction Bill* provides for the formation of a National Donor-Conceived Person Register (NDCPR), a move that was first mooted in

section 33 of the *Children and Family Relationships Act 2015*.

The legislation foresees interaction between the registrar of births and the planned NDCPR, where the registrar can see that a child was born as a result of a donated gamete.

This register will hold the donor’s name, address, date of birth, nationality, date and place of donation, and the sex and year of birth of any other children born from the donors’ gametes.

There has been general welcome for the ban on anonymous gamete donation. In future, donors must give active legal consent. However, there is no legal responsibility, or suggested timescale, for parents to inform children about the truth of their biological origins.

“Where the relevant minister makes an entry in the donor registry, he then notifies *An tArd Chláraitheoir* that this exists, and it is noted in the register of births that there is additional

AT A GLANCE

- When parts 1 and 2 of the *Children and Family Relationships Act 2015* are enacted, the words ‘mother’ and ‘father’ are expected to be replaced, as appropriate, with the word ‘parent’
- Under the new law, the registrar of births will hold ‘additional information’ on donor-conceived children, which may be requested when that child reaches 18
- Child law experts point out the critical importance of accuracy in State certificates – and the profound implications of deliberate falsification of legal documents
- The Oireachtas is in danger of overlooking the identity rights of those born through assisted reproduction, which will be impossible to remedy in the future



PICSHUTTERSTOCK

THE REMARKABLE PARALLELS WITH PAST ABUSES OF THE ADOPTION SYSTEM THROUGH FICTIONALISED BIRTH CERTS HAVE BEEN NOTED BY OTHER EXPERT COMMENTATORS

information available in relation to this child, to be released after that child reaches 18,” a department spokesman confirmed.

Meet the parents

Under sections 20 to 23, the *Children and Family Relationships Act 2015* provides for a court mechanism for a retrospective declaration of parenthood. It also covers donor-assisted human reproduction prior to the act, in cases where a mother is the only intending parent of the child.

One or both intending parents may apply to the District Court for a declaration of parentage.

The child to whom the application applies is joined as a party to the proceedings, which involves swearing an affidavit. The court may also refer all papers to the Attorney General.

A court case can only be taken where no other person is named on the birth certificate.

Separate applications to declare parentage can be made to the Circuit Court, but it is expected this will only apply in cases of dispute.

The fertility clinic will be obliged to gather detailed information on all donor-conceived children of both same-sex and heterosexual couples.

To legally register their donor-conceived child, intending parents will need this fertility clinic certificate, which confers the legal duties of parenthood on to the commissioning parents, a Government spokesman confirmed.

The parent trap

Section 5 removes residual parental rights or duties rights from the donor. The spokesman confirmed that, while a sperm donor remains the child’s biological father, unless this fact is put on a birth cert, he has no constitutional right to parentage under the act. However, a

sperm donor would, in future, have the right to apply through the courts for guardianship rights.

An egg donor, likewise, would have limited parental rights, but this could be tested in court since, currently, under the law, a child cannot have two mothers. And though there may be three or even four, five or six humans involved in a child’s assisted conception, there will only ever be two parents named on the birth cert.

Child law experts point out the critical importance of accuracy in State certificates – and the profound implications of deliberate falsification of legal documents. A birth cert is the gateway to all other rights as a citizen.

Children’s ombudsman Niall Muldoon is adamant that every child born through assisted reproduction should have full, accurate information on “the reality of their lineage and birth.”



THERE HAS BEEN GENERAL WELCOME FOR THE BAN ON ANONYMOUS GAMETE DONATION. IN FUTURE, DONORS MUST GIVE ACTIVE LEGAL CONSENT

“This would necessarily include the identity of any gamete donors or surrogates,” he says.

In its 2014 submission on the *Children and Family Relationships Bill*, the ombudsman described the desire to know one’s origins as “going beyond simple curiosity. It springs from a need that runs deep enough to be a basic aspect of human dignity,” the submission declared, pointing out that Ireland has a “demonstrably poor history in relation to respecting the rights of adopted people in this domain.

“It would be deeply unfortunate and disappointing for the Oireachtas to now overlook the identity rights of those born through assisted reproduction. The reality is that a failure to act will allow an injustice to continue that the Oireachtas will not be able to remedy in future,” the submission stated.

The remarkable parallels with past abuses

of the adoption system through fictionalised birth certs have been noted by other expert commentators.

Minister for Children Katherine Zappone confirmed earlier this year that there are at least 126 illegally registered adoptions in this country, based on fictitious birth certs.

The UN *Convention on the Rights of the Child* could not be clearer on the right of every child to its genetic identity, and to know and be cared for by its natural parents.

Article 7 states that “the child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents” and that “states parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where

the child would otherwise be stateless”.

Article 8 continues: “Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognised by law without unlawful interference” and “where a child is illegally deprived of some or all of the elements of his or her identity, states parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity”.

The Irish Human Rights and Equality Commission (IHREC) also points out that the right to information about one’s identity is a fundamental human right. Specifically, the European Court of Human Rights has found that “everyone must be able to establish the substance of his or her identity”.

Definitely, maybe

In its 2015 observations on the *Children and Family Relationships Bill*, IHREC criticises its narrow concept of identity and lack of compliance with international conventions.

In the complex arena of assisted human reproduction, legislators have an enormously difficult job and one must feel sympathy for their task.

But Helen Coughlan, vice-chair of the Law Society’s Family and Child Law Committee, is upbeat about the changes: “This is a very welcome development. So many families were left in limbo due to the delay in enacting parts 2 and 3. It had very serious unintended consequences, which adversely affected families, and particularly children.

“Firstly, many same-sex couples were unable to be registered as parents on their child’s birth certificate. This then led to serious difficulties in getting a passport for their children.

“I am aware of one couple who were unable to get a passport for their daughter because, in order to do so, one of the parents would have to swear an affidavit stating that





she was the sole guardian of their child. This couple was legally married, and it was patently incorrect to state that one parent was the sole guardian.

“In this instance, this caused profound practical difficulties, as one set of grandparents lived abroad and the couple was unable to take their child to visit its grandparents.”

Section 17 of the *Children and Family Relationships Act* states that “having regard to the child’s right to his or her identity, it is desirable that [the gamete donor] keep updated, in accordance with section 38(1), the information in relation to him or her that is recorded on the register”. However, there is no legal enforcement of this.

For family lawyer Geraldine Keehan, it is unrealistic to expect a donor to update a register with medical details, years and even decades later, though this information could be vital to the child concerned.

Similarly, if a same-sex couple register their parentage on a child’s birth certificate, what happens if that child travels to a jurisdiction that does not recognise gay marriage?

“This is a radical change,” says Geraldine, “and lines up Ireland with California in terms of legislation.” Fertility counsellors may also need to indemnify themselves against future legal actions, she points out.

The Law Society’s deputy director of education and child law expert, Dr Geoffrey Shannon, is positive about the fact that Ireland is now granting donor-conceived children the legal right to their identity.

“The right to an identity is a basic human right, and this is now reflected in our domestic law on donor-assisted human reproduction,” he says.

As he writes in his book *Children and Family Relationships Law in Ireland*, “access

to donor information can be important for the person’s development and health” and access to genetic information is beneficial.

Shannon believes that a donor register will vindicate the rights of donor-conceived children to their sense of identity and personal history.

Life as we know it

But for Susan Lohan of the Adoption Rights Alliance, there are “layers and layers of parallels” to past adoption scenarios: “How can eradicating a child’s identity ever be in their best interests?” she asks. “Have we learnt nothing about the sense of genetic bewilderment that these children feel? If a child is interacting with the State with this fictional piece of paper, it’s going to make any future search for them by their family of origin nigh on impossible.”

She feels that past law has largely been more concerned with protecting the feelings of adoptive parents, and that the same mistakes are being made again with regard to donor-conceived children. We are more particular about our bloodstock industry than the sense of self of Irish children, she believes.

Psychologist Emma O’Friel is concerned to see language from the law of contract and wording such as ‘commissioning parents’ enter the statute books in relation to human beings: “I see no evidence that the child’s interest is being prioritised,” she says. “The discourse is entirely from the adult point of view. No one is asking the primary question, does this cause harm and who is benefiting from it? Why are we legislating for a practice that does not put the best interests of children first? It consolidates all the disadvantages of removal of a child from their genetic family and heritage, and from all the elements of identity that are so important to the rest of us.

“Our genetic identity grounds us in space and time, and enables us to know who we are and where we come from.”


State child protection agency Tusla tries at all costs to keep a child within their genetic family, she says, and recognises that not doing so is harmful.

In this vast, confusing and difficult world, it is intrinsically important to know the people we come from. That connection should not be severed.

“Money is guiding this. The fertility clinics are running a business and have a profit motive. They have no expertise on the welfare or psychology or mental health of children.

“We are allowing scientists to have this power but they refuse to engage with its effects.”

There is no correct way to legislate for this, O’Friel believes, because it is a harmful practice that causes psychological distress and puts a minority of children into a discriminatory position.

“It is wrong to allow children to be removed from their biological parents for no other reason than the desire of an unrelated person. No one would choose this as a start in life – the temporal and geographical dislocation of a child – so why are we doing it?” she asks. 

LOOK IT UP

CASES:

- [Children and Family Relationships Act 2015](#)
- [Civil Registration Act 2004](#)
- [General Scheme of the Assisted Human Reproduction Bill](#)
- [UN Convention of the Rights of the Child](#)

IT CONSOLIDATES ALL THE DISADVANTAGES OF REMOVAL OF A CHILD FROM THEIR GENETIC FAMILY AND HERITAGE, AND FROM ALL THE ELEMENTS OF IDENTITY THAT ARE SO IMPORTANT TO THE REST OF US



What goes on tour stays on tour

The *Intoxicating Liquor (Breweries and Distilleries) Act 2018*, when commenced, will have significant implications for alcohol manufacturers. **Constance Cassidy** and **Máire Conneely** test its specific gravity

CONSTANCE CASSIDY IS A SENIOR COUNSEL. MÁIRE CONNEELY (A&L GOODBODY) HAS ALSO CONTRIBUTED TO THIS ARTICLE. THEY ARE JOINT AUTHORS OF *BREWERS AND DISTILLERS IN IRELAND: THE COMPLETE LEGAL GUIDE*, DUE TO BE PUBLISHED IN AUTUMN 2018



The *Intoxicating Liquor (Breweries and Distilleries) Act 2018* was signed by the President on 22 July 2018. It awaits a commencement order from the Minister for Justice. It has enormous implications for the manufacturers of alcohol.

The act captures the following alcohol manufacturers and their licences:

- Distillers of spirits,
- Rectifiers or compounders of spirits,
- Brewers of beer for sale,
- Makers of cider or perry for sale, and
- Makers for sale of sweets.

Not one of these licences requires a certificate of the court for its grant.

Once commenced, the act will allow a manufacturer of alcohol who holds the appropriate manufacturer's licence to apply for a new retail licence. This new licence is called a producer's retail licence. Before a manufacturer will be granted a producer's retail licence, it

must be able to show that it has put in place an 'appropriate' mechanism to restrict the sale of alcohol to persons who have completed a guided tour of the premises.

AT A GLANCE

- The *Intoxicating Liquor (Breweries and Distilleries) Act 2018* will allow, for the first time, a brewer or distiller to sell the alcohol manufactured on its premises to a visitor
- Before this licence is granted, a manufacturer must be able to show that it has put in place an 'appropriate' mechanism to restrict the sale of alcohol to those who have completed a guided tour of the premises
- Upon the grant of the new retail licence, any existing retail licence that currently attaches to the manufacturers' premises will become extinguished
- The act restricts the type of alcohol that can be sold by retail

What can be sold by retail?

Once the producer's retail licence is granted, the retail sale of alcohol manufactured on the premises under one of the licences referred to above is permitted. So the brewer may sell beer, and the distiller may sell spirits. No other alcohol, however, may be sold. The intention, clearly, is to restrict the retail sale of alcohol under the new licence to that which is manufactured on the premises.

In general, intoxicating liquor can be sold to persons who have completed a guided tour of the premises. The licensee can sell, once he has obtained the appropriate on-licence or off-licence on foot of a court certificate, to visitors who have completed a guided tour, for consumption on and/or off the premises.

So there is a choice: the application



PIC: SHUTTERSTOCK

ANY VISITOR WHO HAS NOT COMPLETED A GUIDED TOUR OF THE PREMISES CANNOT CONSUME THE ALCOHOL ON THE PREMISES

will be to the Circuit Court if the licensee wishes to sell the alcohol for consumption both on and off the premises to persons who have completed a guided tour of the premises.

The application will be to the District Court if it is to sell alcohol for consumption off the premises to those persons who have completed a guided tour of the premises.

The licensee can also sell the alcohol to persons who have not completed a guided tour of the premises: this category of persons, however, can only buy for consumption off the premises – that is, off-sales only.

So any customer who has not completed

a guided tour of the premises may purchase the appropriate alcohol as if the premises were an off-licence. However, there is a restriction as regards permitted hours for this category of customer, that is, where the customer hasn't completed a guided tour of the premises.

Permitted hours

The permitted hours provisions that apply to all licensed premises in the state have no relevance here. Nor can the licensee apply for a special exemption order.

Special restricted permitted hours apply in the case of a producer's retail licence.

Where a visitor has completed a

guided tour of the premises, he or she can purchase the alcohol manufactured on the premises between the hours of 10am and 7pm each day (including Sunday), other than Christmas Day. The alcohol can be purchased for consumption either on or off the premises, depending on whether the producer's retail licence was granted by the Circuit Court or the District Court.

Where off-sales are concerned, a person who has completed a guided tour of the premises can purchase alcohol to consume off the premises (as an off-sale), between the hours of 10am and 7pm daily (including Sunday). Where, however, the customer has not completed a guided tour of the premises,



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THE INTENTION, CLEARLY, IS TO RESTRICT THE RETAIL SALE OF ALCOHOL UNDER THE NEW LICENCE TO THAT ALCOHOL MANUFACTURED ON THE PREMISES

he or she can only buy alcohol between 10am and 7pm (other than Christmas Day) save and except on a Sunday, when alcohol cannot be purchased prior to 12.30pm on a Sunday afternoon.

Limitations of the act

At present, and until this act takes legislative effect, a manufacturer of spirits is expressly prohibited from holding a publican's licence. A recent practice has emerged whereby a manufacturer of spirits leases a portion of his property to a 'newco' (new company). The newco then applies for a publican's licence for a portion of the premises that, generally, insofar as may be achieved, is structurally separated from the distillery. It is in this way that a visitor is able to visit the distillery and then move to the different portion of the premises covered by the publican's or other retail licence and purchase alcohol by retail. So the licensee is not restricted in the type or variety of alcohol that can be sold. Where there is a full seven-day's publican's on-licence, the licensee is not restricted to selling only the alcohol manufactured in the brewery or distillery.

This may appear to be an artificial solution.

However, as is generally recognised, the growth of distilleries, particularly as a tourism destination, is on the up. The act, therefore, may be said to be an attempt to deal with this growing tourist phenomenon.

This is why the act repeals the restrictive provisions of section 13 of the *Licensing (Ireland) Act 1833* and does away with the old statutory provisions that expressly prohibit a distiller and rectifier or compounder of spirits from holding a publican's licence. However, this may not be sufficient.

Section 1(5) of the act provides that, on the grant of the new producer's retail licence in respect of the premises, any other licence issued under the *Licensing Acts* shall be extinguished. The intention is clear here: the legislature intends to restrict the type of alcohol sold by retail to the alcohol that is manufactured on the premises.

In many cases, this is not enough for a manufacturer turned retailer. In certain breweries and distilleries, the manufacturer may have applied for a wine retailer's off-licence (which is a licence granted by the Revenue Commissioners on foot of a certificate of the court, but which does not require the extinguishment of another

similar licence) to sell wine by retail on the premises.

In other cases, as discussed above, the manufacturer may have gone to the expense of separating the distillery from the remainder of the premises and obtaining a new publican's licence in the name of the newco (and paying €60,000 for a substitute licence) for that structurally separate portion of the premises.

The statutory consequence of section 1(5) of the new act may well be that, if the new producer's retail licence is granted for the premises or portion of the premises to which the publican's licence, wine licence or any other type of retail licence (including a special restaurant licence) is presently attached, that retail licence will become extinguished upon the grant of the new producer's retail licence.

This will be of serious concern to a manufacturer who needs to attract tourists – particularly if he wishes to sell alcohol other than that manufactured on the premises.

Our intention in this article is to explore the *Intoxicating Liquor (Breweries and Distilleries) Act 2018* from a manufacturer's point of view and to point out some apparent limitations in the act. It is not an in-depth treatise on each and every provision contained therein. For example, the act's procedural requirements and the penalties, fines and convictions are not dealt with, nor are the potential grounds of objection discussed. These will be dealt with in a future article. [E](#)

Q FOCAL POINT COURT IN THE ACT

An application for a certificate entitling a manufacturer to receive the appropriate producer's retail licence is made either to the Circuit or District Court. The application to the Circuit Court is made where the manufacturer wishes to sell alcohol for consumption on and off the premises. The application to the District Court is for a certificate entitling the manufacturer to sell alcohol for consumption off the premises only.

The grounds of objection set out in the act are more or less the same as those that apply to the grant of a new publican's licence or an off-licence, with one exception. Once the court certificate is granted, the successful applicant applies direct to the Revenue Commissioners, and a new producer's retail licence will issue at an excise cost of €500. The applicant must also be tax compliant.

Q LOOK IT UP

LEGISLATION:

- *Intoxicating Liquor (Breweries and Distilleries) Act 2018*
- *Licensing Acts 1833-2018*
- *Licensing (Ireland) Act 1833*, section 13



Crash and burn

There has been much research on the impact of child-care proceedings on social workers – but very little has been carried out on the health and well-being of lawyers in this field. **Elaine O’Callaghan, Kenneth Burns and Conor O’Mahony** light the touch-paper

DR ELAINE O’CALLAGHAN, DR KENNETH BURNS AND DR CONOR O’MAHONY LEAD UCC’S [IDEA PROJECT](#), A TRAINING PROJECT FOR CHILD PROTECTION PROFESSIONALS



Solicitors and barristers practising in the area of child-care proceedings are exposed to emotionally demanding cases dealing with child abuse, as well as stories of personal and family trauma.

From conversations with lawyers, there appears to be a lack of recognition of the impact of this work on legal practitioners – and few support structures in place to assist those who routinely work in this area. (This may be particularly problematic when the facts of a case overlap with a practitioner’s own history, which may have involved child abuse and/or parental alcohol dependence or domestic violence.) Without sufficient training and support systems in place, working on these cases can lead to secondary traumatic stress, or even burnout.

It is important that legal practitioners are aware of the impact that stress and burnout can have on

This article has been produced with the financial support of the Rights, Equality and Citizenship Programme of the European Union. The contents of this article are the sole responsibility of UCC and should in no way be taken to reflect the views of the European Commission.

their work representing children or parents. A comprehensive international literature search located very few studies examining this issue. This raises questions about just how visible this problem is among those practising in the field and those providing legal training in child-care law.

Of the available studies, research has shown, for example, that stress and burnout can affect legal practitioners’ ability to perform. Levin and Gresiberg (2003), in a US study, examined lawyers’ secondary trauma responses and symptoms of burnout in domestic violence and criminal cases. Their study

showed that attorneys demonstrated “significantly higher levels of secondary traumatic stress and burnout than mental-health providers and social services workers”.

The Wisconsin State Public Defender’s Office focused on the effect of compassion fatigue on attorneys and administrative support staff. It showed that attorneys demonstrated significantly higher levels of “post-traumatic stress disorder symptoms, depression, secondary traumatic stress, burnout and functional impairment compared with the administrative support staff” (Levin et al, 2011). Longer working

AT A GLANCE

- Child-care proceedings can take a huge emotional toll on legal practitioners
- There’s a lack of recognition of the impact of such work on legal practitioners – and few support structures in place to assist them
- In a US study in 2003, attorneys demonstrated “significantly higher levels of secondary traumatic stress and burnout than mental-health providers and social services workers”



PICSHUTTERSTOCK

hours and greater contact with clients affected by trauma were the major factors for attorneys.

The Irish perspective

As part of the IDEA Project, practitioners in five countries were surveyed in 2017 as part of a scoping exercise. In total, 66 practitioners working in child-care proceedings in Ireland participated – 30 barristers, 17 solicitors, 12 guardians *ad litem* and seven social workers. Of these, 79% had no training, support or guidance on how to manage the negative impact of participating in child-care cases.

Irish practitioners were asked how participating in these cases affected their

health, welfare, and sense of well-being. The replies indicated that some solicitors found these cases challenging to work on. For example, solicitors commented that “working on child-care cases is stressful, draining [and] very hard to juggle”, that the work “takes an emotional toll”, while another commented that “as a [parent] myself ... I sometimes can’t help but imagine my own [children] in such a situation”.

Solicitors noted that they had feelings of guilt having been involved in child-care proceedings. One solicitor described “a sense of responsibility for families who are no longer together”.

Another solicitor said: “I didn’t understand the difficulties that so many children face.

I felt naive in the beginning. Over time, I have started to feel some guilt. Particularly in cases where I’m acting for a parent – and that parent poses a genuine threat to the well-being of the child.”

Over time, however, solicitors can become accustomed to dealing with these cases: “I’m probably quite good at this stage in managing the stress and trying to process some of the more traumatic information,” one solicitor told us.

Follow-up research is required to explore how some practitioners have developed resilience over time.

Equally, barristers stated that these cases can have a negative impact on their health, welfare, and sense of well-being. One

A US STUDY SHOWED THAT ATTORNEYS DEMONSTRATED ‘SIGNIFICANTLY HIGHER LEVELS OF SECONDARY TRAUMATIC STRESS AND BURNOUT THAN MENTAL-HEALTH PROVIDERS AND SOCIAL SERVICES WORKERS’



Q FOCAL POINT

BRIGHT SPARK

Practitioners working in the area of child protection and care proceedings can experience a rewarding career supporting children, young people and their families at difficult times in their lives. They can also feel undervalued and overworked, with their practice sometimes misrepresented in the public sphere and media.

To ensure that practitioners provide the best care, decisions and interventions, it is essential that they pause to reflect and are proactive in addressing their personal welfare. Being exposed to stressful workplaces and trauma in child protection cases can have a cumulative negative impact on practitioners' well-being.

Developing and implementing a plan

can help to express and process feelings, recover, re-energise, promote physical and mental health, develop a worker's resilience and ultimately improve practitioners' work.

SPARK is a self-reflective evaluation tool for practitioners working in child protection, supporting them to develop a tailored self-care plan. It aims to prevent excessive stress and burnout by encouraging practitioners to reflect on distinct areas in their personal and professional lives.

A **checklist** for planning ahead for potential international litigation can be found at <https://ideachildrights.ucc.ie/resources/tools/IDEA-Checklist-Ireland.pdf>.

barrister described his reaction to child-care proceedings as "distressing ... I find child removal cases personally quite difficult".

Another said: "It is hard not to be affected. I have cried over cases. I have been upset. These are sad, traumatic cases."

Yet another added: "[Cases] can play on your mind for quite some time. Also, the nature and intensity of the proceedings and hours required crosses over into other aspects of life."

Research from the field of social work has identified a number of practical solutions that can help to promote better health and welfare, including:

- Training,
- Peer support,
- Developing personal resilience,
- Using adaptive coping mechanisms,
- Professional supervision,
- Debriefing, and
- Developing a sense of meaning in their work.

Traumatic cases

The need for training and support for social workers in preventing and managing stress and burnout in child protection and welfare removal cases has been well documented in the literature. While very little research

has focused on lawyers, a larger body of literature has examined lawyers' emotional intelligence generally and the important role it plays in daily practice. The literature observes that law schools should provide training to adequately prepare lawyers to deal with traumatic cases and, in turn, to recognise and process their own emotions.

As part of our survey, practitioners were asked about the type of professional health and self-care training that could be helpful. A number of solicitors and barristers commented that counselling should be available. The importance of training in 'debriefing' and 'detaching' was also noted. One solicitor commented that "some structured debriefing sessions, through work, for dealing with difficult cases" would be useful. It was also commented that "any [training] to help with not taking issues home, resilience, debriefing as part of [the] daily work day" would be helpful.

Two barristers and solicitors also commented on the need for training in "how to debrief from an upsetting case". Three solicitors and barristers commented on the need for training in stress management, while three solicitors and barristers also separately commented that mindfulness should be taught.

Training in developing resilience and personal coping mechanisms has been identified as critical in preventing and managing stress and burnout for professionals in the child protection and welfare removals area.

Research shows that professionals using active and engaged coping methods, such as expressing emotions, cognitive restructuring, social supports, and problem-solving coped better than those who used "avoidant or disengaged methods such as problem avoidance, wishful thinking, social withdrawal or self-criticism". Anderson (2000) found that "workers who use the avoidant coping strategies are more likely to suffer emotional exhaustion, feelings of depersonalisation, and a diminished sense of personal accomplishment".

The importance of developing supportive relationships with supervisors and co-workers in child protection and welfare removal cases has been well documented in research focusing on social workers.

Building relationships

This can be more challenging for lawyers, many of whom are sole practitioners, without a team or supervisor to share their experiences with. To this end, legal practitioners would benefit from building relationships with their peers: research indicates that peer-relationships can ameliorate the impact of these cases. One solicitor commented that a "supervision structure would be helpful ... the support of colleagues in my office is essential". Another solicitor, meanwhile, suggested that mentoring would be useful, which also reflects the research about social workers. A barrister reiterated this point, stating that "a greater degree of understanding could be achieved between professionals if there was education across the board on this issue of the personal impact of working in this area".

Professional motivation for working in the area of child protection and welfare removals is an important factor when considering how to prevent or manage stress and burnout. By its nature, this work attracts 'helping professionals' who are intent on using their knowledge to assist children and families in crisis.

"The term 'compassion satisfaction'



SOLICITORS AND BARRISTERS WORKING IN THE AREA OF CHILD PROTECTION AND WELFARE REMOVALS SHOULD HAVE THE CLEAR TRAINING AND SUPPORTS NEEDED TO MANAGE THE EMOTIONALLY CHARGED AND TRAUMATIC CONTENT OF THESE CASES

refers to the level of satisfaction ‘helping professionals’ find in their job, and the degree to which they feel successful in their jobs” (Conrad and Kellar-Guenther, 2006). It also measures the degree to which professionals feel supported by their colleagues. Research has shown that compassion satisfaction can help mitigate burnout and compassion fatigue.

It is evident that solicitors and barristers working in the area of child protection and welfare removals should have the clear training and supports needed to manage the emotionally charged and traumatic content of these cases. Support structures, including interdisciplinary structures, should be established that can enable legal practitioners to discuss these issues in a safe and confidential manner with their peers and/or supervisors.

Additionally, training in building resilience, coping mechanisms and

debriefing or processing traumatic content at the end of a case is required to manage stress and avoid burnout. This is something

that the IDEA project will be addressing in three interdisciplinary training sessions in Ireland during 2018. [E](#)

LOOK IT UP

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TREND SETTER

The EU's fifth AML/CFT directive addresses new trends and technologies.

Cormac Little gets technical with it

CORMAC LITTLE IS A PARTNER IN WILLIAM FRY AND A MEMBER OF THE LAW SOCIETY'S FATF AND AML TASK FORCE

'5AMLD' DOES NOT FULLY ADDRESS THE THREATS POSED BY SUCH CURRENCIES, IN THAT VIRTUAL CURRENCY TRADERS MAY CONTINUE TO OPERATE ANONYMOUSLY WITHOUT USING EXCHANGE PLATFORMS OR DIGITAL WALLET PROVIDERS

The EU's latest revision of the legal framework governing the use of the financial system to launder the proceeds of crime or to support terrorist organisations was formally adopted earlier this year – such legislation is commonly referred to as AML/CFT laws.

The new rules are contained in [EU Directive 2018/843](#) (amending [EU Directive 2015/849](#)) on the prevention or use of the financial system for the purposes of money laundering or terrorist financing (5AMLD). They focus on combating the use of new trends and technologies by criminals/terrorists. Ireland and other EU member states have until early 2020 to bring their respective national laws into line with the new legislation.

Money laundering and terrorist financing

Money laundering is the process by which the proceeds of crime are 'washed' through the financial system in an effort to disguise their true origin. Money laundering involves an act to conceal, transfer, or convert the proceeds of a profit-making crime such as theft, fraud, or drug trafficking.

On the other hand, terrorist financing is the collection of funds that may often be earned from entirely legitimate activities, for the purposes of causing death or serious bodily injury to civilians, while also intimidating a population and/or seeking to compel a government or an international organisation to

alter a particular policy. Money laundering and terrorist financing are both outlawed by the *Criminal Justice (Money Laundering and Terrorist Financing) Acts 2010 and 2013*.

Origins of 5AMLD

Given the constantly evolving nature of the use of the financial system for illicit purposes by criminals and terrorists, there is a need for regular reform of AML/CFT rules. 5AMLD must be seen in the context of its predecessor, [Directive 2015/849 \(4AMLD\)](#). The deadline for member states to transpose 4AMLD into national law was 26 June 2017.

However, in that two-year period between adoption and the deadline for implementation, two crucial events intervened. Firstly, the terrorist attacks on the Stade de France and various entertainment venues in central Paris in November 2015 occurred. The perpetrators had used anonymous prepaid gift cards to rent the motor vehicles required for these atrocities. In April 2016, the leaking of the so-called 'Panama Papers' to the German daily newspaper *Süddeutsche Zeitung* (which then shared this information with various other news organisations, including *The Irish Times*) demonstrated the scale of financial funnelling and offshore activity involving finances originating within the EU.

Accordingly, given these events, allied to ongoing innovation/technological developments

in the delivery of financial services, the European Commission quickly realised that elements of 4AMLD were already obsolete. The commission therefore proposed changes to this legislation before its deadline for implementation had even passed. That said, 5AMLD does not repeal 4AMLD; rather, the former proposes a series of amendments to the latter.

Main provisions of 5AMLD

5AMLD contains measures to address the use of recently developed financial instruments such as virtual currencies and prepaid cards. 5AMLD also updates the rules regarding the identification of the beneficial owners of companies and other corporates. In addition, the new directive makes various changes to the laws governing how the beneficial owners of trusts are identified.

5AMLD also contains a package of other miscellaneous measures, such as extending the list of designated entities/persons, increasing the powers of financial intelligence units (FIUs), and requiring member states to make the regime governing 'politically exposed persons' more transparent. 5AMLD also provides for enhanced due diligence for transactions involving high-risk countries outside the EU.

Virtual currency

5AMLD defines virtual currency (or cryptocurrency) as a digital representation of value that is not issued or guaranteed by a



P.C. SHUTTERSTOCK

central bank. Encryption techniques are used to regulate the generation of units of such currency and verify the transfer of funds. Virtual currencies are not necessarily attached to a legally established or fiat currency and do not have the legal status of money. Virtual currencies are, however, accepted as a means of exchange. Accordingly, virtual currency exchange platforms have emerged. These facilities allow customers to trade virtual currencies for fiat money. Such platforms grant access to virtual

currency in an online/digital wallet using a series of keys or passwords. (Like ordinary wallets, if you lose your passwords, you lose your virtual currency.)

5AMLD specifically recognises that the anonymity of virtual currencies allows for their potential use for money laundering and/or terrorist financing purposes. It thus includes measures to prevent such abuses. Accordingly, 5AMLD provides that virtual currency exchange platforms and custodian wallet providers become designated persons under

AML/CFT rules. This means that all virtual currency exchange platforms and custodian wallet providers must apply customer due diligence (CDD) measures (that is, identification and verification). In other words, these entities will be required to apply similar measures to banks and law firms when 'on-boarding' new customers. These service providers will also be required to monitor customer transactions and, if they have reasonable grounds to suspect money laundering or terrorist financing, make a sus-

IRELAND AND OTHER EU MEMBER STATES HAVE UNTIL EARLY 2020 TO BRING THEIR RESPECTIVE NATIONAL LAWS INTO LINE WITH THE NEW LEGISLATION



THESE SERVICE PROVIDERS WILL ALSO BE REQUIRED TO MONITOR CUSTOMER TRANSACTIONS AND, IF THEY HAVE REASONABLE GROUNDS TO SUSPECT MONEY LAUNDERING OR TERRORIST FINANCING, MAKE A SUSPICIOUS TRANSACTION REPORT TO THE RELEVANT ENFORCEMENT AUTHORITIES

picious transaction report to the relevant enforcement authorities (in Ireland, the gardaí or the Revenue Commissioners). Accordingly, 5AMLD will undoubtedly require exchange platforms and online wallet providers to revise their business strategies while also imposing significant compliance costs.

The effect of 5AMLD is that anonymous virtual currency holding and transfer into fiat currency will no longer be possible via EU-based exchange platforms and custodian online wallet providers. These measures will bring the regulation of virtual currency exchange platforms and custodian wallet providers within the EU in line with the United States, which has had similar requirements in place since 2013. That said, 5AMLD does not fully address the threats posed by such currencies, in that virtual currency traders may continue to operate anonymously without using exchange platforms or digital wallet providers – for example, by bartering between different cryptocurrencies. One would expect intra-virtual currency exchanges to be the subject of future AML/CFT legislation.

Prepaid cards

5AMLD specifically recognises that, while prepaid cards (such as Skrill or Swirl) have legitimate uses, such instruments may be used in financing terrorist attacks or their planning. Accordingly, 5AMLD reduces both the maximum monthly payment transaction limits and the maximum amounts under which designated persons are not obliged to apply certain CDD measures from €250 to €150.

Companies and other entities

5AMLD builds on the changes introduced by 4AMLD, which required corporate (and other

legal entities) to obtain and hold adequate, accurate and current information on their beneficial ownership. Importantly, 5AMLD has extended the deadline for establishing national/central registers of the beneficial ownership of corporates to 10 January 2020.

In addition, 5AMLD gives any member of the public (plus FIUs, enforcement bodies, and designated entities) access to the relevant central register. The accessible data should include the name, month, and year of birth, plus country of residence and nationality of the beneficial owner, in addition to details regarding beneficial interest held. Indeed, member states may also provide for access to further information, including the date of birth and/or contact details of the beneficial owner, provided data protection rules are not infringed. Member states may charge a fee for accessing the relevant information. However, this fee cannot go beyond the relevant administrative costs. 5AMLD also stipulates that the information held in the national register of beneficial ownership must remain available for between five to ten years after the relevant corporate entity has been struck off.

Moreover, member states must require designated persons and, provided it does not interfere with their statutory functions, the relevant enforcement authorities (such as the Central Bank of Ireland) to report any inconsistencies between the beneficial ownership information available to them and the beneficial ownership information held in the relevant central register.

Finally, access of the public to the information on the register of beneficial ownership may be curtailed if it would expose the

relevant owner to the risk of kidnapping, fraud, extortion, or other forms of crime, or if the relevant beneficial owner is a minor. In such circumstances, member states may prevent such access on a case-by-case basis. That said, this exemption decision may be challenged by means of judicial review.

Beneficial ownership of trusts

Similarly, 5AMLD revises the reforms contained in 4AMLD that oblige the trustees of any express trust to obtain and hold the requisite data regarding the beneficial ownership of a trust. Member states now have until 10 March 2020 to establish a national/central register of the beneficial ownership of trusts.

5AMLD will not only apply to express trusts *per se*. It will also apply to other types of legal arrangement that have a structure or function similar to trusts. Like its corporate counterpart, a member of the public (plus FIUs, enforcement authorities and designated persons) shall have access to the beneficial ownership of trusts register, provided he/she can demonstrate a 'legitimate interest'. 5AMLD requires member states to define this term. That said, such definitions should not be restricted to ongoing litigation or administrative proceedings. Moreover, 5AMLD stipulates that the relevant definition should also take account of the work of investigative journalists to uncover potential money laundering or terrorist financing. This is an obvious nod to the Panama Papers scandal referred to above.

Finally, similar requirements regarding the reporting of discrepancies in the central registers of the beneficial ownership of corporate entities will also apply to trusts. Moreover,



5AMLD also allows for information regarding the beneficial owners of trusts to be withheld where there are, among other things, potential security concerns.

And another thing


In addition to making custodian wallet providers and virtual currency exchange platforms come within the full scope of AML/CFT rules, 5AMLD also makes art traders/dealers (where the entire underlying transaction is worth at least €10,000) designated persons.

Moreover, FIUs (in Ireland, the Garda National Economic Crime Bureau) are given greater powers to seek information from any designated persons

for the purposes of AML/CFT enforcement. In addition, 5AMLD requires member states to issue lists indicating which posts qualify as 'prominent public functions' for the purposes of establishing whether a particular individual is a 'politically exposed person'.

Finally, when identifying high-risk third countries for AML/CFT purposes, the European Commission should take into account the timely availability to the relevant enforcement authorities in that jurisdiction of information on beneficial ownership. Moreover, designated persons will need to apply enhanced CDD to any customers involved in dealing with high-risk third countries.

Overall assessment

5AMLD is but a further step in the Sisyphean task of seeking to prevent the use of the financial system to launder the proceeds of crime. In general, member states have until 10 January 2020 to implement 5AMLD into national law. This means that Ireland is currently two steps back, in the sense that, despite a deadline of 26 June 2017, 4AMLD has not been transposed into national law. Given that the *Criminal Justice (Money Laundering and Terrorist Financing) Bill 2018* is currently making its way through the Oireachtas, one would hope, if only for efficiency's sake, that the final legislation reflects at least some of the changes made to 4AMLD by 5AMLD. 

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REPORTS OF THE LAW SOCIETY COUNCIL MEETINGS

8 JUNE 2018

Legal Services Regulation Act

The chairman of the LSRA Task Force, Paul Keane, reported that the Legal Services Regulatory Authority had published its strategic plan for 2018-2020, which included its vision: “To develop the LSRA into an efficient, effective and accountable regulatory body with the capacity to protect and promote the public interest and the interests of consumers of legal services, while encouraging an independent, strong, competitive legal profession with high standards of professionalism and integrity.”

The four core values of the LSRA were expressed as independence, consumer protection, innovation, and transparency and accountability. The plan elaborated on those core values and their strategic pri-

orities, each with goals, actions, key indicators and outputs, and indicative timelines.

In relation to the indicative timelines, Mr Keane noted that the Roll of Barristers was to be commenced in the second quarter of 2018 and was to be completed by the fourth quarter. The target for a ‘fully functioning complaints system’ was Q2 of 2019, with the introduction of regulations relating to legal partnerships by Q3 of 2018 and a register and regulations on LLPs by Q4 of 2018.

Solicitor education

A presentation was made to the Council on the report of the Future of Solicitor Education Review Group by its vice-chair Carol Plunkett, director of education TP Kennedy, and

deputy director of education Geoffrey Shannon. The report was produced as a response to the consultation process being conducted by the LSRA on legal education and training in Ireland.

Ms Plunkett outlined the recommendations of the review group in terms of access, the entrance examination, training contracts, the professional practice courses, a part-time model, physical resources, and a centre for teaching, development and innovation (see p11 of the *July Gazette*).

Following a lengthy discussion, the Council agreed that the report should be submitted to the LSRA, and also agreed that there should be a rolling programme of debate at the Council on legal education and training.

Crowe Howarth review

The Council noted the *Presidential eBulletin* to the profession in relation to the appointment of Crowe Howarth to conduct a review of the challenges and opportunities for sole practitioners and smaller practices.

The president asked Council members who fell within the categorisation to participate in the survey and to urge other colleagues to do likewise.

In addition, Crowe Howarth would also conduct a small-scale confidential client survey that would contain questions in relation to the services available from their solicitor, the reasons for choosing a local practitioner or small firm, and other areas of business that would be availed of by clients if provided by their solicitor.

13 JULY 2018

Motion: PII

“That this Council approves the Solicitors Acts 1954-2015 (Professional Indemnity Insurance) Regulations 2018.”

Proposed: Richard Hammond

Seconded: Barry McCarthy

Richard Hammond outlined a number of adjustments to the regulations, arising as a consequence of recent difficulties for insurers, including a requirement that, for an insolvency event to have occurred, it must be declared to be so by the PII Committee; a provision that all insurers would cover the Assigned Risks Pool in full, notwithstanding that an insurer left the market mid-year; scope for the possibility of a new insurer

entering the market mid-year where an insurer had failed; and clarification that premiums could be charged on a pro rata basis for the portion of the year for which the firm availed of the ARP.

Other amendments unrelated to insolvency included an obligation on insurers to provide very basic information to the committee in respect of arbitrations that occurred in relation to coverage disputes, without unduly compromising the privacy of the parties; changes in relation to interim relief; a requirement that a practice manager appointed under section 31 of the 1960 act would have a practising certificate; and clarification that the term ‘legal services’ included

working as a patent agent, a registered trademark agent, or a European trademark design attorney.

Legal Services Regulation Act

Paul Keane reported that the task force had approved a submission to the authority in respect of a statutory review of the legislation. The Council noted that the chair and CEO of the LSRA had recently attended before the Oireachtas Justice Committee, and their appearance was available to view online. The director general reported on a meeting between the LSRA’s consultants, Hook Tangaza, and the Society to discuss the Society’s submission in respect of education and training.

Crowe Horwath review

The president reported that there had been a 20% response rate to the survey issued by Crowe Horwath, with a reasonable level of response also to the client survey. He noted that six focus groups were being held in Dublin and throughout the country, and it was hoped that the report and recommendations would be available for discussion at the next Council meeting.

Council election dates 2018

As required by the bye-laws, the Council approved Monday 17 September 2018 as the final date for receipt of nominations for the Council election and Thursday 1 November 2018 as the close of poll date.



CONVEYANCING COMMITTEE

NPPR NEW BUILD

The *Local Government (Charges) Act 2009* imposed on owners of certain residential properties a liability to pay an annual charge (known as NPPR) to the local authority in whose area the property was located. The charge applied from July 2009 to March 2013 inclusive. Section 2(1) of the act defined 'residential property' as a building situated in the State used or suitable for use as a dwelling but does not include, per section 2(1)(b):

- A building that forms part of the trading stock of a business,
- From which, since its construction, no income has been derived, and
- Which has not, at any time

since its construction, been used as a dwelling.

In accordance with an earlier practice note, the committee recommended in cases where a new dwelling was sold that was not a residential property, for the reasons set out in section 2(1)(b) above, that the vendor should provide a statutory declaration confirming the position.

It has come to the attention of the committee that in many instances such a declaration was not obtained at the time of the first purchase of the property. In such circumstances, where on a second sale of that property such a statutory declaration is not

available, the committee is of the view that a declaration from the first purchaser of the property would be acceptable, provided the declarant is in a position to declare that the requirements of section 2(1)(b) have been complied with and is in a position to exhibit in the declaration documentary evidence, such as, for example, a building agreement, an assurance with a building covenant with confirmation of compliance therewith, evidence of first connection to an electricity provider, or other evidence corroborating that the property had not, prior to the first purchase, been used as a dwelling.

The committee is of the view

that, in the absence of evidence to the contrary that the building had not been used since construction as a dwelling, that it is reasonable to assume that no income had been derived from the property.

In addition to the foregoing, the declaration must deal with the issue that the building formed part of the trading stock of a business. This should not be a practical problem if the dwelling is in a building estate where there is a booklet of title with an extract from the memorandum of association of the original vendor/developer, but care would be needed in the case of a one-off house.

CONVEYANCING COMMITTEE

FAMILY LAW DECLARATIONS AND REGISTRATION OF TITLE

The Property Registration Authority (PRA) has recently amended its practice direction to its staff entitled 'Family home and family law acts' (www.prai.ie/family-home-and-family-law-acts), directing them to no longer accept lodgement of *Family Home Protection Act* or *Family Law Acts* declarations (referred to here as 'family law declarations').

It has been confirmed by the PRA that any dealings lodged containing such declarations will not be rejected, but the family law declarations will be returned by the PRA to the lodging party.

The purpose of this practice note is to:

- Firstly, alert the profession to the fact that the PRA is no longer accepting lodgement

of family law declarations and is returning them,

- Secondly, that solicitors should continue to obtain these declarations, and
- Thirdly, let the profession know that the committee is disputing this change in policy with the PRA, with a view to persuading it to change its practice in this regard, as the committee is of the view that family law declarations are a necessary part of title registration.

Retention of title documents

While the PRA was still accepting lodgement of the family law declarations, the profession could be assured that the necessary declarations would be to hand if stored in the Land Registry, should it become necessary to dispute any claim

on property as might arise under family law.

With the PRA now refusing to accept lodgement of these declarations, there is a fear that they may become separated from the main title deeds and become lost as a result.

Family law declarations

The committee's strong recommendation is that solicitors acting for purchasers and mortgagees should:

- Continue to obtain family law declarations in the recommended format, as before, and
- Continue to lodge them with the PRA as a necessary part of title registration, and
- If the PRA decides to return them as not being necessary for registration, keep them with the rest of the client's

title documentation relating to the property (or, if there is a loan involved, lodge them with the bank along with the rest of the client's title deeds) so that they are passed on to new purchasers in due course.

The Society's standard *Objections and Requisitions on Title* will continue to raise requisitions on title in relation to the *Family Home Protection Act 1976*, the *Family Law Act 1995* and the *Family Law (Divorce) Act 1996*, as certain family law issues continue to be a matter of title and title registration, and will continue to seek these family law declarations as corroborating evidence of the veracity of the replies provided by vendors.



REGULATION OF PRACTICE COMMITTEE

LONG-OUTSTANDING CLIENT LEDGER BALANCES

The Regulation of Practice Committee, which monitors compliance with the *Solicitors Accounts Regulations 2014*, wishes to draw attention to the issue of long-outstanding balances on the client ledger. This is an issue that the Regulation of Practice Committee regularly encounters in the course of discharging its statutory duties. In general, long-outstanding client ledger balances relate to moneys to which the solicitor is beneficially entitled or moneys held for or on behalf of clients.

Beneficially entitled

Under regulation 5 of the *Solicitors Accounts Regulations*, solicitors shall not hold moneys to which a solicitor is beneficially entitled in a client account for longer than three months. Accordingly, moneys held in the client account in respect of fees and disbursed outlays, moneys held in the client account in respect of completed matters that would be properly available to be applied in satisfaction of professional fees and outlays if the solicitor had furnished a bill of costs to the client, or moneys held in the client account in respect of a client matter to the

extent that the solicitor is beneficially entitled to a share of those moneys, all have to be withdrawn from the client account within a period of three months.

The Regulation of Practice Committee has a concern that some solicitors leave moneys to which the solicitor is beneficially entitled in the client account for longer than the three months permitted by the regulations. This is a breach of the regulations. When such matters come to the attention of the Regulation of Practice Committee, solicitors are required to immediately withdraw these moneys from the client account. Significant breaches of the regulations can lead to a referral to the Solicitors Disciplinary Tribunal.

Clients' moneys

However, in addition to moneys to which the solicitor is beneficially entitled remaining in the client account, the existence of long-outstanding balances on the client ledger also gives rise to concern that solicitors are holding clients' moneys in the client account in respect of uncompleted client matters. It is often the case that long-outstanding

balances on the client ledger represent stamp duty, registration fees, counsel's fees, miscellaneous undisbursed outlay, or moneys due directly to clients.

In probate matters, many of the balances on the client ledger relate to unpaid beneficiaries or unpaid capital acquisitions tax and capital gains taxes. In many cases, the existence of long-outstanding balances on the client ledger is indicative of solicitors not completing the work they have been engaged to do by their clients. This inevitably leads to complaints from clients. Delays in stamping deeds are of particular concern. Not only does the failure to stamp the deed on time harm the interests of consumers of legal services, but it can also increase the financial liabilities of the solicitor. The Regulation of Practice Committee can refer instances of long-outstanding balances to the Solicitors Disciplinary Tribunal on the grounds of misconduct disclosed by the accounting records.

Review client ledger balances

The Regulation of Practice Committee requires that solicitors should review the client led-

ger balances and long-outstanding balances should be identified, investigated and cleared as soon as possible. Thereafter, solicitors should put in place procedures for the regular review of client ledger balances with the objective of identifying, investigating, and clearing long-outstanding client ledger balances.

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COMPLAINTS AND CLIENT RELATIONS COMMITTEE

APPLICATIONS TO COURT OF APPEAL FOR EXTENSION OF TIME TO APPEAL

The Law Society's Regulation Department has received correspondence from the Court of Appeal drawing its attention to serious concerns expressed by that court about certain averments appearing in affidavits grounding applications to extend the time to appeal.

The court noted the use of

standard template language in such affidavits and concluded that these affidavits were being drafted without regard as to whether or not they contained falsehoods, particularly in relation to allegations made by clients that they had been advised by their former solicitors that they could not appeal the sentence imposed on them.

The Complaints and Client Relations Committee wishes to draw practitioners' attention to their duty as a solicitor, when preparing affidavits for execution by their clients, to ensure to the best of their ability that the contents of the affidavit are true and correct. Failure to do so may become a disciplinary matter.



SOCIAL MEDIA AND THE SOLICITORS (ADVERTISING) REGULATIONS 2002

This notice is intended as general guidance in relation to the subject matter and does not constitute a definitive statement of law. Reference to a solicitor includes a reference to a firm of solicitors in this context.

Although the *Solicitors (Advertising) Regulations 2002* make no explicit reference to social media, the definition of ‘advertisement’ is inclusive of both social media and all other online advertising platforms: “‘advertisement’ means any communication (whether oral or in written or other visual form and whether produced by electronic or other means) which is intended to publicise or otherwise promote a solicitor in relation to the solicitor’s practice”.

Such a definition therefore encompasses all forms of new online media, for example, Facebook, Twitter and Instagram and, as such, the same care needs to be taken to comply with the regulations when publishing advertisements to any and all online platforms.

The Law Society enforces the regulations through the Advertising Regulations Division of the Regulation of Practice Committee. The regulations are interpreted and applied by the Society in such a way that, while not imposing a ban on advertising, they are robust and clearly delineated, thereby upholding the three-pronged purpose of the regulations:

- To preserve the reputation of

the profession,

- To protect the public interest,
- To ensure that a level playing field is maintained across the profession.

In due course, section 218 of the *Legal Services Regulation Act 2015* will remove the involvement of the Society in regulating advertising. However, practitioners should note that section 218(4) echoes the spirit and intention of the existing regulations, insofar as restrictions on the advertising of legal services may be made when they are necessary for:

- The protection of the independence, dignity, and integrity of the legal profession,
- An overriding reason relating to the public interest, and are

- Non-discriminatory and proportionate.

As section 218 has yet to be given a commencement date, the Society’s regulations represent current law and, as such, continue to be enforced rigorously by the Society.

If a solicitor is unsure as to whether an advertisement is compliant with the regulations, it can be submitted for review to the Society’s vetting service in advance of publication.

Eamonn Maguire is the Society’s advertising regulations executive and is contactable at 01 672 4800 or e.maguire@lawsociety.ie.

John Elliot, Registrar of Solicitors and Director of Regulation

BRIEFING | GUIDANCE NOTE

TAXATION COMMITTEE

STAMP DUTY REPAYMENT CLAIMS PURSUANT TO SECTION 83D

The electronic claim system pursuant to section 83D of the *Stamp Duties Consolidation Act 1999* is live on ROS and ‘My Account’. The section, introduced in the *Finance Act 2017*, provides for a stamp-duty refund scheme where land that is chargeable at the 6% non-residential rate of stamp duty is subsequently developed for residential purposes. The claim is submitted under the ‘e-repayment claim’ section of ROS.

The scheme applies to both one-off houses as well as to larger housing developments.

The accountable person can lodge the claim themselves using ‘My Account’ or the solicitor can lodge the claim on their behalf.

In the latter case, refunds are then made to the solicitor’s account as filer.


The system requires the solicitor to make the statutory declaration when acting as filer. The Taxation Committee is of the view that the accountable person(s) is the most appropriate person to make the statutory declaration and is raising the issue with Revenue.

If there is more than one accountable person, then the consent of the other accountable person(s) are required in relation to claims filed. Completion of a consent form issued by Revenue is required.

A number of documents are

required to make the claim as set out in the *Stamp Duty Manual*, but solicitors should particularly note that a certified copy of the deed and the stamp certificate is required, and therefore a copy of these items should be retained on the solicitor’s file if not otherwise

retained. Further information is available in part 7 of the manual, which has been updated.

Any feedback from members in relation to the operation of the system is welcomed by the committee; email: r.hession@lawsociety.ie. 

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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 Sean Foy, a solicitor practising as Foy Ryan & Company, Solicitors, at Altamount Street, Westport, Co Mayo, and as Foy Murphy & Company, Solicitors, at Glebe Street, Ballinrobe, Co Mayo, and in the matter of the *Solicitors Acts 1954-2015* [4668/DT67/14]

Law Society of Ireland (applicant)

Sean Foy (respondent solicitor)

On 22 March 2018, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he failed to respond to the Society's correspondence and, in particular, the Society's letters of 11 October 2012, 2 November 2012, 4 January 2013, 22 January 2013, and 22 May 2013 in a timely manner, within the time prescribed in that letter, or at all.

The tribunal ordered that the respondent solicitor:

- 1) Stand censured,
- 2) Pay a sum of €5,000 to the compensation fund,
- 3) Pay the sum of €2,337 as a contribution towards the whole of the costs of the Law Society of Ireland.

In the matter of Denis Kelleher, a solicitor formerly practising as Denis Kelleher & Co, Solicitors, 70 Main Street, Midleton, Co Cork, and in the matter of the *Solicitors Acts 1954-2015* [2017/DT18]

Law Society of Ireland (applicant)

Denis Kelleher (respondent solicitor)

On 19 June 2018, the tribunal found the respondent solicitor guilty of misconduct in that he failed to comply expeditiously, within a reasonable time, or at all with an undertaking given by him dated 20 June 2008 to Allied Irish Banks plc and AIB Mortgage Bank over a property in Midleton, Co Cork, on behalf of his named client.

The tribunal ordered that the respondent solicitor:

- 1) Stand advised and admonished,
- 2) Pay the sum of €2,500 to the compensation fund,
- 3) Pay the sum of €1,267 as a contribution towards the costs of the Law Society of Ireland or of any person appearing before them.

In the matter of Denis Kelleher, a solicitor formerly practising as Denis Kelleher & Co, Solicitors, 70 Main Street, Midleton, Co Cork, and in the matter of the *Solicitors Acts 1954-2015* [6606/DT82/16]

Law Society of Ireland (applicant)

Denis Kelleher (respondent solicitor)

On 27 June 2018, the tribunal found the respondent solicitor guilty of misconduct in that he:

- 1) Failed to comply expeditiously, within a reasonable time, or at all with an undertaking given by him, dated 16 July 2004, to the Governor and Company of Bank of Ireland over property at Co Cork on behalf of a

NOTICES: THE HIGH COURT

In the matter of Patrick Enright, a solicitor formerly practising as Patrick Enright & Co, Solicitors, Tralee Road, Castleisland, Co Kerry, and in the matter of the *Solicitors Acts 1954-2015* [2017 no 52 SA]

Patrick Enright (applicant)

Law Society of Ireland (respondent)

Take notice that, by order of the President of the High Court made on 31 May 2018, it is ordered that:

- 1) The name of the applicant, Patrick Enright of Carhoo, Dunquin and Glenlarhan, Castleisland, Co Kerry, be restored to the Roll of Solicitors,
- 2) The applicant pay the costs and outlay of the respondent, measured in the sum of €4,660 and the execution and registration on foot of said costs order be stayed for six months from the date hereof.

In the matter of Imelda Leahy, a solicitor formerly practising as Imelda Leahy & Company, Solicitors, Kilree Street, Bagenalstown, Co Carlow, and in the matter of the *Solicitors Acts 1954-2015* [2018 no 66 SA]

Take notice that, by order of the President of the High Court made on 23 July 2018, it was ordered that the name of Imelda Leahy be struck from the Roll of Solicitors.

John Elliot, Registrar of Solicitors, Law Society of Ireland August 2018

- named client and the respondent solicitor,
 - 2) Failed to reply adequately or at all to the complainant's correspondence and, in particular, letters dated 5 August 2004, 3 November 2004, 8 December 2005, 11 July 2007, 12 December 2008, 16 April 2009, 19 May 2009, 26 August 2009, 30 September 2009, 1 December 2009, 8 February 2010, 6 June 2011, 11 July 2011, and 18 January 2012,
 - 3) Failed to reply adequately or at all to the Society's correspondence and, in particular, letters dated 17 May 2013, 13 June 2013, 3 July 2013, 17 July 2013, 21 August 2013, 4 September 2013, 11 October 2013, 5 December 2013, 19 February 2014, 5 June 2014, 24 November 2014, 9 Dec-
 - ember 2014, 5 January 2015, and 6 February 2015,
 - 4) Failed to comply with the direction of the Complaints and Client Relations Committee made on 13 October 2015 to furnish a comprehensive update on or before 27 November 2015.
- The tribunal ordered that the respondent solicitor:
- 1) Stand advised and admonished,
 - 2) Pay the sum of €500 to the compensation fund,
 - 3) Pay the sum of €1,000 to the Law Society of Ireland in respect of its costs.
- In the matter of Denis Kelleher, a solicitor formerly practising as Denis Kelleher & Co, Solicitors, 70 Main Street, Midleton, Co Cork, and in the**



matter of the *Solicitors Acts 1954-2015* [6606/DT83/16]

Law Society of Ireland

(*applicant*)

Denis Kelleher (respondent solicitor)

On 27 June 2018, the tribunal found the respondent solicitor guilty of misconduct in that he:

- 1) Failed to register a property for a named client at Midleton, Co Cork, with the Property Registration Authority expeditiously, within a reasonable time, or at all,
- 2) Failed to comply with the direction of the Complaints and Client Relations Committee made at its meeting on 29 April 2014 to furnish the Society with

an update every four weeks,

- 3) Failed to attend a meeting of the Complaints and Client Relations Committee on 16 September 2014, despite being required to do so.

The tribunal ordered that the respondent solicitor:

- 1) Stand advised and admonished,
- 2) Pay the sum of €500 to the compensation fund,
- 3) Pay the sum of €1,500 to the Law Society of Ireland in respect of its costs.

In the matter of Denis Kelleher, a solicitor formerly practising as Denis Kelleher & Co, Solicitors, 70 Main Street,

Midleton, Co Cork, and in the matter of the *Solicitors Acts 1954-2015* [6606/DT84/16]

Law Society of Ireland

(*applicant*)

Denis Kelleher (respondent solicitor)


On 27 June 2018, the tribunal found the respondent solicitor guilty of misconduct in that he:

- 1) Failed to reply adequately or at all to the complainant's correspondence and, in particular, letters dated 6 November 2012, 2 January 2013, and 3 April 2013 (as amended),
- 2) Failed to reply adequately or at all to the Society's correspondence and, in particular, letters dated 17 May 2013,

7 June 2013, 1 August 2013, 19 February 2014, 5 June 2014, 24 November 2014, and 9 December 2014,

- 3) Failed to comply with the direction of the Complaints and Client Relations Committee made on 13 October 2015 to furnish a comprehensive update on or before 27 November 2015.

The tribunal ordered that the respondent solicitor:

- 1) Stand advised and admonished,
- 2) Pay the sum of €500 to the compensation fund,
- 3) Pay the sum of €1,000 to the Law Society of Ireland in respect of its costs. 

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RATES

PROFESSIONAL NOTICE RATES

RATES IN THE PROFESSIONAL NOTICES SECTION ARE AS FOLLOWS:

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

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ALL NOTICES MUST BE PAID FOR PRIOR TO PUBLICATION. CHEQUES SHOULD BE MADE PAYABLE TO **LAW SOCIETY OF IRELAND.** Send your small advert details, with payment, to: *Gazette* Office, Blackhall Place, Dublin 7, tel: 01 672 4828, or email: gazetestaff@lawsociety.ie. **Deadline for October 2018 *Gazette*: 14 September 2018.** For further information, contact the *Gazette* office on tel: 01 672 4828.

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

WILLS

Bennett, Bridget Maria (deceased), late of 44 Chestnut Drive, Mullingar, Westmeath, and formerly of 36 Green Court, MacKenzie Close, Allesley Village, Coventry, CV5 9NY, United Kingdom, who died on 7 November 2013. Would any person having knowledge of the whereabouts of any will executed by the said deceased please contact Kelly Caulfield Shaw and Company, Solicitors, 1 Chapterhouse, Friars Mill Road, Mullingar, Westmeath; DX 35005 Mullingar; tel: 044 934 8412, email: aisling.penrose@kcs.ie

Cleary, Josephine (otherwise Hanna) (deceased), late of Ailesbury Nursing Home, 58 Park Avenue, Dublin 4, who died on 6 December 2015. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Elizabeth Howard & Co, Solicitors, Ballyowen Shopping Centre, Ballyowen, Lucan, Co Dublin; tel: 01 610 5185, email: info@elizabethhoward.ie

Connolly, James Campbell (also known as JC Connolly) (deceased), late of Parkhurst, Johannesburg, South Africa.

Would any person having knowledge of a will made by the above-named deceased, who died on 6 July 2015, please contact Fitzsimons Redmond Solicitors, 6 Clanwilliam Terrace, Grand Canal Quay, Dublin 2, by post or tel: 01 676 3257, email: lisa@fitzsimonsredmond.ie

Cunnane, John (deceased), late of 135 Herberton Road, Rialto, Dublin 8, who died on 27 October 2017. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Peig Lynch, VP Shields, Solicitors, Westbridge, Loughrea, Co Galway; DX 86001 Loughrea; tel: 091 841 044, email: peig@vpshields.ie

Egan, Anne (or se Annie Teresa Egan) (deceased), late of 'Fatima', 66 Grange Road, Rathfarnham, Dublin 14, who died on 29 June 2017. Would any person having knowledge of the whereabouts of any will made or purported to have been made by the above-named deceased, or if any firm is holding same, please contact P O'Connor & Son, Solicitors, Swinford, Co Mayo; tel: 094 925 1333, email: law@poconsol.ie

Ennis, Elizabeth (née Mulhall) (deceased), late of 14 Derry Drive, Tinahely, Co Wicklow, who died on 2 August 2018. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Pauline O'Toole, solicitor, Main Street, Carnew, Co Wicklow; tel: 053 942 3596, email: info@otoolesolicitors.com

Fitzpatrick, John (deceased), late of 2271 Maryville, Kildare, Co Kildare, who died on 3 October 2017 at Naas General Hospital, Naas, Co Kildare. Would any person having knowledge or possession of the whereabouts of any will made or purported to have been made by the above-named deceased, or if any firm is holding same, please contact Patrick J Reidy, Reidy Stafford, Solicitors, Market Square, Kilcullen, Co Kildare; tel: 045 432 188, email: pjreidy@reidystafford.com

Gartland, Liam (deceased), who died on 20 February 2017 and late of 34 Seabury Park, Malahide, Co Dublin; 50 South William Street, Dublin 2; and 50 Seabrook, Rush, Co Dublin. Would any person having knowledge of the whereabouts

of any will made by the above-named deceased please contact TMR Fitzsimons Solicitors, 44 Laurence Street, Drogheda, Co Louth; tel: 041 984 3534, email: reception@tmrfitzsimons.ie

Grogan, Anne (Nancy) (deceased), late of 5 Heathfield, Monkstown, Co Dublin who died at Beech Tree Nursing Home, Oldtown, Co Dublin, on 6 March 2017. Would any person having knowledge of the whereabouts of a will made by the above-named deceased please contact John Dunne & Co, Solicitors, 61/63 Dame Street, Dublin 2; tel: 01 679 2075, email: john.dunne.solicitor@gmail.com

Hughes, Peter (deceased), late of Paristown, Clonmelon, Navan, in the county of Meath. Would any person having knowledge of a will made by the above-named deceased, who died on 1 April 2018, please contact Ensor O'Connor, Solicitors, 4 Court Street, Enniscorthy, in the county of Wexford; tel: 053 923 5611, email: info@ensoroconnor.ie

Liguori, Luca (deceased), late of 35 St Kieran's Crescent, Kilkenny, who died on 29 December 2015. Would any person having knowledge of the whereabouts of any will executed by the said deceased please contact Emer Foley, Reidy & Foley Solicitors, Parliament House, Parliament Street, Kilkenny; tel: 056 776 5056, fax: 056 776 3697, email: efoley@reidyandfoley.com

MacCarthy, Kathleen (deceased), late of MacCarthy's, The Square, Castletownbere, Co Cork (formerly of 13 Grosvenor Road, Northwood, Middlesex, England), who died on 21 March 2013. Would any person having knowledge of the whereabouts of the will made or purported to be made by the above-named deceased, or if any firm is holding same, please contact Des Lynch, O'Flynn Exhams, Solici-



tors, 58 South Mall, Cork; tel: 021 427 7788 or email: dl@ofx.ie

McEniry, John (deceased), late of 33 Ravensdale Road, Mahon, Cork. Would any person having any knowledge of a will made by the above-named deceased, who died on 30 April 2008, please contact Fiona Twomey, Fiona Twomey Solicitors, 3 Eastgate Village, Little Island, Co Cork; DX 189 001; tel: 021 435 5405, fax: 021 429 7841, email: reception@fionatwomey.ie

Murphy, Mark (deceased), late of Kilmaine, Co Mayo (Tuam Road, Kilmaine Village, Co Mayo). Would any person having knowledge of any will made by the above-named deceased, who died on 17 June 2018, please contact Geraldine Dooley, solicitor, c/o Catherine Murphy & Co, Solicitors, Main Street, Headford, Co Galway; tel: 093 36030, fax: 093 36031, email: gdooley@cmurphysol.com

O'Dwyer, Breda (deceased), late of Bailey House Nursing Home, Killenaule, Co Tipperary, and formerly of 1 The Square, Mullinahone, Co Tipperary, and of Ballyvadlea, Mullinahone, Co Tipperary, who died on 14 January 2018. Would any person having knowledge of the whereabouts of any will executed by the said deceased please contact Emer Foley, Reidy & Foley Solicitors, Parliament House, Parliament Street, Kilkenny; telephone: 056 776 5056, fax: 056 776 3697, email: efoley@reidyandfoley.com

O'Malley, Patrick (deceased), formerly of Cornmarket, Ballinrobe, Co Mayo, who died on 20 June 2017. Would any person having knowledge of the whereabouts of any will made by the above-named deceased or if any firm is holding same, please contact Teresa Mullan, solicitor, Bowgate Street, Ballinrobe, Co Mayo; tel: 094 954 1800, email: solicitorm@eircom.net

O'Shea, David (deceased), late of Hillside Cottage, Hillside Road, Greystones, Co Wicklow (formerly of 2 James Square, Tower Street, Cork), who died on 22 June 2018. Would any person having knowledge of the whereabouts of any will made or purported to have been made by the above-named deceased, or if any firm is holding same, please contact Rosemary Scallan & Co, Solicitors, Menlo, Church Road, Greystones, Co Wicklow; tel: 01 287 2905, email: andrew@rosemaryscallan.ie

Redmond, Margaret (deceased), late of TLC Nursing Home, Maynooth, Co Kildare, and formerly of 157 Cherryfield Road, Walkinstown, Dublin 12. Would any person having knowledge of the whereabouts of any will executed by the above-named deceased please contact C Grogan and Co, Solicitors, 3 Isoldes Tower, Essex Quay, Dublin 8; tel: 01 872 6066, email: dublin@cgrogansolicitors.com

Treacy, Mary (deceased), late of 30 Calderwood Avenue, Drumcondra, Dublin 9, who died on 13 January 2018. Would any person having knowledge of the whereabouts of any will made by the above-named deceased on or around 14 July 1989, or any other will made by her, please contact Gartlan Winters, Solicitors (ref: Peter Gartlan), 56 Lower Dorset Street, Dublin 1; tel: 01 855 7434, fax: 01 855 1075, email: info@gartlanwinters.ie

Ward, James Patrick (deceased), late of Parkview Nursing Home, 1-3 Eversley Road, London SE19 3PY, formerly of no 3 Marks House, Elizabeth Estate, Phelp Street, London SE17 2PP, and formerly of Cattán, Annaghmore, Co Leitrim, Ireland. Would any person having knowledge of a will made by the above-named deceased, who died on 27 January 2017, please contact Messrs G Jones & Co, Solicitors, Main Street, Car-

rickmacross, Co Monaghan; tel: 042 966 1822, email: jdoherty@gjones.ie

Weldon, Kenneth (otherwise Ken) (deceased), late of 3 Richmond Park, Newline Road, Wexford and formerly of 1 Boland's Cottages, East Wall, Dublin 3; 120 Charlemont, Griffith Avenue, Dublin 9; and 1 The Rock's, Lower Abbey Street, Cahir, who died on 15 June 2018. Would any person having knowledge of the whereabouts of a will made by the above-named deceased please contact Catherine Stack, solicitor, Stone Solicitors, The Bull Ring, Wexford; tel 053 914 6144, email: cstack@stonelaw.ie

TITLE DEEDS

In the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978

Take notice that any person having any interest in the freehold estate of or any superior or intermediate interest in the premises known as Carrigdangan, Guileen, Whitegate, Co Cork, being that part of the lands of Glanturkin, with the dwellinghouse erected thereon and the appurtenances thereto, situate in the barony of Imokilly and county of Cork, being the entire premises comprised and demised by indenture dated 1 March 1924, made between Mary Ann Mahony of the first part, Katherine Cunningham of the second part, Ellen Lynch of the third part, and Thomas Revatto of the fourth part, held as tenant from year to year from Henry Smyth, esquire of Finure, at the yearly rent of £1.15.0, should give notice to the undersigned solicitors.

Take notice that the applicants, Kieran Stone and Bernadette Stone, intend to apply to the county registrar for the county of Cork for acquisition of the freehold interests and all intermediate interest in the above-mentioned property, and any party asserting that they hold an interest superior to the

applicants in the aforesaid property are called upon to furnish evidence of title to same to the below-named solicitors within 21 days from the date hereof.

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

Date: 7 September 2018

Signed: James A Sberidan & Co (solicitors for the applicants), The Mall, Riverside Way, Middleton, Co Cork

In the matter of the Landlord and Tenant Acts 1967-2005 and in the matter of Landlord and Tenant (Ground Rents) (No 2) Act 1978 and in the matter of an application by Robin Roring

Any person having an interest in the freehold estate or any intermediate interest in the property known as 3 Redclyffe, Western Road, Cork, held pursuant to the indenture of lease made on 18 May 1893 between Anne Perrott and Richard Perrott of the first part and Samuel Hill of the other part, which lands are described as "all that and those part of the lands commonly called and known as Rough Marsh, situate, lying and being between Western Road and Mardyke Walk in the parish of St Fin Barres, partly in the city of Cork and partly in the barony of Cork, bounded on the north by the Dyke Walk, on the south by the Western Road East by the dwellinghouse and grounds called Hawthorn (in possession of the lessor Anne Perrott), and on the west by the buildings and ground of Fairy Lawn, and containing the number of feet and laid down figured and described and coloured pink



in the map” for a term of 800 years from 24 June 1892, subject to the yearly rent of IR£30 thereby reserved.

Take notice that Robin Roring intends to submit an application to the county registrar for the county of Cork for the acquisition of the freehold interest and all intermediate interest in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid property is called upon to furnish evidence of title to the aforesaid property to the below named within 21 days of this notice.

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

Date: 7 September 2018

Signed: Taylor Solicitors (solicitors for the applicant), Unit 3A River House, Blackpool Retail Park, Cork

In the matter of the Landlord and Tenant Acts 1967-2005 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978 and in the matter of the property at the rear of Main Street, Roscommon, in the county of Roscommon, and upon an application being made by Shane Fleming

Take notice that any person having any interest in the freehold estate or any intermediate interests in the following property: all that and those the property and premises situate on the north side of Chapel Lane, on the east side of Main Street in the town, parish and county of Roscommon and barony of Ballintubber South, the subject matter of a lease dated 9 February 1949

between Nora Dooley of the one part and James O’Reilly of the other part, as is now in the possession of the applicant for the residue unexpired of the term of 99 years from 1 May 1943 and subject to the covenants and conditions therein contained and subject to the apportioned yearly rent of £0.25p in the deed dated 29 January 1943 and the new lease dated 9 February 1949, and all that and those the property situate on the north side of Chapel Lane and the east side of Main Street in the town, parish and county of Roscommon and barony of Ballintubber South, as is now in the possession of the applicants for the residue unexpired of the term of 99 years from 1 May 1943 and subject to the covenants and conditions therein contained, and subject to the apportioned rent of £2.25 in the lease dated 29 January 1943 between Mary Teresa McDonnell of the one part and James O’Reilly of the other part and the new lease dated 9 February 1949 between Mary Teresa McDonnell of the one part and James O’Reilly of the other part.

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

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

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are unknown or unascertained.

Date: 7 September 2018

Signed: Mahon Sweeney (solicitors for the applicants), Main Street, Roscommon

In the matter of the Landlord and Tenant Acts 1967-2005 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978: an application by Evelyn McKenna and Mary McKenna in respect of property known as 16 Newtown Park, Blackrock, Co Dublin

Take notice any person having an interest in the freehold estate or any intermediate interest in the property now known as 16 Newtown Park, Blackrock, Co Dublin, situate in the townland of Stillorgan Park and the barony of Rathdown in the county of Dublin, and held pursuant to an indenture of lease made on 9 September 1966 between Maria M Moore of the one part and David O’Connor of the other part for a term of 87 years from 29 September 1962 in consideration of IR£350, and subject to the yearly rent of IR£5 thereby reserved.

Take notice that Evelyn McKenna and Mary McKenna, being the parties entitled to the lessee’s interest in the said lease as respects the said premises, intend to submit an application to the county registrar for the county of Dublin for the acquisition of the freehold and any intermediate interest in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid property is called upon to furnish evidence of title

to the aforesaid property to the below named within 21 days of this notice.

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

Date: 7 September 2018

Signed: Willitt Solicitors (solicitors for the applicants), of 26 Upper Pembroke Street, Dublin 2

In the matter of the Landlord and Tenant Acts 1967-1994 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978 and in the matter of premises at 116 known as 114 Lower Rathmines Road, Dublin 6: an application by Joan Young

Take notice any person having any interest in the freehold estate of or superior interest in the following premises: all that and those the property known as 116 and 114 Lower Rathmines Road, in the parish of Saint Peter, barony of the Uppercross, and formerly in the county but now in the city of Dublin, held under an indenture of lease dated 25 October 1955 made between the Right Honourable Anthony



Windham Normand, Earl of Meath, of the one part, and Maurice Tarlo of the other part for the term of 99 years from 25 March 1955 and subject to the yearly rent of £9 (old currency).

Take notice that the applicant, Joan Young, being the person entitled under sections 9 and 10 of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* intends to submit an application to the county registrar for the county/city of Dublin for the acquisition of the freehold interest and any intermediate interests in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid premises or any of them are called upon to furnish evidence of title to the aforementioned premises to the below named within 21 days from the date of this notice.

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

Dated: 7 September 2018

Signed: Jordan Law (solicitors for the applicant), 130 Leinster Road, Rathmines, Dublin 6

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978*: an application by **James J Walsh, Kevin Walsh and Brendan Walsh**

Take notice that any person having an interest in the freehold estate of the following property: 4/5 The Hill, Stillorgan, Co Dublin, held under an indenture of lease made on 24 September 1965 between John Francis Cullen and Margaret Mary Utley of the one part and Gerard Christopher Pearse of the other part for a term of 99 years from 29 September 1963, subject to the yearly rent as therein.

Take notice that James J Walsh, Kevin Walsh and Brendan Walsh, as owners, intend to submit an application to the county registrar for the county of Dublin for the acquisition of the freehold interest in the aforesaid premises, and any party asserting that they hold a superior interest in the aforesaid premises is called upon to furnish evidence of title to the aforesaid premises to the below named within 21 days from the date of this notice.

In default of any such notice being received, the applicants intend to proceed with the appli-

cation before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the county of Dublin for directions as may be appropriate on the basis that the persons beneficially entitled to the superior interest including the freehold reversion in the aforesaid premises are unknown or unascertained.

Date: 7 September 2018

Signed: Kelly Kennedy & Co (solicitors for the applicants), 22 Upper Mount Street Dublin 2

In the matter of the *Landlord and Tenant (Amendment) Act 1980* and in the matter of the premises known as **The Laurence Inn, Drogheda, Co Louth: an application by **James Carter****

Take notice that any person having a superior interest in the following property: the rear portion of the licensed premises known as 'The Laurence Inn', 52 Laurence Street, Drogheda, Co Louth, backing onto Batchelor's Lane, being the land demised by a lease dated 2 November 1899 made between Judith Gernon of the one part and James Dolan of the other part from 1 May 1899 for term of 99 years, subject to the yearly rent of £4, should give notice of their interest to the undersigned solicitors.

Take notice that James Carter

intends to submit an application to the county registrar for the county of Dundalk for a reversionary lease in the aforesaid property, and any party asserting that they hold an interest therein is called upon to furnish evidence of their title to the undersigned solicitors within 21 days from the date of this notice.

In default of any such notice of interest being received, James Carter intends to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the county of Dundalk or such Circuit Court judge as may be sitting for such directions as may be appropriate on the basis that the person or persons beneficially entitled to all or any of the superior interests in the above property are unknown or unascertained.

Date: 7 September 2018

Signed: AMOSS Solicitors, Warrington House, Mount Street Crescent, Dublin 2

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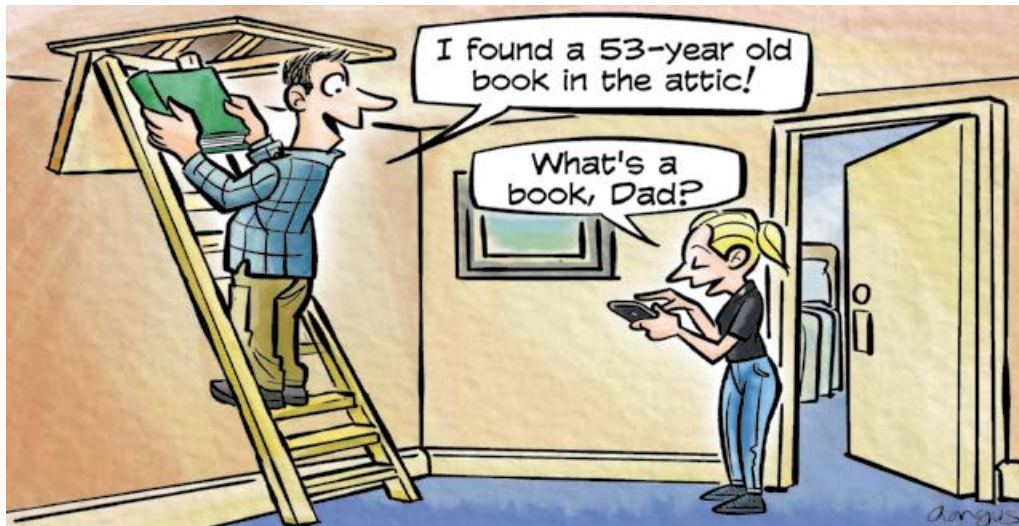
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NE ULTRA CREPIDAM JUDICARET

FINE AND DANDY OVER FIVE DECADES



Tipperary library has had a book returned to it – 19,433 days overdue (that’s 53 years), according to the *Irish Examiner*.

The library posted a tweet highlighting the return of the book, *Father Theobald Mathew* (by Rev Patrick Rogers), origi-

nally published in 1943. It had been overdue since 30 May 1965.

The fine racked up for the book’s late return amounted to €971.65 – the library service joked that it would take €950, because they are “sound like that”.

Librarian John O’Gorman said staff had been unaware the book had been missing, as it had been taken out under an old system. “Somebody found it while they were clearing out a house,” he added.

The library waived the fine.

AN IDIOT ABROAD

With a growing number of people travelling to far-flung destinations, the British Foreign and Commonwealth Office (FCO) has warned travellers to brush up on lesser-known local laws and customs – or face being fined, jailed or deported, the *Guardian* reports. Last year, the FCO dealt with over 23,000 cases of Britons falling foul of local laws.

Cases that made the news last year included two US tourists who were detained in jail for over a week and then deported after posing for a nude photo in front of a Buddhist temple in Thailand. Others included a tourist in Dubai who touched a man’s hip, while a woman in Sri Lanka got into trouble for having a tattoo of Buddha on her arm.

Items that are legal in Europe may be banned elsewhere. In Thailand, it is illegal to take vaping supplies, with punishments ranging from confiscation to up to ten years in prison.

In Japan, items such as Vicks Inhalers or painkillers containing codeine are prohibited. Possession can result in detention or deportation.

GO EAST! UNTIL YOU’RE DEPORTED

Trainee solicitor pay in London has reached £60,000 for the first time ever, thanks to a fresh round of rises by US giant Davis Polk, reports *LegalCheek*.

The New York-headquartered firm has increased its pay for second-year trainees by £5,000, or 9% over the previous level.

That puts the firm’s second-year trainees £5,000 ahead of their counterparts at Kirkland & Ellis and Sullivan & Cromwell.

A second-year trainee at Davis Polk now earns the same as many newly qualified lawyers at British firms DAC Beachcroft, Irwin Mitchell, Withers, and Womble

Bond Dickinson – and earning more than and those at DWF (£59,000), Hill Dickinson (£58,000) and Howard Kennedy (£58,000).

Don’t get caught in the rush, however. Davis Polk recruits just four trainees annually. But as soon as they qualify, their new lawyers’ salaries double to £120,000.

AND THE ABYSS STARED BACK

Art became a little too real for a visitor to the Serralves Foundation museum in Porto, Portugal, on 31 August, when he experienced, first hand, a *Descent into Limbo*. According to *Euronews.com*, the unnamed Italian man approached what he thought was a representation of a black hole on the ground, but discovered it had some depth

to it – 2.5-metres to be precise – after he tumbled in.

The 1992 artwork is a cube-shaped building containing a dark hole in the floor. The optical illusion, created by British artist Anish Kapoor, is painted with the darkest-known pigment in the world, *Vantablack*.

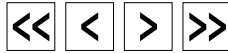
The 60-year-old visitor was

taken to hospital but made a swift recovery.

A museum spokesman said it complied with all security protocols: “We had warning signs, a security guard next to the artwork, and a disclaimer acknowledging the safety risk. But despite the safety precautions, the accident happened.”



“That represents the hole in the gallery finances after recent litigation.”



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Corporate Solicitor / Commercial Firm

Cork / €50,000 - €75,000

Brightwater have a great opportunity for solicitors with corporate experience to join a new commercial law firm based in Cork. The firm primarily specialises in corporate and commercial matters, and are looking for solicitors at all levels to join the team. This is an excellent opportunity to get in to the firm at an early stage, be part of the integral team and to grow with the business. They have ambitious growth plans for the next 5 years. The firm also provide services in commercial property, tax, and commercial litigation. No business development needed at present as the firm are very busy. The ideal candidate will have experience in some corporate or commercial matters.

Ref: 918688

Should you require further information about any of these roles or have any other legal recruitment requirements, please contact Michael Minogue on m.minogue@brightwater.ie or SORCHA CORCORAN on s.corcoran@brightwater.ie in the strictest confidence.

Dublin (01) 662 1000 | Cork (021) 422 1000 | Belfast (028) 90 325 325 www.brightwater.ie | www.brightwaterNI.com

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TakeControl

DIRECTOR OF LEGAL

RTÉ wish to appoint a Director of Legal who will have overall responsibility for developing and leading all legal services, in providing independent and impartial legal advice. Reporting to the Director General, the Director of Legal will be the chief legal advisor to the RTÉ Board, Director General and members of the Executive Board and their teams. The person appointed will lead the legal team in developing and implementing the legal strategy, and providing legal advice to the organisation.

Responsibilities will also include:

- Providing legal advice to programme makers and journalists in respect of our output
- Managing a professional solicitors' office to act for RTÉ in a range of litigation matters
- Providing legal advice and assistance in relation to corporate, contractual, copyright, commercial and public law matters

The Director of Legal must have strong leadership ability and have a proven track record at senior management level, with extensive experience working as a Barrister or Solicitor in a similar legal advisory capacity, or in private practice.

For further details see www.rte.ie/careers

Closing date for receipt of applications is 5.00pm, Monday 24th September, 2018

RTÉ is an equal opportunities employer.



NORTHERN TRUST

**Legal Counsel, Northern Trust Asset Management
Limerick**

As part of Northern Trust Asset Management's expansion into the Irish Market, we are currently recruiting for a qualified lawyer with several years PQE to join our team in Limerick. The successful candidate will be providing legal support across several business units. To find out more about this role please visit northerntrustcareers.com,

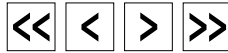
Job reference number: 70766.

For any further information please contact

careers@ntrs.com

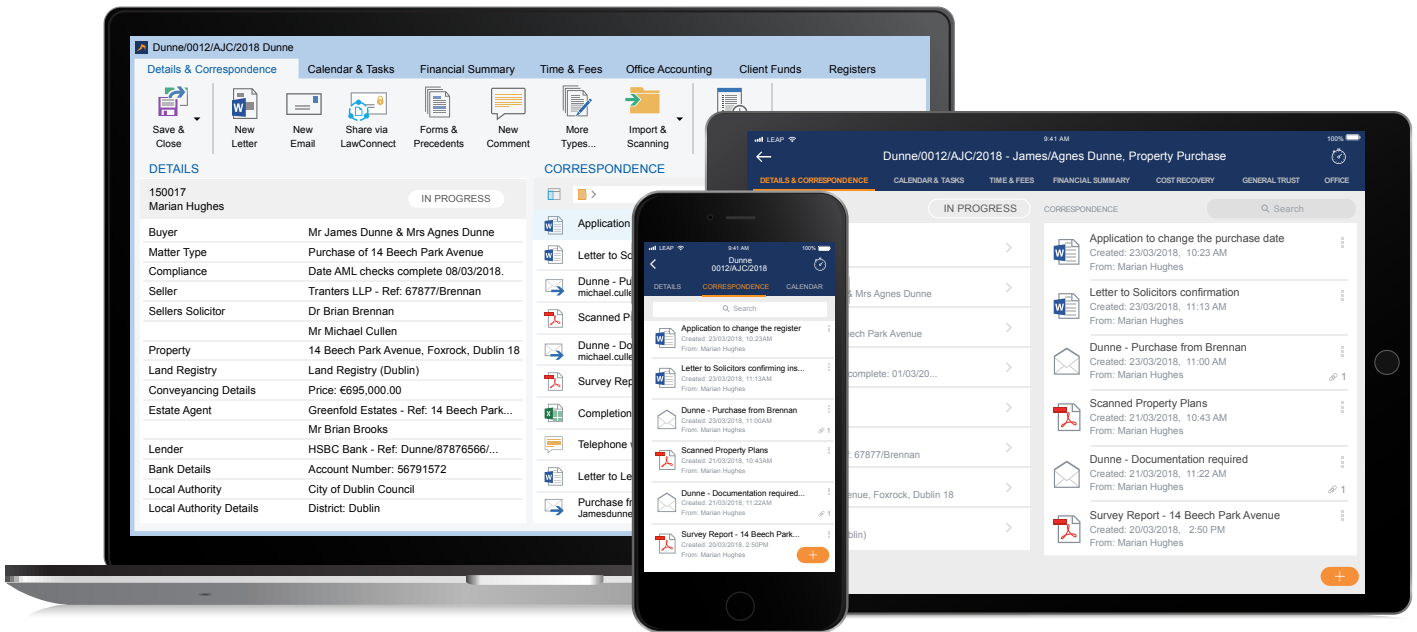


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