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OF IRELAND

IF IT QUACKS LIKE A DUCK

The lease/licence distinction in Irish law

COPPING ON
Lawyers can be key actors in the ongoing climate transition

ON BALANCE
Balance of probabilities in tortious claims: lessons from English case law

STATE OF CHASSIS
Are we able to elect an Oireachtas consistent with the Constitution?

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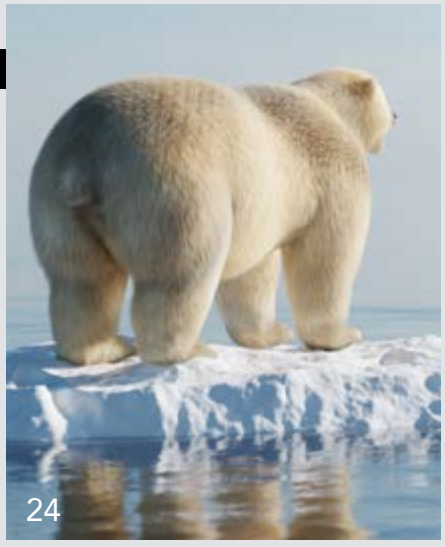
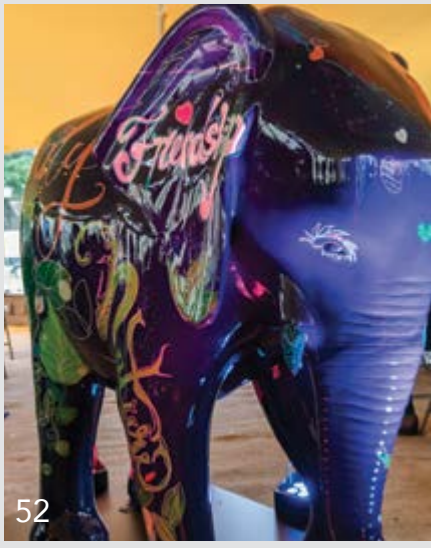
FEATURES

REGULARS





Elevating excellence

As I come to the end of my term as president of the Law Society, it's an opportunity to reflect on what has been a rich and varied experience.

I have been privileged to represent the profession at many events and conferences over the course of this year. From welcoming new solicitors at parchment ceremonies, attending Government meetings, engaging with international peers at home and abroad, and participating in significant events like the recent opening of the legal year in the Four Courts, each has served to cement the influential and leadership role of the Law Society for solicitors and the public.

Having attended many of the regional Law Society Skillnet cluster events, it has been a great opportunity to meet solicitors around the country and hear from you directly on the challenges faced by smaller community-based legal practices. One of the ways in which I have used my time as president has been to highlight that the availability of legal services in many regional communities is at risk, which – if left unaddressed – will have a significant negative impact on access to justice in those affected areas.

During my term as president, I have also gained a stronger appreciation of the value that larger firms place in the Law Society's commitment and ambition to be an influential voice on important policy matters and to help shape a just and accessible legal system that works for all.

Justice and change

The Law Society has a leading role in advocating on matters of justice and law reform in the wider public interest and also the interests of our members. I have had a front seat this year in representing the profession to seek to improve the environment in which we operate and to tackle issues needing attention in the public interest. In February, I opened the first in a series of justice and law reform events hosted by the Law Society. I have worked closely with the director general, Mark Garrett, and Law Society committees to actively engage with policymakers and other key stakeholders to resolve some of the significant issues facing practitioners. Some examples of our engagements included improving efficiencies in probate and conveyancing to cut down on delays, providing direct input to the Government's housing policy, and advocating for changes to registration practices being applied by Tailte Éireann. A new consumer guide was published by the Law Society, together with the Society of Chartered Surveyors Ireland. It seeks to help consumers take steps aimed at speeding up property sales and should be an asset for any practitioner to assist their clients in preparing for the conveyancing process. We have also been working intensively for many months to ask the Decision Support Service and Minister Anne Rabbitte to remove the unjustifiable barriers that have been placed in front of the public in the name of 'digital primacy'. We remain committed to achieving an outcome that provides uninhibited access to any person who wishes to make an enduring power of attorney. Over the past number of months, we have engaged with policymakers on the *Family Courts Bill 2022* and have put forward proposals aimed at its improvement.

Solid road map

As a member of the Law Society's Strategy Task Force, and seeing first-hand the extent of collaboration with solicitors and other stakeholders that went into its development, I was very pleased to see the launch of our *Statement of Strategy 2024-2028*. We, as solicitors, are working in an increasingly complex and ever-changing legal environment that affects us and our clients. I believe this strategy provides a solid roadmap to enable the profession to handle the challenges that we may face, and also to position the profession to take advantage of opportunities that lie ahead, forge stronger connections between the Law Society and the profession, and elevate the standards of excellence expected in the provision of legal services.

I am very grateful to the Law Society Council, the committees, the executive leadership team, and all the staff of the Law Society for their hard work – and to you, the profession, for your appreciated support during my term in office.

LAW SOCIETY OF IRELAND

"THE LAW SOCIETY HAS A LEADING ROLE IN ADVOCATING ON MATTERS OF JUSTICE AND LAW REFORM, AND I HAVE HAD A FRONT SEAT THIS YEAR IN REPRESENTING THE PROFESSION"

BARRY MacCARTHY,
PRESIDENT

THE BIG PICTURE

LEGENDS OF THE FALL

US vice-president Kamala Harris speaks at a rally in Grand Rapids, Michigan, on 18 October. In-person polling in the hotly contested US presidential election is on 5 November, but political scientists believe that the final result may also be hotly contested

PIC: ANDREW ROTH/SHUTTERSTOCK EDITORIAL

‘Innovating and Leading in Transformative Times’

The Annual In-House and Public Sector Committee conference was held on 2 October in Blackhall Place. A full report on the conference will be published in the next issue

PICS: CIAN REDMOND

Jessica Lyons, Anna Murphy, Nicola Curry, Alana Shortt, and Caroline Stack

Nicole Muldoone and Alison Bradshaw

Brian McMahon, Lisa Gallagher, and Richard Breen

Aisling Fitzgerald, Mairead McShea, and Ciara Daly

Mark Cockerill, Ruth McCarthy, and Dr Des Hogan

Brazilian lawyers bring it to Blackhall

Over 100 practitioners attended the recent international congress of the Brazilian Lawyers Association at the Law Society

On a Clare day

Colette Fahy, Elizabeth Mullins BL, and Michael Collins SC

PICS: EAMON WARD PHOTOGRAPHY LTD

The Clare Law Association's High Court Drinks Reception was held at the Old Ground Hotel in Ennis on 27 June. Members of the profession and local barristers enjoyed the company of Justice Emily Egan and Justice Liam Kennedy. Pictured: CLA committee members Louise Merrigan, Mairead Doyle, and Avril Collentine, with Judges Kennedy and Egan and District Court Judge Gabbett

Avril Collentine, Louise Merrigan, Pamela Clancy, and Mairead Doyle

Gerry Tynan SC and Joe Molony, solicitor

Colette Fahy, Judge Gabbett, and Isobel O'Dea

Pat Whyms BL and solicitors Pamela Clancy and Stephen Keogh

Patently obvious

Seven solicitors were granted Patents of Precedence on 14 October, enabling them to use the designation of 'senior counsel'. Pictured are John Meade SC (John Meade Solicitors) and family

Niamh Coyne (Law Society), John Cahir SC (A&L Goodbody LLP), and family

PICS: CIAN REDMEOND

David Herlihy SC

Past-president Michelle Ní Longáin SC (Byrne Wallace LLP) and family

Myra Garrett SC (Willian Fry LLP) and Michelle Ní Longáin SC (Byrne Wallace LLP)

Launch of legal partnership framework

PICS: MAXWELL PHOTOGRAPHY

The new regulatory framework for legal partnerships was launched by the Legal Services Regulatory Authority on 8 October. Pictured are Dr Brian Doherty, chief executive of the Legal Services Regulatory Authority, and Mr Justice Michael Twomey

BIICL seminar on product liability, 26 September

Michael Cush, Jantina Hiemstra

Joanne Blennerhassett, Julie Murphy-O'Connorr

PICS: CIAN REDMOND

Eileen Harrington SC

Melanie Power, Sarah Reid

European Law Institute conference held in Dublin

The Law Society hosted the European Law Institute's (ELI) annual conference from 9-11 October. It is the first time the prestigious event has been held in Dublin. At the event were Law Society President Barry McCarthy, former MEP Frances Fitzgerald, and Paul Keane (Law Society Council member and ELI Irish Hub co-chair)

Geoffrey Vos, Master of the Rolls, England and Wales

PICS: CIAN REDMOND

Opening of the new legal year at the Four Courts

Council members Aine Hynes SC, Keith Walsh and Martin Lawlor

Law Society President Barry McCarthy, Fiona McNulty, Mark Garrett (director general), and Catherine Bourke

PICS: CIAN REDMOND

Chief Justice Donal O'Donnell

Justice Elizabeth Dunne

Angela Denning, chief executive of the Courts Service, with Attorney General Rossa Fanning

YMC, eh?

The Law Society's Younger Members Committee (YMC) held its annual conference on 3 October at Blackhall Place. Pictured is Patricia Gannon

Bríona Brogan

PICS: CIAN REDMOND

Chris Murnane, Sinéad Gibney

Bláithín Sheil, Sinead Gibney

Judge James O'Donoghue

Genevieve Lynch, Fiona McNulty, Michelle Cross, and Siobhán Masterson

Law Society payments update

A new collaboration between the Law Society and NoFrixion to deliver upgraded payment services has been announced. The first phase of this partnership was successfully launched in October, making card payments quicker and more reliable across the board.

In phase two over the coming weeks, the Law Society will be transitioning from Bank of Ireland to NoFrixion, including issuing a new VBAN (Virtual Bank Account Number) for use by anyone making EFT payments.

Other benefits include the addition of more payment options, such as Apple Pay, Google Pay, and Pay by Bank (currently supported by AIB, Bank of Ireland, PTSB, and Revolut), enabling smoother transactions for both personal and company cards.

These changes will bring numerous benefits, including enhanced financial flexibility and improved services

Look out for further details on how this transition will affect you on all Law Society channels.

Harassment of Bangladeshi lawyers reported

Barrister Syed Syedul Haque Sumon

Disturbing reports are emerging about the harassment and worse of certain respected lawyers in Dhaka, Bangladesh, *writes Alma Clissmann*.

Since the collapse of the former Awami League government on 5 August and transition to an interim government, there has been sporadic violence in Dhaka and in the provinces. The recent political turbulence appears to be allowing some old scores to be settled.

Barrister Syed Syedul Haque Sumon, a former MP and anti-corruption activist, was detained by police in the early hours of 22 October in Dhaka. His arrest, on questionable charges related to the anti-discrimination student movement, along with his humiliating treatment while in custody and a physical attack on his legal representative, Morshed Hossain Shaheen, represents a violation of national and international human rights standards.

Prominent lawyer and human rights defender ZI Khan Panna was accused of attempted murder on 17 October. It appears to be a baseless and politically motivated charge. Panna is chair of the well-known human rights organisation Ain o Salish Kendra. The charge accuses 180 individuals of involvement in the 19 July incident in Meradia Bazaar during the anti-quota movement protests. The charge is widely considered an attempt to stifle his advocacy work, as well as retaliation for his criticism of the interim government.

Two defence lawyers were arrested in Dhaka on the night of 16 October – Mustafizur Rahman and Akram Hossain – and charged with murder on apparently spurious grounds. Rahman is a former senior deputy general secretary of the Dhaka Lawyers' Association.

See www.jmbf.org for further information.

Blackhall Place painting to mark 250th anniversary

● The Law Society is teaming up with Hanna Fine Art to give solicitors the opportunity to buy limited-edition prints of a painting of Blackhall Place. The painting by Stephen McClean, along with 250 prints, was commissioned by the Law Society to mark the 250th anniversary of the laying of the foundation stone at the building.

The Law Society has reserved 75 of the prints, all of which have been signed by Chief Justice Donal O'Donnell and outgoing Law Society President Barry MacCarthy, exclusively for sale to solicitors.

The prints are available to Law Society members at a special price of €395 – a saving of €100 off the published price of €495. The price includes the double-mounted and framed print (25 x 30 inches), free delivery to your home or office (Ireland only), and photographs of the Chief Justice and president signing the full edition.

For further information on availability and how to reserve, contact maria@hannafineart.co.uk.

Dublin Circuit family law case progression

● Case progression lists before the county registrar will now take place during callovers at 10am and 2pm on assigned days – Court 35, 1st Floor, Áras Uí Dhálaigh, Four Courts Complex, Inns Quay, Dublin 7.

Please note the new dates set out below for case progression. Check the legal diary on courts.ie to confirm dates in November and December.

Case progression list date	New callover date
7 November	Check legal diary
14 November	7 November
15 November	Check legal diary
21 November	Check legal diary
28 November	21 November
5 December	12 December
12 December	Check legal diary
19 December	16 January 2025

Law Society annual report, 2023/24

● The Law Society's annual report for 2023/24 has been published on the website and is also available to download in PDF. In a year that included the launch of the new five-year strategy, it provides insights into performance through key statistics and reports of organisational activities such as ESG and anti-money-laundering, top ten achievements, as well as financial statements for the year ended 31 December 2023. It also includes a wide range of interesting statistics about the profession, management and committee updates, and a new corporate governance report. Visit www.lawsociety.ie/annualreport.

The annual general meeting for Law Society members is on Thursday 7 November at 6.30pm and is a hybrid event to facilitate members around the country. To register, visit www.lawsociety.ie/agm.

Sheriff appointment

● As of 30 October 2024, Alice Lanigan was appointed sheriff of the bailiwick of Wicklow on a permanent basis, in addition to her current bailiwicks of Kildare and Carlow.

Therefore, with effect from that date, sheriff searches for the bailiwick of Wicklow, in addition to the bailiwicks of Kildare and Carlow, should be directed to the office of Alice Lanigan, Sheriff of Kildare/Carlow/Wicklow, PO Box 52, Carlow, or by email to collections@ckcarlow.com.

ENDANGERED LAWYERS

MUHANNAD KARAJAH, TALA NASER, DIALA AYESH – OCCUPIED PALESTINIAN TERRITORY

Diala Ayesh and and Tala Naser

Many people are caught up in the side-effects of the military operations in Gaza and Lebanon, including those living the Occupied Palestinian Territory (OPT). As reported in this column last April, Palestinian lawyer Diala Ayesh was arrested in January. Her detention has since been renewed.

She had previously worked with Muhannad Karajah, co-founder of Lawyers for Justice, an independent Palestinian group of lawyers based in Ramallah, which provides free legal aid to Palestinian human rights defenders and political prisoners and works to uphold fair trial rights for all.

Since 2016, life for Muhannad Karajah has not been easy. He has been subjected to numerous threats, abuse, smear campaigns, a travel ban, and detention by both the Palestinian and Israeli authorities. Concerns about the campaign of arbitrary harassment have been raised repeatedly by various organisations, including the Council of Bars and Law Societies of Europe.

For the past year, the situation has got worse and more tense. Most recently, Karajah has reportedly been targeted by two campaigns of incitement to violence, respectively initiated by Palestinian and Israeli individuals through Telegram groups, due to his efforts to protect lawyers in the OPT and advocate for fair trial rights for human rights defenders. In response to these threats, the NGO Lawyers for Lawyers reported (15 October) that Karajah has been forced to remain home for his own safety, as well as that of his family and organisation.

Like Diala Ayesh, Tala Naser works for Addameer, a Palestinian NGO that advocates for the rights of prisoners detailed by the Israeli army. She visited Ireland in April to talk about the plight of these prisoners. In an interview last June she stated: "The Israeli army seems to want as many Palestinians behind bars as possible – 8,800 people have since been arrested, including 630 children, 76 journalists, and an unknown number of lawyers and human rights defenders. Most of those people are held under 'administrative detention'. Based on a 'secret file', the military prosecutors ask the judge to confirm an order for administrative detention. This form of detention can be extended indefinitely, without even having to press charges."

Naser believes she is also at risk of arrest. Addameer has been flagged as a 'terrorist organisation', their office has been raided, and she believes that everyone who works there is a target.

Alma Clissmann was a longtime member of the Law Society's Human Rights Committee. With thanks to Lawyers for Lawyers.

Workplace investigations seminar

The Employment Law Association of Ireland (ELAI) and the Association of Workplace Investigations (AWI) are co-hosting a workplace investigations skills seminar on 11 November.

The seminar will cover everything from effective witness interviewing techniques to learning the core skill of how to evaluate evidence and produce impartial reports, equipping participants with the practical skills needed to conduct impartial and thorough workplace investigations

Such investigations are a common feature of the work environment, and how they are managed and investigated is central to resolving and responding to a workplace dispute. A badly conducted investigation can be worse than no investigation, as the fallout can be damaging to the organisation and result in legal claims. A properly conducted internal workplace investigation will often be the touchstone for an organisation and lay the groundwork for defending any such claims before the Workplace Relations Commission or the courts.

The event is on Monday 11 November from 8.30am to 4.45pm at the McCann FitzGerald premises, Riverside One, Sir John Rogerson's Quay, D02 X576. The registration fee is €200 and includes lunch. Speakers include Monica Jeffrey (AWI president), Oliver McKinstry (AWI vice-president), Colleen Cleary (CC Solicitors and ELAI member), Terence McCrann (McCann FitzGerald Solicitors and ELAI member), and seminar chair Carol Ann Casey (ELAI treasurer and managing director of CA Compliance Limited).

To register, see www.awi.org/events. For more information, contact Colleen Cleary (colleen@ccsolicitors.ie) or Carol Ann Casey (carolann@cacompliance.ie).

Can you help tackle educational disadvantage?

Business in the Community Ireland (BITCI) is urging more legal firms to become involved in delivering its various education programmes. These programmes are designed to be a worthwhile employee engagement experience, enable the firm to forge closer links with the local community, and help tackle educational disadvantage. Firms like A&L Goodbody, Maples Group, and the Chief State Solicitors Office are already actively involved.

Through its network of regional coordinators, BITCI pairs and supports companies' volunteers to deliver education programmes with local DEIS schools. Two programmes in the primary system aim to improve literacy and numeracy, while the secondary programmes involve mentorship, workplace visits, and advice and work placements. All programmes are designed to provide pupils with an improved understanding of the world of work, raise their own career expectations, create a level playing field, and increase their self-confidence. Approximately, 6,000 pupils across Ireland benefit from these programmes annually.

The Maples Group participates in the student mentoring programme, where paralegals, trainees, partners, and senior executives are paired with fifth and sixth year students. "For Maples, we have gained immense satisfaction in contributing to the students' educational journeys over the last two years and are proud to continue our involvement with this impactful programme in the years ahead," said Alma O'Sullivan, CSR partner at the Maples Group in Dublin.

For more information, check out 'Education Programmes' at bitc.ie.

IRLI IN AFRICA

VICTIM-CENTRED CHILD SEXUAL EXPLOITATION INVESTIGATIONS

Detective Constable Mark Lewis (PSNI), specialist trainer, Crime Training Faculty, engaging with a course participant during the training session at Moshi Police School, Tanzania, in July 2024

Irish Rule of Law International (IRLI) is a charity established and supported by the law societies and bars of Ireland and Northern Ireland, supported by the Department of Foreign Affairs, and dedicated to promoting the rule of law in countries including Malawi, Tanzania, and Zambia.

In Tanzania, An Garda Síochána (AGS) and the Police Service of Northern Ireland (PSNI) have been working closely with IRLI to support global efforts to tackle abuse of children, particularly child sexual exploitation (CSE), across both jurisdictions in Ireland and with counterparts in Tanzania. The programme is funded by the Embassy of Ireland, Tanzania.

The objective has been to strengthen high-level institutional linkages between Ireland and Tanzania in relation to the investigation, prosecution, and adjudication of CSE matters to enable collaborative relationships that improve the way these matters are conducted. This has been achieved through online meetings, information sharing events, and exchange visits between Ireland and Tanzania.

Improving a victim-centred approach has remained the focus of the programme, through sharing of training materials and face-to-face training. Both the PSNI and AGS consolidated training material used in Ireland into a series of presentations for use by Tanzanian police. These materials were shared in three formats – recorded videos, online training for approximately 900 Tanzanian police officers in June 2024, and then an in-person training event for two groups of 45 officers in Tanzania from 15-19 July 2024. Held at the Tanzania Police School, Moshi, some key topics covered were investigative actions, assessing victims, immediate response, and medical care.

The 90 Gender and Child Protection Desk Officers participating in the July training had been specifically selected from the 900 officers who joined the online session. They are now tasked to cascade the training to other officers within the Tanzanian police.

IRLI is extremely grateful to our policing and other partners in Ireland and Tanzania for their continued support in our work towards the improved handling of CSE cases, which helps to achieve meaningful access to justice for victims and survivors of these horrific crimes.

Anne-Marie Blaney is programme manager, Irish Rule of Law International.

Brendan Johnson (1954 – 2024)

We lost a truly irreplaceable friend and colleague on 13 August 2024, with the sad and untimely passing of Brendan Johnson.

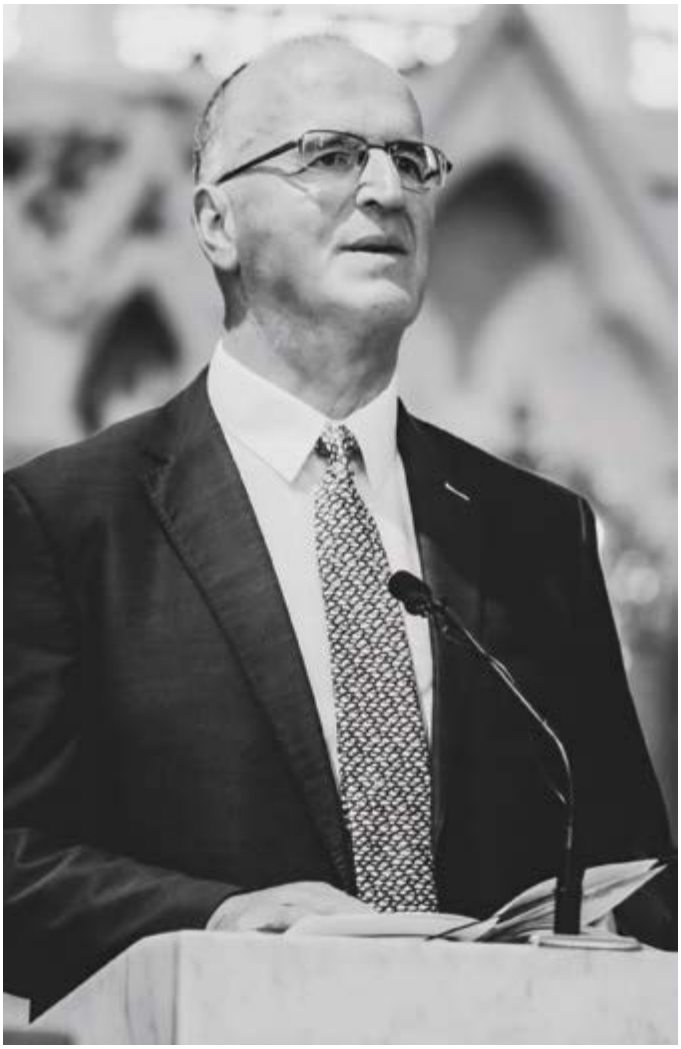
Brendan had been unwell for only a matter of months and courageously dealt with the terminal diagnosis that he had received, telling us in his final days that he needed a miracle.

His fortitude and good humour when confronting his illness was extraordinary, but came as no surprise to those of us who knew him well. Every day mattered to him. Every text and communication from him concluded with the words '*carpe diem*'. He even had those words emblazoned on the front wall of his house.

Brendan was a native of Ballymote, Co Sligo, being the son of the late District Judge Keenan Johnson and his wife Helen Johnson. He was the brother of our Circuit Court Judge Keenan Johnson and Helen Johnson BL.

After Brendan qualified as a solicitor, he worked in Ballina and in Ballinasloe, and then returned to Ballymote and entered into partnership with his brother Keenan. He then opened his own office in Sligo and ultimately ended up back in Ballymote working with his good friend Donnacha O'Connor in O'Connor Johnson.

As a lawyer, Brendan was deeply committed to vindicating the rights of clients who had been denied justice, especially by the State or financial institutions. He was fearless in the face of adversity, irrespective of the power or reputation of the opposition. He became very animated when representing his clients, but always in a reasoned manner, and he was most certainly not easily deflected by the stonewalling approach raised in defence by such institutions.



He had an aptitude for letter writing that was unequalled by his peers. This extended well beyond his legal brief, and he scarcely let an opportunity pass to reflect his views on many diverse topics, particularly when he saw something that was wrong that needed to be addressed.

Brendan believed firmly in the role of the volunteer in society. He was a member of the Lions Club and took an active role in his community in his adopted Rosses Point. He was an active member of the tidy towns committee and could regularly be seen out doing those maintenance jobs we all leave to someone else. He even volunteered himself as 'the Mayor' of the village, a position he held for some considerable time, in order to raise funds. He sat on the board of management of the local national school and was an active member of County Sligo Golf Club. We will miss our many golf outings, where we played in the most magnificent golf courses – it was never about the golf, but more about the camaraderie and friendship. He never considered himself an accomplished golfer, but he played with everybody irrespective of their skill-set.

Brendan loved the arts, especially music and musical theatre in particular. He was well capable of delivering a song, in a totally word perfect, if perhaps less than tuneful manner. He was a dedicated supporter of the Hawkswell Theatre in Sligo.

He became a director of the North West Hospice and embraced that role with such vigour and made such an impression on his colleagues in that organisation. It is a sad irony that, ultimately, he became entrusted into the care of the staff and consultants of the North West Hospice, who made him so comfortable and tended to his needs in his final days.

His funeral in the beautiful setting of Rosses Point church on 16 August was a fitting tribute to Brendan, describing his role in the family and to his community.

He was fondly remembered in Sligo District Court. District Justice Sandra Murphy presided over a packed courtroom on 3 September, when some of the most heartfelt and elegant tributes were paid to Brendan. He touched the lives of so many people with kindness, friendship, and good humour. He truly valued friendship, with his unmatched sincerity, and wouldn't mind us quoting WB Yeats: *"Think where man's glory most begins and ends, and say my glory was I had such friends."*

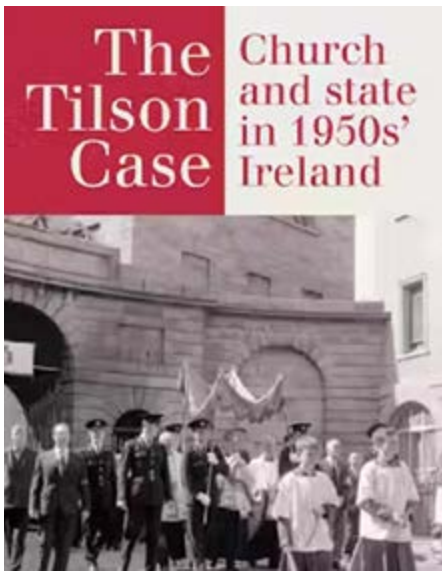
Brendan will be most sadly missed by all of us, but particularly by his devoted wife and best friend Catherine, his adoring children, sons Ronan, David, daughter Jennifer, his beloved step-mum Therese, and his siblings Ann, Keenan, Hugh, Geraldine and Helen.

May he rest in peace.

SMCT
DH

The *Tilson Case*: Church and State in 1950s' Ireland

David Jameson. Cork University Press (2023), www.corkuniversitypress.com. Price: €39.



This groundbreaking book is addressed to lawyers, historians, and the wider interested public in a fluent and accessible style. It explores the multiple themes, entanglements, and misconceptions that surround what is called the *Tilson Case*, a *habeas corpus* matter that emerged from the historic tensions concerning marriage between Catholics and Protestants in Ireland.

Ernest Tilson (a working class member of the Church of Ireland from Oldcastle) married Mary Barnes (a Catholic, of Turner's Cottages, Ballsbridge) in 1941. Previously, both signed a promise that any children of the marriage would "be baptised in the Catholic Church and carefully brought up in the knowledge and practices of the Catholic religion". They had four sons. Marital difficulties developed. Ernest Tilson removed the older three children to Oldcastle in early April 1950. He placed them in a Protestant-run orphanage known as the Birds' Nest some six weeks later. Litigation before the High and Supreme Courts culminated in Mary Tilson, in the presence of her solicitor, collecting those three sons and returning with them to Turner's Cottages.

David Jameson divides his book into three parts. Part 1 examines previous disputes emanating from mixed marriages, the evolution of Roman Catholic canon law as it related to marriage, and church/state relations. Part 2 considers Irish paternity law, the impact of the 1937 Constitution, and the court proceedings. Part 3 addresses the public reaction.

In *Tilson*, the Supreme Court acknowledged the distinction between civil and canon law; however, confusion remained in popular culture, focused on the Vatican's *Ne Temere* decree. Jameson rightly points out that the 1907 decree is silent on the religious upbringing of the children of a mixed marriage. He points out that, despite being subsumed into the codified canon law of 1917, *Ne Temere* remained a lightning rod for Protestant insecurities – however, Jameson does not fully explain why. As d'Alton and Milne (*Protestant and Irish*, 2019) have highlighted, following independence, the Protestant communities operated in their own silos. Inter-church marriage threatened the viability of this strategy, given insistence by *Ne Temere* that Catholics required a dispensation to marry a non-Catholic before a Catholic priest. Such a dispensation could only be obtained where commitments as to the education of any children of the marriage were given by both parties under other provisions of canon law. *Ne Temere* thereby silently formalised that link. Without both dispensations, there could be no marriage. While formally correct that *Ne Temere* does not mention commitments in respect of children, the decree cannot be isolated from the canon law it reinforced.

Jameson's case study is a thought-provoking volume. He has forensically engaged in researching the sources behind the appropriate dryness of the law report. In this, he has done legal history and lawyers sterling service by reminding us of the personal costs of vindicating rights and how that process can be used by different institutions for their own ends, not always with progressive intentions. g

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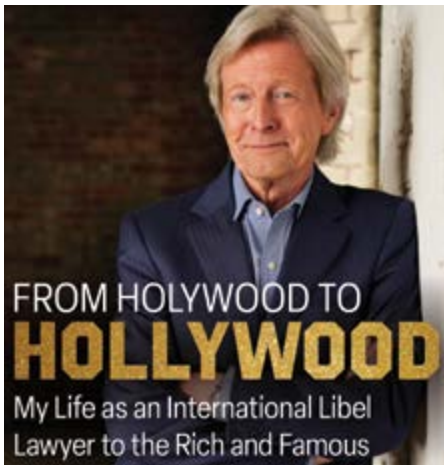
Rev Robert Marshall is a non-stipendiary priest of the Church of Ireland, a retired commercial property solicitor, and former president of the Irish Legal History Society. He writes in a personal capacity.

From Holywood to Hollywood: My Life as an International Libel Lawyer to the Rich and Famous

Paul Tweed. Irish Academic Press (2024), www.irishacademicpress.ie. Price: €17.99.



● Legal careers can have uncertain beginnings. However, few have been formed on foundations as fragile as a chocolate éclair.

Paul Tweed boasts a client list including Britney Spears, Liam Neeson, Johnny Depp, and Justin Timberlake. Closer to home, he has represented Miriam O'Callaghan and Gavin Duffy, while he has spanned the political divide in Northern Ireland through advising Gerry Adams, David Trimble, and Arlene Foster. Yet his introduction to libel litigation came in 1986 after the *Sunday World* ran a piece claiming that two leading Belfast QCs, Bob McCartney and Des Boal, had argued over the last chocolate eclair in a cake shop in Hollywood, Co Down. Proceedings followed, with a jury awarding both plaintiffs the then enormous sum of £50,000 each.

These awards were, however, soon to be overshadowed. Tweed's client Barney Eastwood was the manager of one of Ireland's greatest boxers, Barry McGuigan, who became world featherweight champion in 1985. Their relationship would later end in acrimony and legal action, after McGuigan unexpectedly lost his title to the unfancied Steve Cruz. McGuigan claimed that he had been forced to fight when injured, and Eastwood sued for defamation. After a five-week trial, a jury awarded Eastwood record damages of £450,000.

In recounting the *Eastwood* case, Tweed – perhaps unintentionally – hits upon one of the great failings of defamation actions: trial by ambush. Unlike in many other countries, the parties do not have to provide witness lists or witness statements in advance. As he puts it, this enables the parties to catch their opponents off guard and retain an element of surprise, which in the *Eastwood* case was taken "to extremes".

I have often wondered if books by libel lawyers are read before publication by other libel lawyers. Tweed is, to put it mildly, critical of his opposite number in the Eastwood/McGuigan litigation. However, he passed away in 2004 and, as any good libel lawyer will tell you, you cannot defame the dead.

This book is a memoir aimed at the general reader rather than the legal practitioner. For many, therefore, its main attraction will be Tweed's relationship with Prince Andrew in the period leading up to his disastrous interview with Emily Maitlis. This is already the subject of two films and a musical. However, while the prince's former wife, Sarah Ferguson, was a client, Tweed makes clear that Andrew was not.

Paul Tweed and I disagree on many things. Indeed, I acted on the other side in several of the cases he highlights in his book. However, we do agree about the dangers to reputations, privacy, and data protection posed by the large tech companies and by the spread of disinformation. As he puts it: "They are now responsible for a significant proportion of news dissemination across the world and also divert advertising revenue from mainstream media, while benefitting from expensive investigative journalism without a corresponding payment. In other words, they are getting all the benefits and all the rewards without any of the associated responsibilities."

One other thing we probably agree on. His book is a rollicking read.

Michael Kealey is solicitor for DMG Media and a member of the Gazette *Editorial Board.*

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PROFESSIONAL LIVES

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

Remember Movember

As we step through November, widely recognised for Movember's focus on men's health awareness, it is crucial to spotlight men's mental health, particularly in the demanding environment of the legal profession.

In Ireland, a substantial percentage of solicitors are male and, like their counterparts worldwide, they face distinctive stressors that can adversely affect their mental and physical wellbeing. To address these challenges effectively, Law Society Psychological Services implements both individual and organisational strategies that promote a healthier, more supportive work culture. One particularly effective approach is group therapy, which offers numerous benefits for men navigating the pressures of the legal profession.

Challenges

The legal profession is renowned for its high-pressure environment. Solicitors frequently work long hours, manage intense workloads, and bear significant responsibilities for their clients' welfare. Such stresses often contribute to mental health issues, including anxiety and depression, which are alarmingly prevalent among men. Unfortunately, men in this profession are less likely to seek mental health support compared to their female colleagues, primarily due to societal norms regarding masculinity and an expectation of stoicism.

This reluctance to reach out for help can perpetuate a dangerous cycle, where untreated mental health challenges manifest into more significant issues, including burnout, substance abuse, and overall decline in personal wellbeing. The Law Society's insights on solicitors' psychological wellbeing underscores this alarming trend, revealing that many male solicitors report feeling overwhelmed, yet they are underrepresented in the services available to them.

Positive cycle

Group therapy can be a vital resource for men grappling with stress and mental health issues. It offers valuable benefits, primarily through shared experiences and understanding, as it allows participants to openly discuss their professional challenges with peers who empathise, fostering camaraderie and mutual support. As the legal profession continues to confront deep-seated issues surrounding mental health, particularly among men, prioritising the establishment and accessibility of group therapy could serve as a pivotal step forward. The Law Society Psychological Services team is looking forward to initiating group therapy for male trainees this month, with the ambition to grow a larger community of men speaking openly about their difficulties early and proactively.

If you would like to know more about the plans or to be involved in such a program, contact ps@lawsociety.ie.

Adam Dehaty is Psychological Services executive at the Law Society. Confidential, independent, and subsidised support is available through LegalMind for legal professionals. All enquiries to LegalMind are fully confidential to Clanwilliam Institute (the Law Society's partner providers). All therapy sessions are conducted by highly trained professionals in a confidential forum. Email: reception@clanwilliam.ie; tel: 01 205 5010 (9am to 5pm, Monday to Friday); web: lawsociety.ie/legalmind.

Waiting on redress

Many survivors of historic child sexual abuse in primary and secondary schools have not yet received redress from the State, despite the passage of more than ten years since Louise O'Keeffe's landmark win in the European Court of Human Rights, writes Áine Bhreathnach

BY FAILING TO PUT IN PLACE ADEQUATE CHILD-PROTECTION MEASURES UNTIL 1991 (FOR PRIMARY SCHOOLS) AND 1992 (FOR SECONDARY SCHOOLS), THE STATE HAD A STAND-ALONE CULPABILITY FOR BREACH OF CONVENTION RIGHTS, INDEPENDENT OF ANY OTHER ACTOR

The Irish Human Rights and Equality Commission (IHREC) continues to push for the immediate roll-out of a fair, non-discriminatory, and accessible State redress scheme that fully implements the judgment of the European Court of Human Rights (ECtHR) in *O'Keeffe v Ireland*.

In the meantime, survivors continue to come forward seeking information on their legal options, including their right to redress, most recently following the publication the *Report of the Scoping Inquiry into Historical Sexual Abuse in Schools Run by Religious Orders*.

The O'Keeffe case

Louise O'Keeffe was sexually assaulted in 1973 by Leo Hickey, the school principal at Dunderrow National School, Co Cork. In 1996, complaints were made to the gardaí regarding abuse at Dunderrow. Hickey pleaded guilty in 1998 to 21 sample charges relating to sexual abuse of girls under his care and was sentenced to three years in prison.

More than 20 years ago

In1998, Louise O'Keeffe commenced legal proceedings against the State. However, the courts in Ireland ruled against her, leaving her with no option but to appeal the Supreme Court judgment of December 2008 to the ECtHR. The Irish Human Rights Commission (the predecessor to IHREC) intervened as third-party intervener (the Strasbourg equivalent to *amicus curiae*) before the ECtHR.

In her complaint to the ECtHR, O'Keeffe argued that the State had failed to structure the education system so as to protect her from abuse (article 3 of the *European Convention on Human Rights*) and that she had not been able to obtain recognition of, and compensation for, the State's failure to protect her (article 13).

Ten years ago

In 2014, Louise O'Keeffe won her case before the ECtHR, and the court ruled: "When relinquishing control of the education of the vast majority of young children to non-State actors, the State should also have been aware, given its inherent obligation to protect children in this context, of potential risks to their safety if there was no appropriate framework of protection. This risk should have been addressed through the adoption of commensurate measures and safeguards."

In other words, by failing to put in place adequate child-protection measures until 1991 (for primary schools) and 1992 (for secondary schools), the State had a stand-alone culpability for breach of convention rights, independent of any other actor (whether teacher, board of management, religious order, etc).

In light of the ECtHR judgment, Ireland was required to undertake specific measures in respect of Louise O'Keeffe, as well as general measures to vindicate the rights of other victims of sexual abuse in day schools prior to 1991/1992, including to redress.

2024 – what progress?

Ten years after the ECtHR judgment, the State continues to fail to implement *O'Keeffe v Ireland*, as it has failed to introduce appropriate general measures to provide redress to survivors of historic child sexual abuse.

While, in the past decade, the State has introduced two *ex gratia* schemes, both have been fundamentally flawed, since they have contained unfair and arbitrary conditions for entry to the schemes.

The first *ex gratia* scheme, which opened in 2015, required survivors to show proof of a prior complaint against their abuser before they could be admitted to the scheme. By 2017, 50 applications had been made and, at first instance, all were refused. Under the *ex gratia* scheme, applicants were entitled to appeal the first instance negative decision to an 'independent assessor'. The State appointed Iarfhliath O'Neill (a retired High Court judge) to this role. In July


PIC: SHUTTERSTOCK

2019, he concluded that the precondition of proof of a prior complaint involved an inherent inversion of logic and a fundamental unfairness to applicants. The scheme was scrapped and not replaced until 2021.

The second *ex gratia* scheme opened on 21 July 2021 for two years only. It also contained unreasonable and unfair preconditions: first, on or before 1 July 2021, the applicant must have instituted proceedings against the State (that is, proceedings that were doomed to fail since the Supreme Court had held in Louise O'Keeffe's case that the State could not be vicariously liable for the actions of teachers who are employed by boards of management/religious orders); and, secondly, the 'real prospect test'. This scheme closed in July 2023.

At this time, the State has no scheme open to survivors of historic abuse, leaving survivors with no option but to seek legal advice on how to vindicate their right to redress as directed in the judgment of the ECtHR in *O'Keeffe v Ireland*.

Litigation and reporting

Since 2014, IHREC has made seven submissions to the relevant committee in the Council of Europe that supervises states' failure to properly implement judgments of the ECtHR. In these submissions, IHREC has outlined the State's ongoing failure to comply with the judgment of the ECtHR, specifically on the State's failure to introduce a fair and accessible redress scheme.

IHREC has intervened as *amicus curiae* in two sets of High Court proceedings where survivors challenged the State's refusal to admit them to the *ex gratia* schemes: *PD v Minister for Education, Ireland and the Attorney General* in December 2022, and *KW v Minister for Education, Ireland and the Attorney General* in May 2024. These proceedings were settled by the State, and we are also aware of other cases that have settled.

In all of these cases, IHREC understands that each of the litigants received €84,000 – that is, the amount of redress paid by the State under the *ex gratia* schemes and also the amount paid by the State to Louise O'Keeffe.

Where are we now?

The *Report of the Scoping Inquiry* is a shocking account of the nature and extent of the depravity visited on children in Irish schools. There is much to be considered in it. However, it is crucial that it should not further delay survivors' right to State redress.

The ECtHR was explicit and clear on the stand-alone responsibility of the State – and its failure – to children who suffered sexual abuse in schools. It stated as follows on the State's liability: "The State had to have been aware of the level of sexual crime against minors through its prosecution of such crimes at a significant rate prior to the 1970s. A number of reports from the 1930s to the 1970s gave detailed statistical evidence on the prosecution rates in Ireland for sexual offences against children...

"When relinquishing control of the education of the vast majority of young children to non-State actors, the State should have adopted commensurate measures and safeguards to protect the children from the potential risks to their safety through, at minimum, effective mechanisms for the detection and reporting of any ill-treatment by and to a State-controlled body."

Áine Bhreathnach is senior solicitor at IHREC.

CPD WEBINAR

On 7 November, IHREC will host a free CPD webinar for legal practitioners on this important issue.

Colin Smith SC, Prof Conor O'Mahony, and Áine Bhreathnach (IHREC senior solicitor) will speak. To register, please contact rsvp@ihrec.ie.

Good COP, bad COP?

The Irish legal community can be key actors in taking the first steps to a national 'justice' pathway that responds to the ongoing climate and energy transition, argue Raphael Heffron and Aonghus Kelly

The winds of change are set to sweep across the practice of commercial law over the coming years. The battle against climate change will rise to a new level after the next Conference of the Parties, the 29th iteration of the United Nations Framework Convention on Climate Change (commonly known as COP), which will take place in Baku in Azerbaijan. A key new development at COP29 will be centred around 'justice', and countries (including Ireland) are expected to advance a 'justice pathway'. The existing energy and climate targets required by each country will have to align with this pathway.

The impact of the development of this justice pathway will be profound across society. Specifically, business sectors across Ireland will see extensive change. Businesses will have to align their corporate strategies to the justice pathway. They will need to state how their energy usage and their business activities are climate-change compliant. In essence, society will be able to expect businesses to deliver more 'just outcomes', which are more fair, transparent, equitable, and sustainable than the existing status quo.

This focus on justice at COP29 points towards how companies will have to meet ESG (environmental, social, and governance) objectives. It strengthens the overall ESG framework, as it highlights that corporate activity should improve 'just outcomes' in society over time. Action in this area is already taking place in other countries, such as the US, where we have seen principles of justice being utilised regarding energy and environmental issues related to infrastructure development, and in terms of energy and climate transition policy more broadly in South Africa and Colombia.

> THE PRACTICE OF COMMERCIAL LAW NEEDS TO BECOME SYNONYMOUS WITH ESG, SUSTAINABILITY, CLIMATE, AND ACHIEVING JUSTICE

Diffusing climate change

Ireland needs to move forward in an accelerated way in this area. There are economic advantages and job creation opportunities for the country should this 'justice' acceleration happen promptly. Furthermore, extensive new EU directives and regulations will necessitate the education of all legal professionals on what will now be expected across all areas of society, from finance to agriculture to planning to banking and beyond. These changes will realign Ireland and the world's economies, and there will be no returning to the business practices of old. If Ireland does not engage significantly in this area of ESG, justice, climate, and sustainability, we will compromise both our economy and fall behind in best business practices.

Legal professionals are key actors in any society, but particularly in an open democratic country like Ireland. Lawyers are the operators of the 'rules of the game', who facilitate a society in moving and functioning in the best possible manner. Consequently, all legal professionals should be educated extensively on the effects of climate change that challenge our society now and will continue to do so. This process is beginning in certain parts of the legal education infrastructure, but the speed at which this is taking place is slow compared to where it needs to be.

Education in ESG and wider climate and sustainability issues should, in our opinion, be obligatory at all levels of legal education from undergraduate level, through entry level training, to continuous professional development education for solicitors, barristers, and judges. The practice of commercial law needs to become synonymous with ESG, sustainability, climate, and achieving justice. This will allow legal professionals to undertake their work correctly, but also position Ireland as a leader. Ireland has put a heavy emphasis on being a market leader in areas as diverse as trusts and aircraft leasing. The Irish legal community has been bringing the 'Ireland for Law' campaign to venues around the world. However, without proper education in this key area for all sections of the Irish legal education system, there is a gaping hole in the nation's legal curriculum vitae. Indeed, one could say that a legal crossroads has been reached, and there are very few dancing there at this moment.

PIC: SHUTTERSTOCK

Displaying leadership

Given the underlying dynamics across the planet – but particularly in the European Union – Ireland and Irish legal professionals must position ourselves at the forefront of the change that will be further highlighted at this year's COP29. To best seize the opportunities presented by these massive changes, there should be mandatory training for all trainee solicitors on ESG at entry level. The Law Society of Ireland and the Bar of Ireland should undertake a joint study to ascertain the levels of ESG education that should be mandatory at CPD level. Further, there should be sensitisation sessions with the Irish judiciary as part of the work of the Judicial Council, and with the Department of Justice. These changes would lead to Irish legal professionals positioning themselves and the country as a leader in this important new field.

Finally, action needs to be undertaken to advance the Irish economy on the pathway of a just transition to a low-carbon economy. Currently, there is significant evidence of unequitable and unjust outcomes in our public space. Policy frameworks need to be realigned, and the business sector of the Irish economy needs to engage with the challenge of climate change and sustainability. As a small island nation, climate change will disproportionately affect Ireland, as opposed to other countries in our region. It is time to ensure that domestic action is undertaken.

Raphael Heffron is a barrister and professor in energy law and justice at the University of Pau and CNRS, France; Aonghus Kelly is head of the International Crime Legal Unit at the European Advisory Mission, Ukraine, and has completed a master's in sustainability leadership at the University of Cambridge.

IF IT QUACKS LIKE A DUCK...

The legal distinction between lease and licence relationships is an important one – and not determined by how the agreement is labelled. Una Woods sorts the ducks from the drakes

The classification of a residential occupation agreement as a lease/tenancy as opposed to a licence confers significant rights on the tenant and imposes increasingly onerous obligations on the landlord. Accordingly, the legal distinction between the two relationships is an important one and not determined by how the agreement is labelled. As legal practitioners may recall, the land law topic dealing with the lease/licence distinction also represents a firm favourite of law students. This is unsurprising, as many students are renting a property for the first time, but also the case law is replete with visceral and memorable judicial metaphors. As Lord Templeman famously remarked in the English case *Street v Mountford*: "The manufacture of a five-pronged implement for manual digging results in a fork even if the manufacturer, unfamiliar with the English language, insists that he intended to make and has made a spade." In a similar vein, Bingham LJ noted in *Antoniades v Villiers*: "A cat does not become a dog because the parties have agreed to call it a dog."


PIC: ALAMY

The Irish courts have yet to be presented with circumstances equivalent to those in *Street v Mountford* (where the occupant signed the agreement presented by Mr Street, a Bournemouth solicitor, which was couched in licence terminology with a view to evading the protections conferred by the *Rent Act 1977*). The House of Lords ruled that if the agreement presented all the proprietary elements or hallmarks of a tenancy – namely, exclusive possession for a term at a rent – a tenancy was to be presumed, regardless of expressions of a contrary intention.

In the residential sector, the Residential Tenancy Tribunals, which resolve most landlord and tenant disputes, are more likely to be presented with the issue than the courts. Also, given the minefield of statutory regulation of residential tenancies facing putative landlords and the shortage of rental properties available to prospective tenants, it seems inevitable that disputes raising this issue will become more common.

As a result of recent reforms to the *Residential Tenancies Act 2004*, landlords now face the prospect of tenancies of unlimited duration and restrictions on rent increases and, at the same time, obligations requiring high standards of property maintenance and annual registration. A property owner may insist that a prospective occupant signs an agreement that is labelled a licence and includes certain key clauses typically associated with a licence, in the hopes of evading these regulations. The current housing crisis means that those seeking residential accommodation are likely to be desperate enough to sign any document presented to them.

Irish case law

Most of the Irish case law in this area involves a business occupant of a garage premises or a shop claiming an entitlement to a new business tenancy on the basis that his licence agreement operates, in substance, as a tenancy. Where the written terms of the agreement unambiguously express an intention to create a licence, especially where the occupant has received independent legal advice, the courts have typically respected these expressed intentions by adopting a 'contractual approach' to the classification of the agreement. Clauses that clearly state that there is no intention to confer a tenancy, that exclusive possession is not conferred, or the inclusion of a clause reserving the right to move the occupant to a different premises (sometimes referred to as a 'mobility clause') have all been treated as

IN THE RESIDENTIAL CONTEXT, THE INTRODUCTION OF A STATUTORY REBUTTABLE PRESUMPTION OF A TENANCY WHERE THE HALLMARKS OF A TENANCY EXIST WOULD BE HELPFUL IN REFLECTING AND CLARIFYING WHAT APPEARS TO BE HAPPENING IN PRACTICE. IN EFFECT, THERE SHOULD BE A DUAL SYSTEM OF STATUTORY GUIDELINES GOVERNING THE LEASE/LICENCE DISTINCTION

expressions that strongly indicate an intention to create a licence agreement.

In *Gatien Motor Company Ltd v Continental Oil Company of Ireland Ltd*, Griffin J, in ruling that a caretaker agreement amounted to a licence, noted that the parties had negotiated at arm's length, both were fully legally advised, and that the arrangement expressed the intention of the parties and was entered into at the behest of the solicitors for the tenant. Similarly, in *National Maternity Hospital v McGouran*, Morris J noted that there were certain clauses, including a mobility clause, in the agreements that made it clear beyond doubt that what was being granted by the hospital was no more than a licence. In *Kenny Homes & Co v Leonard*, a carefully crafted agreement was held by the High Court to confer a licence, and the Supreme Court affirmed this ruling, noting that the terms of the agreement were "crystal clear". More recently, in *Esso Ireland Ltd v Nine One Ltd*, McGovern J commented: "The court should be slow to look behind the clear terms negotiated by the parties at arm's length and in circumstances where each was legally represented."

There have been two Irish cases where the courts adopted an approach more akin to that set out in *Street v Mountford*, which looked beyond certain expressed terms to identify the hallmarks of a tenancy. In *Irish Shell and BP Ltd v Costello Ltd*, the court ruled that a licence agreement in relation to a garage premises amounted to a tenancy on the basis that the occupant had exclusive possession of the premises at a rent (although it was referred to as a payment for the hire of equipment). This approach, while difficult to reconcile with the case law discussed above, was warranted in the circumstances, as there were significant ambiguities in the terms of the agreement, rendering the contractual approach unsuitable. The parties had entered into a number of agreements over the years and, while earlier versions of the agreement had included clauses negating exclusive possession or an intention to create a landlord and tenant relationship, the agreement before the court did not include these clauses. The agreement was also inaccurate in delineating the premises to be occupied: it failed to include a workshop that had been built to be occupied by the defendants and was, in fact, so occupied.

The second and more recent judicial foray into the realms of *Street v Mountford* was arguably less appropriate. In *Smith v CIE*, a very experienced businessman, following legal advice, had entered into a clearly drafted licence agreement in relation to a shop in Tara Street Railway Station. He admitted in evidence that he understood he was only getting a licence. Peart J, relying heavily on *Street v Mountford*, held that it amounted to a tenancy on the basis that exclusive possession had been conferred. This decision was criticised by the Law Reform Commission in 2003 and led to proposals for legislative clarification that the courts should give effect to the express agreement of the parties on this issue, provided they have received independent legal advice. While these proposals have yet to be implemented, the need for such reform is arguably less pressing since a 2008 amendment of the *Landlord and Tenant (Amendment) Act 1980* that permits a tenant to contract out of his entitlement to a new business tenancy, provided they have received independent legal advice. It will be interesting to see if licences of commercial premises continue to be as popular in the

IN QUITE A BOLD MOVE, THE TRIBUNAL SEVERED A CLAUSE THAT HAD BEEN AGREED BETWEEN THE PARTIES AND THAT ALLOWED THE LANDLORD AND HIS FAMILY TO STAY IN THE PREMISES WITH THE TENANT ON WEEKEND VISITS FOR MATCHES, OVER THE SUMMER, AND AT CHRISTMAS

aftermath of this legislative intervention. It is highly possible that the lease/licence distinction will become more important in the residential context in the future.

Residential Tenancy Tribunal

It is not unusual for the lease/licence distinction to come before Residential Tenancy Tribunals. It will need to be determined where a putative landlord seeks to evade his statutory obligations by relying on one or more clauses typically indicative of a licence agreement.

Lodger scenario

The landlord may include a clause reserving a right to reside in the property for himself or a family member. Section 3(2)(g)-(h) of the *Residential Tenancies Act 2004* clearly excludes such lodger arrangements from the ambit of the legislation. However, in *Leonard v McHugh*, the tribunal was not satisfied on the evidence submitted that the landlord did, in fact, reside in the property, bringing the matter within its jurisdiction.

In addition to detecting sham clauses, the tribunals have on occasion gone further. In quite a bold move, the tribunal in *O'Sullivan v Conlan* severed a clause that had been agreed between the parties and that allowed the landlord and his family to stay in the premises with the tenant on weekend visits for matches, over the summer, and at Christmas. The landlord's family had stayed in the premises for 18 days over a 20-month period. The tribunal found that the clause was in breach of the landlord's duty to afford the tenant peaceful and exclusive occupation of the dwelling.

Provision of services

A landlord might reserve the right to access the premises to carry out various services – for example, cleaning, linen change, or refuse collection. While I could not locate any tribunal decisions where this was a definitive issue, in the English case *Crancour Ltd v Da Silvaesa*, it was held that such a clause meant that exclusive possession was not conferred and so it was indicative of a licence. In *Aslan v Murphy*, however, the court struck out such a clause on the basis that it was a 'pretence' and found that the true bargain was for a lease.

Rules, inspections, mobility clauses

Another common situation is where the landlord imposes rules – for example, restricting the hours of visitors or allowing for inspections for cleanliness. Inherent in the right to exclusive possession is freedom from this type of supervision or regulation. In *Deans Hall Student Accommodation v McGuinness and King*, the tribunal found that an agreement containing such rules did not confer exclusive possession and therefore amounted only to a licence. However, in *O'Connor v Flynn*, the tribunal examined how an arrangement including similar clauses operated 'on the ground' and concluded that, in substance, the tenant had exclusive possession.

A mobility clause is another trick that may be found up the sleeve of a putative landlord. This is a clause reserving to the owner the right to move an occupant from one room to another. In two tribunal decisions, *Deans Hall v Mc Guinness and King* and *O'Driscoll v Mulvaney*, such a clause was found to be indicative of a licence and not a tenancy.

House shares

A landlord may decide to recruit occupants at different times under separate agreements, so that there is a shifting population of occupants. Typically, each occupant is assigned exclusive use of a bedroom coupled with access to common areas, such as a kitchen. I found several tribunal decisions in which such arrangements were found to give rise to individual licences but, in *Stankiewicz v Darcy*, such an arrangement was found to give rise to individual tenancies.

To confuse matters utterly, recently there were two conflicting decisions by differently constituted tribunals in relation to the same eight-bedroom house in Maynooth. Individual agreements had been entered into in respect of each bedroom, which included access to a common area. In *Andrew Browne Construction v Ennis*, one such agreement was held to confer a licence. The tribunal noted that, while bedsit accommodation was included within the ambit of the *Residential Tenancies Act*, a house share was not self-contained and so, unless it related to student accommodation (the *Residential Tenancies (Amendment) Act 2019* extends certain rights to students who occupy student accommodation under a licence agreement), it was not within the remit of the Residential Tenancy Board. In contrast, one week later, in *Andrew Browne Construction Ltd v Young and McGaley*, another tribunal adopted a more expansive definition of bedsit accommodation and reached a decision that

an identical agreement in relation to a different bedroom in the same house *did* constitute a tenancy.

Guardianship agreements

It is worth briefly mentioning the growing proliferation of guardianship arrangements in England and Wales. These agreements are typically entered into to protect vacant commercial property against squatters. Certain temporary renovations are made to facilitate residential occupancy and, while the occupants pay below-market rent, they are typically entitled to only a minimum of notice when required to leave. The agreements include many of the clauses that have just been discussed, and the courts have, in general, held that such arrangements amount to a licence rather than a tenancy.

Ugly duckling

As is the case with commercial occupation agreements, the inclusion of certain clauses in a residential occupation agreement may be indicative of a licence and oust the jurisdiction of the Residential Tenancy Board. However, there is also strong evidence to suggest that tribunals are more open to examining how the agreement operates in practice in determining if a tenancy exists. In making this examination, the presence of exclusive possession as a key hallmark of a tenancy is likely to be determinative. The tribunals are astute in detecting shams and will look beyond or sever misleading contractual terms. This is fair and appropriate in the context of residential tenancies where an agreement will often be presented to a prospective occupant on a take-it-or-leave-it basis, and independent legal advice is unlikely to be helpful.

If the Law Reform Commission's proposed reforms to make the expressed intentions of the parties determinative are implemented, it would make sense to limit this statutory guideline to commercial occupancy agreements. In the residential context, the introduction of a statutory rebuttable presumption of a tenancy where the hallmarks of a tenancy exist would be helpful in reflecting and clarifying what appears to be happening in practice. In effect, there should be a dual system of statutory guidelines governing the lease/licence distinction. g

Dr Una Woods is associate professor in the School of Law, University of Limerick.

LOOK IT UP

CASES:

- *Antoniades v Villiers* [1990] 1 AC 417
- *Aslan v Murphy* [1990] 1 WLR 766
- *Crancour Ltd v Da Silvaesa* (1986) 52 P & C 204
- *Esso Ireland Ltd v Nine One One Ltd* [2013] IEHC 514
- *Gatien Motor Company Ltd v Continental Oil Company of Ireland Ltd* [1979] IR 406
- *Irish Shell and BP Ltd v Costello Ltd* [1981] ILRM 66
- *Kenny Homes & Co v Leonard* [1997 IEHC 230]
- *National Maternity Hospital v McGouran* [1994] 1 ILRM 521
- *Smith v CIE* [2002] IEHC 103
- *Street v Mountford* [1985] AC 809

RESIDENTIAL TENANCY TRIBUNAL DECISIONS

- *Andrew Browne Construction v Ennis* (March 2021) TR1020-004502
- *Andrew Browne Construction Ltd v Young and McGaley* (March 2021) TR1020-004501
- *Deans Hall Student Accommodation v McGuinness and King* (February 2015) TR0914-000847
- *Leonard v McHugh* (June 2007) TR44
- *O'Connor v Flynn* (November 2014) TR0814-000789
- *O'Driscoll v Mulvaney* (October 2016) TR0915-001354
- *O'Sullivan v Conlan* (May 2014) TR1113-000500
- *Stankiewicz v Darcy* (July 2015) TR0515-001156

LEGISLATION:

- *Landlord and Tenant (Amendment) Act 1980*, as amended
- *Residential Tenancies Act 2004*, as amended

I'm a MOVER

Three solicitors who have made the move to dynamic business roles talk about their transition and how they navigated this career shift

This year, the In-House and Public Sector Committee examined the theme of lawyers moving from legal roles into business roles. As lawyers, we possess skills that makes us exceptionally well-suited for business roles. Our analytical thinking, attention to detail, and understanding of complex topics position us to excel in strategic decision-making and risk management. So let's hear what those who have made this change have to say.

Connor Stafford – SMBC Aviation Capital

Conor holds a bachelor of law degree from UCD and qualified as a solicitor while working with McCann FitzGerald in Dublin. He left private practice to join an aircraft leasing company, where he moved from a legal role into a sales and marketing role in EMEA (based in Dublin), subsequently covering Asia (based in Singapore) and ultimately stepping into the head of leasing role (based in the US). Conor joined SMBC Aviation Capital in 2023 as head of airline marketing, leading the company's airline customer relationship and marketing initiatives.

What were the main drivers in your decision to move away from a purely legal role?
My legal career was largely focused on transactional work in the aviation industry, which I enjoyed. However, when presented with a signed term sheet, I was always curious about how the deal first came to life, what seeded the opportunity, and how the pricing on the deal was analysed, negotiated, and agreed. I knew at an early stage that I wanted a role that was customer-facing and that allowed me to build relationships with stakeholders. It felt like a natural chain of events to move from working in a law firm, to moving in-house, to transitioning into a sales and marketing role.

What elements of your legal training and experience have served you best in your new role?
I firmly believe that legal training instils in you a discipline that is deep-rooted and that lends itself well to whichever career you ultimately end up pursuing. The core fundamental skills that I honed during my legal training were an ability to absorb large amounts of information, distil down, and pinpoint the most relevant kernel of information to help inform strategy. Good attention to detail and strong negotiation skills have also lent themselves well to a more commercially focused career.

Was there anything you were less prepared for than your peers by virtue of your legal background?
There are so many different disciplines in legal careers, each with its own area of expertise. From my own experience, I do find that I have had to work harder to brush up on my knowledge of accounting and finance than others who came from non-legal backgrounds. Having a better understanding of these areas (and simply knowing the unknowns) has helped me to be able to form a more rounded opinion when making transactional and strategic decisions.

Is there anything you miss since moving?
My role still affords me the opportunity to use the skills I worked hard to hone during my legal days, and so I haven't looked back. I'm a big believer in looking forward and backing the decisions you make.

MY ROLE STILL AFFORDS ME THE OPPORTUNITY TO USE THE SKILLS I WORKED HARD TO HONE DURING MY LEGAL DAYS, AND SO I HAVEN'T LOOKED BACK. I'M A BIG BELIEVER IN LOOKING FORWARD AND BACKING THE DECISIONS YOU MAKE

Have you ever received any resistance from the organisation in having a 'lawyer with a seat at the table'?
When I first made the move into a commercial role, it was relatively rare for lawyers to move into sales and marketing roles in my industry, with more people from technical and financial backgrounds making the move. That said, I never experienced any significant pushback internally – at most, a stereotyping of strengths and weaknesses based on profession, but this was easily dispelled. In the meantime, it has become much more commonplace for lawyers in the aviation industry to move into other roles and, generally, I feel that people are less pigeon-holed these days.

How did you establish boundaries both for yourself and your stakeholders that you were no longer a legal advisor?
I think the most difficult part was stepping back from the responsibilities that had previously been in my domain when performing a legal role. There was a tendency for colleagues who were working in a legal role to at times fall back to expecting you to fulfil the previous role you had performed. There was also initially the temptation to 'add red-ink' as if working in a legal capacity when not strictly necessary, and I quickly learned the need to allow others to own this area.

Do you think solicitors are too slow to look at roles outside of the legal profession and, if so, why do you think that is?
I think that within law firms there is a subculture that attaches huge importance to partnership, which is highly coveted. This can often blinker other options available outside of law firm life, and I think that some solicitors who do move outside of the legal profession often take a significant amount of time to consider other options. For me, a move to an in-house legal role was a stepping-stone into a role outside of the legal profession, and I found this way of changing focus was gradual and helped to facilitate the move.

Would you move back into a legal role in the future?
No – I am a firm believer in moving forward and not back.

Ruth McCarthy – Fexco

Ruth is head of compliance, risk and policy for Fexco Group. Previously, she worked in a commercial role as CEO of Fexco Corporate Payments and as a solicitor specialising in financial regulation. Ruth is chair of the Fintech and Payments Association of Ireland and a member of the Industry Advisory Group for the Government's Ireland for Finance strategy for financial services. She is a member of the EU Commission Payment Services Market Experts Group, a chartered director, and a regular contributor to publications and events relating to the Irish fintech industry.

What were the main drivers in your decision to move away from a purely legal role?
The opportunity to go beyond giving advice and to get involved in the practical side of business was exciting to me.

What elements of your legal training and experience have served you best in your new role?
Good research skills and problem-solving skills have been very helpful in my commercial career. I also got exposure to large, complex projects with tight timelines when I worked as a lawyer, and that experience has been immensely valuable in everything that I've done subsequently.

Was there anything you were less prepared for than your peers by virtue of your legal background?
Coming from a legal background, I was nervous about anything to do with finance, but I have fantastic colleagues in our finance function who demystified the area for me.

Is there anything you miss since moving?
I miss being able to take the time to master a particular topic. Also, lawyers enjoy the luxury of knowing they are right, whereas, in business, there is usually no one right answer.

Have you ever received any resistance from the business in having a 'lawyer with a seat at the table'?
Never!

GOOD RESEARCH SKILLS AND PROBLEM-SOLVING SKILLS HAVE BEEN VERY HELPFUL IN MY COMMERCIAL CAREER. I ALSO GOT EXPOSURE TO LARGE, COMPLEX PROJECTS WITH TIGHT TIMELINES WHEN I WORKED AS A LAWYER, AND THAT EXPERIENCE HAS BEEN IMMENSELY VALUABLE

How did you establish boundaries both for yourself and your stakeholders that you were no longer a legal advisor?
I gave up my practising cert when I began working in a business role, and I made it clear that I was no longer able to give legal advice. I don't think I can dabble in being a lawyer.

Do you think solicitors are too slow to look at roles outside of the legal profession and, if so, why do you think that is?
Yes. As lawyers, we learn to be good at what we do and to get it right every time. A step into another line of work requires us to start again in a new field where we have limited knowledge and possibly no direct experience. It is unfortunate that lawyers don't move outside the profession very often, because we have so much to give to the business world once we make the leap.

Would you move back into a legal role in the future?
I would love to go back to being a lawyer someday. I think I did my best work as a lawyer, but I get a lot more done in a business function!

Colm Kincaid – Central Bank

Colm was appointed to the role of director of consumer protection in October 2021. Prior to this, he was director of securities and markets supervision and, before that, head of consumer protection: policy and authorisations and deputy head of the Legal Division at the Central Bank of Ireland. He joined the Central Bank in 2004 and has also practised as a solicitor in commercial practice in London and Dublin, specialising in financial regulation and structured finance.

What were the main drivers in your decision to move away from a purely legal role?
The law was once described to me as 'applied philosophy', and the public policy drivers and objectives of the law always interested me most. I had spent many years learning my craft as a lawyer specialising in regulation and structured finance, including in the Central Bank through the crucible of the banking crisis and then the sovereign crisis. So, in 2013, I decided to leave my role as a legal adviser in the Central Bank and move more fully into a policy and regulation role in consumer protection at the bank. For me, at that point in my career and since then, it was more fulfilling to provide public service through the lens of the policy objectives we are trying to achieve to improve financial services for people than to continue to focus on the legal aspects.

What elements of your legal training and experience have served you best in your new role?
I believe a legal training (and perhaps, particularly, practice as a commercial solicitor) provides a unique way of thinking and problem-solving compared to any other discipline, as well as honing negotiation skills. It also taught me how to work without sleep! More profoundly, it provided me with a strong appreciation of the role the law plays in society, which has served me well as a public servant.

Was there anything you were less prepared for than your peers by virtue of your legal background?
The biggest change I found was moving from addressing a topic through the lens of a particular discipline one is trained in (the law) to having to make judgement-based decisions across a range of aspects in a matter where one is not the expert. However, I don't know that I faced this challenge any more than peers who moved into such a role from other disciplines. All in all, I think the law sets you up really well for any role.

Is there anything you miss since moving?
I have very fond memories of my time as a lawyer, and I am especially proud of the service I got to give the State during the banking and sovereign crises. I don't really spend time thinking about the past or missing it. Part of this is, I guess, because the time was right for me to move on to another chapter in my career. And of course, as a regulator, I still get to interact with the law on a regular basis!

Do you think solicitors are too slow to look at roles outside of the legal profession and, if so, why do you think that is?
Everyone has to chart their own course, and society needs a strong independent legal profession with experienced lawyers. But I would encourage lawyers to consider taking a step into other fields, even for a period (if only to get the perspective from the client side of things, which can be an eye-opener!). In-house legal roles can provide a nice bridge for this, if you want something different but not to leave legal practice behind. g

INTERNATIONAL PROTECTION AS AN LGBT APPLICANT

Mr Justice Max Barrett offers some pointers for solicitors on advising LGBTI+ applicants on whether they have received fair process in any international protection applications – and whether there are grounds for appeal or judicial review

'*Right now, someone, somewhere is fleeing persecution because of their sexual orientation or gender identity ... Protecting the persecuted and sheltering the uprooted are part of the foundations of our societies*' (Filippo Grandi, UN High Commissioner for Refugees, address on International Day Against Homophobia, Transphobia and Biphobia, 2019).

Around the world, people are treated badly and attacked because they are LGBTI+. People forced to leave their country to escape such treatment may be able to claim international protection. In this article, I briefly explain what procedures LGBTI+ people can expect to apply when such claims are being processed. Breaches of these expectations may in some instances offer good grounds for an appeal or a judicial review application.

This article leverages off the content and language of the UNHCR's useful *Guidelines on International Protection No 9*. It proceeds by identifying what type of process applicants can expect. It then identifies 'useful questions' that applicants and their advisors might ask themselves in terms of identifying whether they got what they rightly expected to receive.

General

LGBTI+ individuals require a supportive environment throughout the international protection application process. A safe environment is important during consultations with legal advisors.

Useful questions:
Was the applicant provided with (a) a supportive environment throughout the refugee application procedure, and (b) a safe environment in which to meet with legal advisors?

Discrimination, hatred, and violence can affect an LGBTI+ person's capacity to present their claim. It should not be counted against an applicant that they did not declare their sexual orientation or gender identity at the earliest opportunity. Claims based on sexual orientation and/or gender identity are generally unsuited to accelerated processing or the application of 'safe country of origin' concepts.

Useful questions:
- Were adverse judgements drawn from the applicant's not having declared their sexual orientation or gender identity at the screening phase or in the early stages of the interview?
- Were the applicant's claims concerning sexual orientation and/or gender identity subject to accelerated processing or the application of 'safe country or origin' concept?

Interview process

- Was the interview conducted in an open, reassuring environment?
- Did the interviewers assure the applicant at the outset that all aspects of their claim would be kept in confidence?
- Was the interpreter (if any) bound by confidentiality obligations?
- Did the interviewers maintain an objective approach and avoid reaching conclusions based on stereotypical, inaccurate, or inappropriate perceptions of LGBTI+ individuals?
- Were the presence/absence of stereotypical behaviours or appearances relied upon to conclude the applicant possessed a particular sexual orientation or gender identity?
- Did the interviewers proceed on the basis that there are universal characteristics or qualities that typify LGBTI+ individuals?
- Did the interviewers proceed on the basis that life experiences of LGBTI+ individuals can vary greatly, even if from the same country?
- Did the interviewers avoid expressing, verbally or through body language, any judgement about the applicant?
- Had specialised training been provided to interviewers on the particular nature of LGBTI+ claims?

IF SOMEONE'S CREDIBILITY IS QUESTIONED BECAUSE THEY ARE IN A MIXED-SEX MARRIAGE, THEY CAN BE ASKED ABOUT THE REASONS FOR THE MARRIAGE. BUT IF THEY GIVE A CONSISTENT, REASONABLE ANSWER, THIS PART OF THEIR TESTIMONY SHOULD BE FOUND CREDIBLE

- Did the interviewers use vocabulary (particularly in the applicant's own language) that was non-offensive and showed a positive disposition towards diversity?
- Were specific requests by the applicant regarding the gender of interviewers/interpreters considered favourably?
- Was any questioning about sexual violence conducted with the same sensitivity as in the case of any other sexual assault victims?
- Did the interview process show respect for the human dignity of the asylum-seeker?
- If the applicant is a woman, were they interviewed separately, without the presence of male family members, to ensure they had an opportunity to present their case?

If the answer to any of these questions is 'no', it seems ostensibly arguable that the applicable interview process was flawed.

Credibility

Whether an applicant's LGBTI+ claim is successful turns ultimately on whether an applicant's contentions are believed. This falls to be judged on a case-by-case basis and handled sensitively. The interviewer is required to focus on an applicant's experiences, feelings, and perceptions, not their sexual practices.

Useful questions:

- Was credibility assessed by reference to the applicant's circumstances and in a sensitive way?
- Did the interviewer focus on the applicant's experiences, feelings, and perceptions?
- Did the interviewer avoid focusing on the applicant's sexual practices?

Self-identification

If someone says they are LGBTI+, this should be seen as an indication of their sexual orientation or gender identity. A person's social and cultural background can influence how they identify. People from very intolerant countries may not easily identify as LGBTI+. This should not rule out their claim based on sexual orientation or gender identity if there are other signs of their sexual orientation or gender identity.

Useful questions:

- Was the applicant's self-identification as LGBTI+ taken as an indication of their sexual orientation and/or gender identity?
- Was there consideration of how the applicant's social/cultural background may affect how they self-identify?
- Was there consideration of the fact that (if it is the case) the applicant harbours shame and/or internalised homophobia, leading them to deny their sexual orientation and/or to adopt perceived 'heterosexual' behaviours?
- If the applicant comes from a country highly intolerant of LGBTI+ people, was it accepted that a failure readily to identify as LGBTI+ should not be fatal to their claim?

Childhood

Some LGBTI+ individuals may feel 'different' as children. The core attractions that form the basis for adult sexual orientation may emerge between middle childhood and early adolescence; however, some may not experience same-sex attraction until later in life. Persons also may not be aware of their full gender identity until adolescence, early adulthood, or later in life.

Useful questions:

- Was there consideration of the fact that (if this is so) the applicant felt 'different' as a child?
- Was there acceptance that (if this is so) same-sex attraction was not experienced by the applicant until later in life?
- Was there acceptance that (if this is so) the applicant did not become fully aware of their gender identity until later in life?

If the answer to any question is 'no', the applicant may have cause for complaint about the process through which they have been put.

Self-realisation

'Coming out' can mean an LGBTI+ person accepting their identity and/or telling others about it. Asking about 'coming out' can help an applicant talk about their identity. Some people know they are LGBTI+ for a long time before they have relationships or openly express their identity. Prejudice and discrimination can make it hard for people to accept their sexual orientation or gender identity, so it can be a slow process.

Useful questions:

- Was the applicant asked questions about 'coming out' or self-realisation?
- Was there an acceptance that some people know they are LGBTI+ for a long time before they pursue relationships with other people and/or express their identity openly?
- Was there an acceptance that prejudice and discrimination may make it difficult for people to come to terms with their sexual orientation and/or gender identity and that it can, therefore, be a slow process?

Gender identity

Just because a transgender person has not had medical treatment or changed their appearance does not mean that they are not transgender. Some transgender people identify with their chosen identity without medical treatment, or they might not have access to such treatment. It is considered permissible by the UNHCR for an interviewer to ask (sensitively) about any steps a transgender person has taken during their transition.

Useful questions:

- Was there acceptance that the fact that (if this is so) the applicant had not undergone any medical treatment or other steps to help their outward appearance match their preferred identity should not be taken as evidence that the person is not transgender?
- Was there an acceptance that the fact that some transgender people identify with their chosen identity without medical treatment, while others do not have access to such treatment?

- Was the applicant asked about any steps taken in their transition?

Non-conformity

LGBTI+ applicants for international protection may come from places where their sexuality or gender identity is seen as bad or is forbidden. This can make it hard for them to understand themselves or feel accepted. They might feel like they do not fit in with their families, friends, or communities, and this can make them feel ashamed or alone.

Useful questions:

- Was there an acceptance that the fact that (if this is so) the applicant grew up in a culture where sexuality and/or gender identity is shameful/taboo?
- Was there an acceptance that the fact that (if this is so) the applicant struggled with their sexual orientation or gender identity?
- Was there an acceptance of the fact that experiences of disapproval and of 'being different' or the 'other' may result in feelings of shame, stigmatisation or isolation?

Family relationships

Some applicants might not have told their family about their sexuality or gender identity. They might also be (or have been) in a mixed-sex marriage or have children. But these things alone do not mean that they are not LGBTI+. If someone's credibility is questioned because they are in a mixed-sex marriage, they can be asked about the reasons for the marriage. But if they give a consistent, reasonable answer, this part of their testimony should be found credible.

Useful questions:

- Was there acceptance that a lack of general openness about sexual orientation and/or gender identity does not mean that an applicant is not LGBTI+?
- Was there acceptance of the fact that just because an applicant may be or have been in a mixed-sex marriage and/or has children is not determinative as to whether they are LGBTI+?
- If an applicant is in a mixed sex marriage and concerns as to their credibility arose, were they asked questions surrounding the reasons for marriage?
- If they were able to provide a consistent and reasonable explanation of why they were in a mixed-sex marriage and/or have children, was this portion of their testimony found credible?

Romantic and sexual relationships

Not everyone, especially young LGBTI+ people, will have had romantic/sexual relationships. The fact that an applicant has not had any relationship(s) in the country of origin need not mean that they are not LGBTI+. It may be an indication that they have been seeking to avoid harm. Interviewers need to be sensitive when questioning about past/current relationships, since it involves personal information that the applicant may be reluctant to discuss in an interview setting. Detailed questions about an applicant's sex life are required to be avoided. Interviewers are required to bear in mind that sexual orientation and gender identity are about a person's identity, whether or not that identity is manifested through sexual acts.

Useful questions:

- Was there acceptance that not everyone, especially young LGBTI+ people, will have had romantic/sexual relationships?
- Was there acceptance that the fact that an applicant has not had any relationship(s) in the country of origin need not mean that they are LGBTI+?
- Was the interviewer sensitive as regards questioning about past/current relationships?
- Were detailed questions about the applicant's sex life avoided?
- Was there acceptance of the fact that sexual orientation and

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IN-PERSON CPD CLUSTERS 2024			
14 November	**Practitioner Update Cork 2024**	The Kingsley Hotel, Cork Total 6 hours (by group study)	*€160
21 November	**General Practice Update Kilkenny 2024**	Hotel Kilkenny, Kilkenny Total 6 hours (by group study)	*€160
04 December	**Practice and Regulation Symposium 2024**	The College Green Hotel (formally The Westin), Dublin 2 Total 6 hours (by group study)	*€160
IN-PERSON AND LIVE ONLINE			
06 November	**Employment Law Annual Updates 2024**	Zoom webinar | 3.5 general (by eLearning)	€175
13 November	**Annual Business Law Conference 2024**	Law Society of Ireland | 3 general (by group study)	€175
19 November	**Top Tips for Successful Probate Applications**	Zoom webinar | 1 general (by eLearning)	€65
21 November	**Environmental and Planning Law Committee Annual Conference 2024**	Law Society of Ireland | 3 general (by group study)	€175
27 November	**The Right to Trial by Jury in Civil Proceedings**	Zoom webinar | 1 general (by eLearning)	€65
05 December	**Client Skills for Lawyers Morning Workshop**	Law Society of Ireland | 3 professional development and solicitor wellbeing (by group study)	*€160
05 December	**Client Skills for Lawyer Afternoon Workshop**	Law Society of Ireland | 3 professional and development solicitor wellbeing (by group study)	*€160
28 February	**Human Rights Annual Conference 2024 - Friend or Foe? AI, Justice & Human Rights**	Law Society of Ireland | 4 general (by group study)	Complimentary
ONLINE, ON-DEMAND			
Available now	**International Arbitration in Ireland Hub**	Up to 11.5 general (by eLearning)	*€110
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gender identity are about a person's identity, whether or not that identity is manifested through sexual acts?

Community

Applicants who were not open about their sexual orientation or gender identity in the country of origin may not have information about LGBTI+ venues or culture. Ignorance of commonly known meeting places and activities for LGBTI+ groups is not necessarily indicative of the applicant's lack of credibility. Lack of engagement with other members of the LGBTI+ community in the country of asylum or failure to join LGBTI+ groups may be explained by economic factors, geographic location, language and/or cultural barriers, lack of such opportunities, personal choices, or a fear of exposure.

Useful questions:

- Was there an understanding of the fact that (if this is so) the applicant does not have information about LGBTI+ venues or culture because they have not generally been open about their sexual orientation or gender identity in the country they come from?
- Did the interviewer/decisionmaker seem to accept that ignorance of commonly known meeting places and activities for LGBTI+ groups is not necessarily indicative of an applicant's lack of credibility?
- Did the interviewer/decisionmaker appear to accept that lack of engagement by the applicant with other members of the LGBTI+ community in their country of asylum or failure to join LGBTI+ groups may be explained by economic factors, geographic location, language and/or cultural barriers, lack of such opportunities, personal choices or a fear of exposure?

Religion

Where an applicant's personal identity is connected with their faith, religion, and/or belief, this may be helpful to examine as an additional narrative about their sexual orientation or gender identity. The influence of religion in the lives of LGBTI persons can be complex, dynamic, and a source of ambivalence.

Useful question:
To the extent that religious factors are of any relevance to an applicant's life or experiences, was the applicant asked about them?

Principle of non-discrimination

As humans, we all have basic rights under international law. Article 1 of the *Universal Declaration of Human Rights* states that "all human beings are born free and equal in dignity and rights". Article 2 states that "everyone is entitled to all the rights and freedoms in this declaration". The *Refugee Convention* (1951) and international refugee law focus on respect for fundamental rights and non-discrimination.

A country's international protection application process is required to respect fundamental rights and the principle of non-discrimination, and not to discriminate on the ground of sexual orientation or gender identity. Observation of the above procedural precepts and propositions is critical to attaining these ends. Failure to observe such precepts and propositions may, in the right case, offer good grounds to an applicant to bring an appeal against, and/or to seek judicial review of, a decision adverse to their claim.

Dr Max Barrett is a judge of the High Court of Ireland. Any views expressed herein are personal. This article is not intended to be and should not be relied upon as legal advice. Law (including 'soft' law such as that considered in this article) can be a clumsy instrument when it comes to describing and defining matters as personal and delicate as sexual orientation and gender identity. So I apologise for any perceived (unintended) clumsiness of phraseology that arises from my description of the applicable (soft) law.

UNTANGLING THE THREADS

A departure from the existing causation test in tortious claims might be required to ensure that a meritorious claim will not fail. Is it a case of 'no buts, it's got to be but-for?', asks Kate Ahern

In tortious claims, the general rule is that the plaintiff must prove, on the balance of probabilities, that the defendant owed the plaintiff a duty of care and that the defendant's wrongdoing caused the plaintiff's injury. The courts usually approach the latter issue by answering the question "Would the injury not have occurred but for the defendant's actions?". In other words, would the outcome have eventuated irrespective of the breach?

This test operates efficiently where there is a single cause of the injury. Its limitation is evident in more complicated matters, such as occupational disease where the cause is multifactorial or where there is more than a single tortfeasor. Difficulties with the traditional test may also arise in clinical negligence litigation, where there may be multiple causes, including pre-existing conditions or where co-morbidities interact.

Position in Ireland

The infant plaintiff in *Quinn v Mid Western Health Board* suffered catastrophic injuries at birth. The defendants, while acknowledging negligence in care, contended that the injuries were caused by an acute episode *in utero* requiring early delivery, for which they were not responsible. Kearns J rejected the proposition of considering an alternative test where the standard test failed: "If I were convinced that defendants who have a substantial connection to the injury were escaping liability because plaintiffs cannot prove causation under currently applied principles, I would not hesitate to adopt [an alternative]. In my opinion, however, properly applied, the principles relating to causation are adequate to the task. Adoption of either of the proposed alternatives would have the effect of compensating plaintiffs where a substantial connection between the injury and the defendant's conduct is absent."

To date, the Irish courts have failed to consider an alternative test. An analysis of our neighbouring jurisdiction might provide a helpful insight into the potential approach to be taken in cases where the 'but-for' causation test proves inadequate. Where a plaintiff may face an injustice on the standard test, the courts of England and Wales have extended the test to that of 'material contribution'. This concept originated in occupational disease litigation and has since been applied in clinical negligence cases.

Extending the but-for test

This area of law has been described by the English Court of Appeal as involving "complex and difficult questions of law in an area that has been bedevilled by apparent inconsistency and imprecision at the highest level on multiple occasions".

In that jurisdiction, where the standard test fails, there remains a prospect of recovery for the plaintiff, and the legal principle of material contribution should be considered.

Courts can determine whether the defendant's act materially contributed to the harm – that is, that the cause was more than negligible. The courts in such cases rely on expert evidence and, if this can show that the defendant's actions substantially contributed to the harm suffered, then the plaintiff may recover 100% of the damages from that defendant. Even where the defendant's negligence was not the sole – or even the most significant – cause, and one or more causes materially contribute to the injury, the claim can succeed.

PIC: SHUTTERSTOCK AI

The courts of England and Wales have dealt with this issue in a number of cases that might provide a useful guide to our courts should the need arise.

In *Bonnington Castings v Wardlaw*, the plaintiff suffered from pneumoconiosis arising out of silica dust inhalation during the course of his employment with the defendant. There were two sources of the dust:

- Pneumatic hammers, during which period there was no known protection, and
- Swing grinders – the dust was present owing to a failure to maintain dust extractors on the part of the defendant, rendering it liable.

The expert evidence failed to show which dust was responsible for the disease. In those circumstances, the 'but-for' test failed, as the plaintiff was unable to establish that the injury would not have eventuated but for the silica dust exposure. The court then considered whether the plaintiff had proven that the dust produced by the swing grinders made a substantial contribution to the disease. The court found that the defendant's failure contributed dust in levels that were "not negligible to the lungs and were therefore causative". Lord Reid continued: "What is the material contribution must be a question of degree. A contribution which comes within the exception *de minimis non curat lex* is not material, but I think that any contribution which does not fall within that exception must be material."

The court found in favour of the plaintiff on the basis that the tortious exposure was more than *de minimis*, therefore it had materially contributed to the illness suffered.

The plaintiff in *McGhee v National Coal Board* suffered dermatitis from brick kiln dust on his clothing. The

'I said tortious claims!'

defendant did not provide washing facilities, and the plaintiff was forced to wear the dusty work clothing after work until he returned home to wash. The House of Lords followed *Bonnington* and found in favour of the plaintiff, holding that the exposure to the brick dust outside of work had contributed to his skin condition and materially increased the likelihood of him developing dermatitis.

In contrast, while the infant plaintiff in *Wilsher v Essex Area Health Authority* suffered harm at his premature birth, resulting in blindness, and it was accepted that excessive oxygen had been negligently administered to the newborn, the evidence before the court was that numerous other factors could also have caused the harm suffered. While the defendant's lack of care was proven, the plaintiff failed to show that it was causative. The House of Lords allowed the defendant's appeal, where it was held that there was no satisfactory evidence that excess oxygen is more likely than any of a number of other distinct possible factors to have caused the harm.

Inadequate test

In *Fairchild v Glenhaven Funeral Services Ltd*, the plaintiff developed mesothelioma as a result of exposure to asbestos dust in the course of employment at more than one employer. Mesothelioma is what's known as an 'indivisible disease' (discussed below), as it may occur following inhalation of a single particle, thereby making it difficult to identify which defendant was responsible for the disease. It also followed that the 'but-for' test was inadequate. The House of Lords held that, in certain special circumstances, the court could modify the 'but-for' test to enable causation to be found proved where it is demonstrated that a breach of duty materially increases the risk of the plaintiff contracting an injury. The court held that it was just to find both defendants liable where their conduct made a material contribution to the outcome.

In *Bailey v Ministry of Defence & Anor*, the plaintiff suffered a series of incidents culminating in aspirating after vomiting, thereby suffering cardiac arrest and brain damage. The incidents included the non-negligent cause of pancreatitis and the negligent lack of care on the part of the defendant. The court distinguished this case from *Wilsher*, in which there had been cumulative causes that resulted in the outcome. The court held that the aspiration was caused by debilitating weakness, which, in turn, was caused by the numerous incidents. The court modified the but-for test, allowing the plaintiff to succeed, holding that since the contribution of the negligence was more than minimal, causation was established.

CNZ v Royal Bath Hospitals concerned the birth of twins, one of whom suffered profound hypoxic ischaemia, leading to quadriplegic cerebral palsy. The plaintiff contended that the failure to provide a caesarean section in time caused the injury. The court concluded that, where the but-for test cannot be satisfied due to a lack of conclusive scientific evidence, then the law will apply the material contribution test. If the plaintiff can prove that the breach made a material contribution to the injury that was more than *de minimis*, then he should be entitled to recover 100% of the damages.

The recent case of *Holmes v Poeton Holdings Ltd* also involved occupational disease. The plaintiff claimed that the Parkinson's Disease he suffered resulted from exposure to unsafe levels of trichloroethylene while at work, forcing his early retirement. At first instance, the plaintiff was held to have established causation, and the court found the defendant liable for all of the disease.

The defendant appealed on the causation ground, submitting that the trial judge had relied on the wrong legal test where the harm suffered was an 'indivisible disease'. Further, the defendant claimed that the court had failed to consider whether the plaintiff would have developed the disease in any event. The appeal was allowed, as the court found

WHETHER IRISH COURTS FOLLOW THE ENGLISH JURISPRUDENCE TO PREVENT CAUSING AN INJUSTICE REMAINS TO BE SEEN. A DEPARTURE FROM THE EXISTING CAUSATION TEST MIGHT BE REQUIRED TO ENSURE THAT A MERITORIOUS CLAIM WILL NOT FAIL OWING TO THE STRICT NATURE OF THE 'BUT-FOR' TEST

that insufficient evidence had been adduced to substantiate a causative link between the tortious exposure and the disease in circumstances where causation of the disease is multifactorial. The evidence before the court was that Parkinson's Disease may result from genetic risk factors and environmental factors.

Divisible v indivisible diseases

The courts have categorised diseases according to divisibility of liability. Lord Justice Stuart-Smith stated in *Holmes*: "It is a characteristic of divisible diseases that, once initiated, their severity will be influenced by the total amount of the agent that has caused the disease. By contrast, once an indivisible disease is contracted, its severity she will not be influenced by the total amount of the agent that caused it."

Diseases resulting from asbestos exposure highlight the distinction between divisible and indivisible diseases. Scientifically, the severity of a case of asbestosis is directly related to the exposure to asbestos. A defendant may be held liable only for the extent to which they contributed to the injury, therefore the injury is described as 'divisible'. Mesothelioma, on the other hand, can eventuate following exposure to a single asbestos fibre. So where there are a number of defendants, it is medically impossible to say which exposure caused the condition.

Where it is impossible to divide the damages between defendants, then all are payable by the liable defendant(s). If the court is unable to make any apportionment between the two or more periods, then the plaintiff will be entitled to recover in full. In *Bonnington*, pneumoconiosis is aggravated by every exposure – therefore, it was categorised as a divisible disease. *Holmes* confirmed that the material contribution principle should also apply to indivisible diseases.

Burden of proof

In the Irish case of *Quinn*, the plaintiff sought to rely on the *Fairchild* test in circumstances where there was a question as to the causation of the brain damage. The plaintiff's appeal was dismissed, where it was proven that the plaintiff would have suffered the damage regardless of the care provided by the defendant.

At the time of the judgment in *Quinn*, it was suggested that the use of the *Fairchild* test required a shift in the onus of proof, obliging the defendant to prove that they did not cause the harm. In this case, the Supreme Court was reluctant to require a shift in the onus of proof, stating that such would only be done in exceptional circumstances. Kearns J held that the more relaxed requirements in *Fairchild* and *McGhee* should be confined to more exceptional cases. Since then, *Holmes* has confirmed that no onus shift is appropriate. Accordingly, the Irish courts might be more open to considering the 'material contribution' test.

Whether Irish courts follow the English jurisprudence to prevent causing an injustice remains to be seen. A departure from the existing causation test might be required to ensure that a meritorious claim will not fail owing to the strict nature of the 'but-for' test.

Kate Ahern is a practising barrister and former solicitor.

LOOK IT UP

- *Quinn v Mid Western Health Board* [2005] IESC 19

ENGLISH CASES:

- *Bailey v Ministry of Defence & Anor* [2007] EWHC 2913 (QB)
- *Bonnington Castings v Wardlaw* [1956] AC 613
- *CNZ v Royal Bath Hospitals* [2023] EWHC 19 (KB)
- *Fairchild v Glenhaven Funeral Services Ltd* [2002] UKHL 22
- *Holmes v Poeton Holdings Ltd* [2023] EWCA Civ 1377
- *McGhee v National Coal Board* [1973] 1 WLR 1
- *Wilsher v Essex Area Health Authority* [1988] 1 AC 1074

OUR HOUSE

The in-house sector is expected to make up close to 30% of the profession within a few years. Mary Hallissey speaks to Alison Bradshaw, chair of the Law Society's busy In-House and Public Sector Committee

Committee secretary Louise Campbell, chair Alison Bradshaw, and vice-chair Roisin Magee

PIC: CIAN REDMOND

Of any given Blackhall Place PPC class, close to a third could end up working as in-house counsel. This demonstrates the wider importance of the Law Society's In-House and Public Sector Committee to the profession.

It's a busy committee, with 25 members and about eight meetings a year, combining virtual and at least three in-person formats. A key goal is to build a culture of even greater involvement with the Law Society, given that the sector is expected to make up 30% of the profession within a few years.

The committee will be making it a primary aim to encourage more representation of the sector at Law Society Council level. "We do need to have a pipeline there. It's something I see us looking into as we head into next year, because we have realised deciding to run for Council is not just something you decide close to the deadline date; it's something that a candidate needs to plan," says committee chair Alison Bradshaw.

Public and private

Alison notes that the public sector has always been strongly represented in in-house numbers, while the private side has surged in recent years, in tandem with increased inward investment to Ireland and the economic growth it fosters.

"We have so many companies here now, and companies that seek out Ireland as their base," she says. "Those companies generally find that it is beneficial to them to have in-house legal. Once they make Ireland their base, it makes sense to have Irish solicitors on staff."

This has led to a huge growth in numbers – to 25% of the profession, with expectations of growth to 30% over the next five years.

"That's the profile, and within the solicitor community, it's becoming quite a recognisable cohort. We want to really set out and get a clear picture of the sector, as to what our composition is and our concerns are," says Alison. "We want to improve awareness of the profile and standing of the in-house community within the Law Society.

"Another area we would like to promote is raising the level of the sector's representation on Law Society committees, which would benefit in terms of spreading in-house expertise."

Different strokes

"The sector is a bit different," Alison notes. Lawyers in private practice are surrounded by other lawyers, while in-house solicitors work side by side with a wide range of stakeholders and skillsets. "In private practice, you need to go and fetch your work, you need to win it. In-house, by the nature of the role, the work finds you."

There may also be slightly less formality to the legal advice that's delivered in-house, she adds. "You're getting asked questions as you go, and you need to be able to think on your feet."

THE RELATIONSHIP BETWEEN IN-HOUSE LAWYERS AND PRIVATE PRACTICE IS THAT WE CAN BOTH CO-EXIST VERY WELL TOGETHER AND LEARN FROM AND COMPLEMENT ONE ANOTHER. THE MORE WE'RE ALL INVOLVED IN ONE CENTRAL LAW SOCIETY, THE BETTER FOR THE PURPOSE OF THE PROFESSION, FOR PRACTICES, AND FOR ORGANISATIONS

The other big difference is the necessary in-depth knowledge of the organisation that the in-house lawyer is supporting. "When you work in-house, you really are expected to know your organisation inside out and know the impact of the advice that you're providing, while obviously remaining impartial.

"That knowledge can actually make your input impactful very quickly," says Alison, who works as part of the AIB legal team.

The *Guide for In-House Solicitors* on the Law Society website is an excellent resource, Alison says. "There's years of experience ploughed into that."

Membership of ECLA – the European Company Lawyers Association – is a vital resource, because it provides a pan-European perspective for in-house company lawyers. In some European countries, it can be the case that lawyers practising in-house don't have the same rights in relation to legal professional privilege, and the committee is actively monitoring the situation in other jurisdictions through its ECLA membership.

Role of honour

Impartiality is the key part of the role of in-house counsel, Alison notes.

Legal counsel also act as a support for decision-makers and help them to proceed through the practical implications of business initiatives. "It's about helping them to make that link between where the legal clarity ends and the actual hard decisions. It's in that zone, I think, that we bring most value."

In-house lawyers often buy in legal advice from private practice, Alison points out. "The relationship between in-house lawyers and private practice is that we can both co-exist very well together and learn from and complement one another. The more we're all involved in one central Law Society, the better for the purpose of the profession, for practices, and for organisations."

Packed agenda

"For each large agenda item, we have a committee subgroup that advances that. We do a lot of work in between meetings and then report back as to how things are progressing," Alison says. "We have a lot of activity in our agenda; it's always very packed."

The use of subgroups for various initiatives allows for more focused work by the committee.

Guidance on *pro bono* work and other legal issues underscores the committee's commitment to supporting in-house lawyers in their roles.

The committee hold two large sectoral events each year – a panel discussion in the spring and an annual conference in October. Each event is supported by different subgroups, which monitor legal developments to decide on topical content.

"We are innovating and leading in transformative times, so we are focused on how lawyers get ahead as leaders in their organisation. Right now, we're looking at rising in-house numbers, and we do expect that to continue."

The expertise and skillset of the in-house lawyer lies in the ability to help stakeholders formulate the right question and to know how to get the answer, Alison says. "It's a very fulfilling and viable career choice in itself, because of the expertise developed in-house." g

Mary Hallissey is a journalist with the Law Society Gazette.

Constitutional chaos?

The seminal *Heneghan* judgment has serious implications for the ability to elect an Oireachtas consistent with the Constitution. Lesley O'Neill takes the tally

HOGAN J ASSERTED THAT IT WOULD NOT BE PRACTICAL OR REALISTIC TO MAKE A DECLARATION OF INVALIDITY IMMEDIATELY EFFECTIVE, SINCE IT WOULD 'EFFECTIVELY RENDER OUR DEMOCRATIC SYSTEM POSITIVELY UNWORKABLE'

The decision of the Supreme Court on 26 July 2023 in *Heneghan v Minster for Housing, Planning and Local Government, Government of Ireland, Attorney General and Ireland* ([2023] IESC 18) addressed the limited and rarified circumstances in which declaratory orders can be suspended by the court, with the Supreme Court permitting the suspension in that case to prevent and avoid "constitutional chaos".

In *Heneghan*, the plaintiff (a graduate of the University of Limerick) asserted, among other things, that certain provisions of the *Seanad Electoral (University Members) Act 1937*, which limited the six so-called 'university seats' of the Seanad to graduates of the National University of Ireland and Trinity College Dublin, were inconsistent with the provisions of article 18.4.2 of the Constitution.

The plaintiff also asserted that the State had failed to enact enabling legislation to take account of the referendum passed in 1979 that permitted the extension of the Seanad university franchise to graduates other than those of the NUI and TCD and that the State's failure to recognise and implement the result of the 1979 referendum constituted a further failure on its part.

It was also asserted that the required enabling legislation was neglected by successive governments, and it was accepted by the court that the time for enactment had "long since expired", given some 44 years had passed since the 1979 referendum.

Remedy

Notwithstanding the court's censure, it did not declare sections 6 and 7 of the 1937 act invalid with immediate effect, and ruled instead that its declaration of invalidity would instead remain suspended or postponed to allow the present Government to "allow the position to be remedied" – that is, to pass the requisite enabling legislation. Hogan J asserted that it would not be practical or realistic to make a declaration of invalidity immediately effective, since it would "effectively render our democratic system positively unworkable".

In deference to the separation of powers doctrine and keen not to step into the shoes of the legislature, the court acknowledged the difficulties it faced in formulating the period of suspension, given that the responsibility for the legislative process lies squarely with the Oireachtas and also given the administrative task associated with the creation of a new electoral register. In considering the period of suspension, the court addressed its own jurisdiction to suspend declarations of invalidity, being guided by article 15.4.2, which asserts that "every law enacted by the Oireachtas, which is in any respect repugnant to this Constitution (or to any provision thereof) shall, but to the extent only of such repugnancy, be invalid".

The court, in considering its jurisdiction to declare laws repugnant, held that it must exercise the utmost caution in suspending any such declaration, as to do so would permit the state of affairs to continue – that is, sections 6 and 7 of the 1937 act would remain in force, albeit for a specified and limited period. As such, the court asserted that it must only suspend such rulings on rare occasions and acknowledged that the jurisprudence of the courts establishes that there are circumstances in which the retrospective "effect of a declaration of invalidity must be qualified". The court noted that it was necessary in *Heneghan* to avoid "constitutional crisis" and that

the legislation in question was "part of the constitutional architecture of the State itself".

Suspension

Accordingly, the court suspended its declaration of invalidity to 31 May 2025 to permit and facilitate the Oireachtas to enact new "curative" legislation, holding that, while the risk of the dissolution of the current Dáil before the curative legislation is in place was in its view "small", that the consequences for the "constitutional structure (were) so final and fatal" that it was appropriate for the court in *Heneghan* to suspend its declaration of repugnancy.

The court considered the term of its suspension appropriate, being a "single, relatively lengthy period". However, it remains to be seen if the curative legislation can be passed and enacted in advance of the suspensory longstop date, noting that the court referred to international precedent that acknowledges that a "reasonably lengthy period of suspension is necessary where the incompatibility identified related to electoral provisions".

Following the decision in *Heneghan*, the *Seanad Electoral (University Members) (Amendment) Bill 2020* was initiated to provide for the extension of the franchise of the university panel of Seanad Éireann to all people who are over 18 and are holders of an appropriate third-level qualification from an Irish institute of higher education. The bill proposes to amend (the soon to be invalidated) section 7 of the *Seanad Electoral (University Members) Act 1937* to entitle every Irish citizen over 18 who has received a degree or diploma (as defined) to be registered as an elector in the register of electors for the university constituency.

The *Heneghan* judgment is considered seminal in terms of not just its analyses of articles 18 and 34 of the Constitution, but also in terms of the court's review of its rarified jurisdiction to suspend declarations of invalidity. It will also, it is argued, be indubitably associated with the creation of a reformed Seanad, which for the first time in its history will (if the curative legislation is enacted) extend the franchise to graduates other than those of NUI and TCD.

The judgment is also to be considered seminal as it will ensure, once the curative legislation is enacted, the belated acknowledgement of the outcome of the 1979 referendum (some 44 years later) and will, as per Chief Justice O'Donnell in the ruling, direct the attention of the Oireachtas to its obligation to perform its constitutional duty to enact legislation – with the court again emphasising that it was appropriate in this rare case to suspend its ruling, as there was a real risk that, had it not, the curative legislation might not have been enacted in time and would, as a consequence, result in an inability to elect an Oireachtas consistent with the Constitution. g

Lesley O'Neill is a solicitor with Blake & Kenny LLP, Galway.

Ten years gone

Ten years ago, the provision of counselling services moved in-house at the Law Society. Where has the time gone, asks Trish Howard

> RESEARCH CONFIRMS THAT LAWYERS ACROSS THE GLOBE EXPERIENCE CLINICALLY CONCERNING LEVELS OF MENTAL HEALTH AND WELLBEING, ALONGSIDE HIGH LEVELS OF BULLYING, HARASSMENT AND SEXUAL HARASSMENT IN THE WORKPLACE

Hozier was taking us to church, Enda Kenny was taoiseach. The country was on its way to recovery after some exceedingly difficult years. Change was also afoot in the Law School. What was to become the Law Society Psychological Services' start-up team was born.

The first challenge was to encourage large numbers of trainees to engage in a series of counselling sessions while attending the Professional Practice Course. To attract them in, a new module was introduced – 'Shrink Me: Psychology of a Lawyer'. For the first time, and uniquely in Ireland, the psychological aspects of professional legal life would be addressed, and trainees would be offered a space to think about these aspects and how they might apply them in their own lives.

Since 2014, around 3,000 trainee solicitors from 385 legal workplaces have received over 15,000 clinical hours – at an average of five appointments per trainee. Around half of the 2023 full-time PPC cohort have engaged with the service and, when asked to rate their satisfaction with the service, 77% (of the 2023 PPC) gave a score of 9 or 10.

Houses of the holy

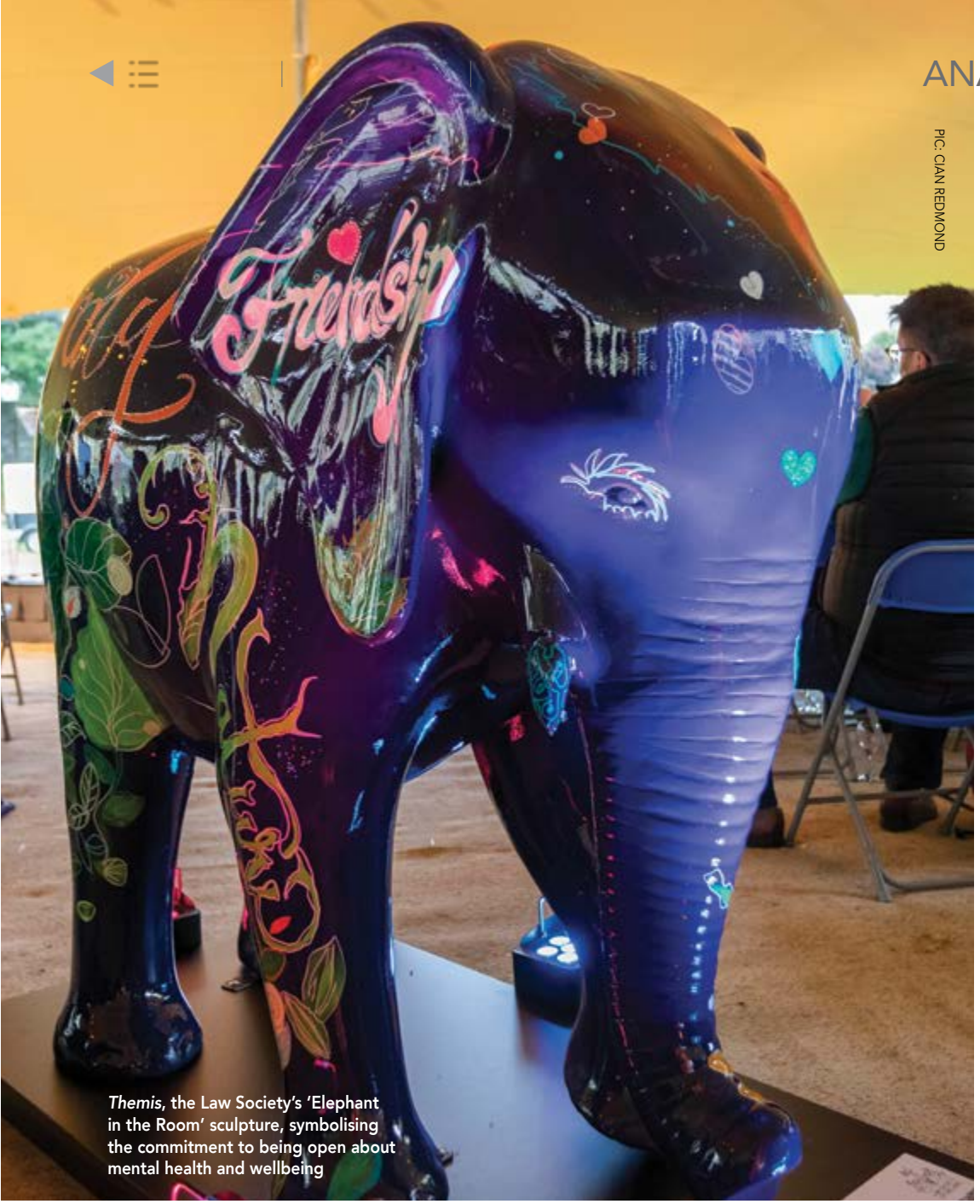
The space allocated to the counselling team reflects the Law Society's commitment to the wellbeing of trainees, Antoinette Moriarty, head of Psychological Services, notes: "We moved from an external partnership with St Edmundsbury Hospital, Lucan, to having one counsellor attend once a week at the back of the Law Society, to being allocated three dedicated rooms in a building where space is at a premium. This signals the importance that has been placed on mental wellbeing and reflects the innovation and essential support provided by Law Society leadership, such as director of education TP Kennedy and successive presidents such as Michael Quinlan and Michelle Ní Longáin. The immense and vital support from the Law Society Council has made this innovative and unique programme successful."

As the Law School developed and changed its training, so too did the counselling team. 2019 saw the launch of the Hybrid PPC course and, alongside it, an expanded counselling team. More recently, the 'Complete Lawyer' module was launched, placing psychological knowledge as a third pillar of legal training, alongside legal knowledge and skills.

So what kind of topics were being talked about?

The 'Shrink Me' module covered topics such as perfectionism and its toxic first-cousin, imposter syndrome and, as Antoinette Moriarty observes, "the ever-prevalent dynamics of the drama triangle that plays out between trainees/lawyers, clients, and the demands of their own workplaces". Professionals often find themselves assigned to and unconsciously trapped in specific psychological roles: the rescuer, the victim, or the perpetrator. Aspects of psychological health, such as how to regulate stress and anxiety using frameworks like the 'Window of Tolerance' and connecting this with effective legal practice, are also addressed. The counselling service has been and remains available and operates alongside these lectures to give trainees a solid sense of how their psychological wellbeing can be scaffolded alongside their skills and legal knowledge.

Why is this important? Although talked about more now, it's worth remembering that research confirms that lawyers across the globe experience clinically concerning levels of mental health and wellbeing, alongside high levels of bullying, harassment, and sexual harassment in the workplace. Back in 2014, it was harder than it is now to speak about the psychological reality of working in the legal profession, and the idea of engaging in this way with trainees was almost unheard of. Antoinette Moriarty remembers: "At an IBA conference in New York in 2016, people looked at



PIC: CIAN REDMOND

Themis, the Law Society's 'Elephant in the Room' sculpture, symbolising the commitment to being open about mental health and wellbeing

me like I had two heads. The idea that trainee solicitors at the start of their careers would use and benefit from access to psychotherapy, before the challenges of working in the profession had properly hit them, was unheard of. We were utterly unique." However, the need was there. Lynda Sheane, counselling service coordinator, says: "Maybe what was surprising back then was the workload that the students in the PPC had to bear. It wasn't unusual for a trainee to do a full day in Blackhall and then go back to the office until 11pm or midnight."

Good times, bad times

Feedback from 2014 highlights how access to counselling at this point in life can be very transformative: "I entered the service not knowing what to expect and also unsure whether I had anything I needed to discuss. It turned out I had plenty to say over the course of sessions and, in turn, discovered a lot about myself. The sessions opened a lot of doors for me and helped me deal with some things that I didn't really consciously know were troubling me. The sessions have made me a lot more open, understanding and patient."

TP Kennedy notes: "Our student population is a little older than third level, and distressing life events (like the loss of a parent or grandparent) are much more common with us. In addition, many of our students are very bright and high achievers, and the firms have high expectations. The PPC is almost a last chance to draw breath and prepare for a stressful career ahead."

He adds: "I suspect that the counselling service has enabled many trainee lawyers to deal with issues and recognise unhealthy behaviours before they became a problem. In conjunction with the course on the PPC, we've shone a large spotlight on mental health and resilience. It's clear that we perceive it as of equivalent value to ethics, knowledge, legal skills, and the other requirements for legal practice. That's a very strong message to be sending both the profession and Irish society generally."

Bring it on home

Since 2014, the team has grown and now comprises 14 part-time psychotherapists with a range of specialities, from general psychotherapy and drama therapy to gestalt and group analysis.

The team has dealt with a range of issues over the years and, like all psychotherapists, stick to the idea that there is nothing that can't be helped or eased by being thought about and named in the therapy room. As a response to what emerges, the team has received specialist training in areas such as suicidality, eating disorders, and working with neurodiversity.

We look forward to another ten years of serving a wonderfully rich and diverse group of people at such an important stage of their lives. g

Trish Howard is a psychotherapist with the Law School Psychological Services team.

Smarter, not harder

Changes in the rules of procedure of the CJEU and General Court should lead to greater efficiency in the working of the courts. Tony Joyce explains

A NEW COURT FORMATION, THE INTERMEDIATE CHAMBER OF NINE JUDGES, IS BEING ESTABLISHED. THE INTENTION IS THAT THIS WILL DEAL WITH CASES OF IMPORTANCE THAT WOULD HAVE GONE TO THE GRAND CHAMBER IN THE CJEU

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

Significant changes have been made to the operation of both the Court of Justice and the General Court of the EU. Regulation (EU, Euratom) 2024/2019 was published on 12 August and took effect on 1 September 2024.

The impetus to make amendments to the rules of the CJEU and the General Court is grounded on two issues: the growing workload of the CJEU, and the previous reform of the General Court, which doubled the number of judges. The last five years have seen a significant increase in the work being dealt with by the CJEU, both quantitatively and in terms of complexity and sensitivity. In addition, the extra capacity of the General Court arising from its expansion has led to calls for some article 267 preliminary references, previously dealt with exclusively by the CJEU, to be heard by the General Court. These changes were seen as an opportunity to make other alterations.

The legal basis for the rules is set out in articles 253 (for the CJEU) and 254 (for the General Court) of the *Treaty on the Functioning of the European Union* (TFEU) and the *Protocol on the Statute of the Court of Justice of the European Union* at article 63. The amendments required extensive discussions between the courts, EU institutions, and member states.

Preliminary references

Article 267 preliminary references are cases where questions on the interpretation of EU law are referred by courts in the member states to the CJEU. The CJEU issues a judgment, which is then applied by the national court.

The combined effect of amendments to the statute, the CJEU rules, and the General Court rules is that article 267 preliminary references on the following areas of law will be delegated by the CJEU to the General Court:

- The common system of value added tax,
- Excise duties,
- The customs code,
- The tariff classification of goods under the combined nomenclature,
- Compensation and assistance to passengers in the event of denied boarding or of delay or cancellation of transport services, and
- The system for greenhouse gas emission allowance trading.

It is estimated that this will account for approximately 20% of preliminary references. There is no appeal to the CJEU in respect of preliminary references decided by the General Court, although there is a procedure whereby the CJEU may, of its own volition, review the decision of the General Court in exceptional circumstances.

The president of the CJEU, after hearing the vice-president and first advocate general, will decide if a case is suitable for delegation. The case must be exclusively on one of the above areas. It may not be delegated if it concerns questions of primary principles of EU law or the *Charter of Fundamental Rights*. If a preliminary reference is made directly to the General Court, the registrar of the General Court will transmit it to the registrar of the CJEU.

The General Court rules are being amended regarding hearing preliminary references so that they mirror the rules in the CJEU. There are some differences. In the General Court, there will be an advocate general appointed to every preliminary reference while, in the CJEU, it is optional, with straightforward cases decided without an advocate general. The General Court does not have dedicated advocates general; instead, a judge will be appointed to act as advocate general in each case.

The General Court will designate chambers of five judges to hear most preliminary references. If the issues of law pose no difficulty, then the case may be assigned to a chamber of three. A new court formation, the Intermediate Chamber of nine judges, is being established. The intention is that this will deal with cases of importance that would have gone to the Grand Chamber in the CJEU.

Member states may request that a five-judge chamber of the Intermediate Chamber be appointed to a particular case.

The current rules provide that the EU institution that adopted the legislation or act in question may participate in preliminary references. That has been widened to permit intervention by the European Parliament, the Council, and the European Central Bank, where they consider that they have a particular interest in the questions raised by the request for a preliminary ruling. This puts those institutions on a similar footing to the European Commission.

Broadcasting

During the COVID-19 pandemic, the CJEU invested significantly in audiovisual equipment to facilitate remote hearings. The new rules confirm the post-COVID position that hearings by video-conference will only occur in circumstances where a party is unable to travel to the hearing. As a by-product of the investment in audiovisual facilities, the CJEU commenced a trial of broadcasting hearings by streaming them on the court's website. It has been decided to make such streaming permanent, and it has been included in the new rules. The streaming facility can be accessed from the home page of the courts' website, www.curia.europa.eu.

Live broadcasting in the CJEU will be limited to the delivery of judgments or advocate general opinions. Hearings before the full court, the Grand Chamber or, exceptionally, chambers of five judges will be broadcast on a delayed basis once the hearing has concluded. For the General Court, it will be for cases referred to the Grand Chamber, to the Intermediate Chamber, or – where this is justified by the importance of the case – to a chamber sitting with five judges or, exceptionally, to a chamber sitting with three judges.

For both courts, there is a facility for a party or intervener to a case to make a reasoned request not to broadcast a hearing. The video recordings of hearings shall remain available on the court website for a maximum period of one month after the close of the hearing. Again, a party may make a reasoned request to have the broadcast removed.

Transparency

The new rules provide for the publication on the court website, within a reasonable time, of written observations filed in a case once judgment has been delivered. The rationale of this is to enhance the court's transparency and openness. A party may veto the publication of their own observations. In such a case, no reason need be given and the court must comply.

The combined effect of the changes should lead to greater efficiency in the working of the EU courts, including allowing the CJEU to focus on its role as the supreme constitutional court of the European Union, as well as enhancing the openness and transparency of the courts to the public and practitioners alike. g

Tony Joyce is head of the EU Law Section of the Chief State Solicitor's Office and a member of the EU and International Affairs Committee.

COUNCIL REPORT

LAW SOCIETY COUNCIL MEETING – 12 JULY 2024

At its meeting on 12 July 2024, the Council approved the decision to withdraw from participation in an initiative to establish a procedure for the adjudication of low value disputes (construction contracts). It also approved the dissolution of the Benburb Street Development Task Force and the eConveyancing Task Force.

Council approved several appointments/nominations, following consideration of recommendations from the Coordination Committee, including to the Legal Services Regulatory Authority (LSRA). Before considering specific appointments, Council first approved the recommendation that a Council member should be obliged to resign from Council if appointed to the LSRA due to the significant actual, potential, or perceived conflicts of interest arising.

Council approved nominations and appointments to the Access to Justice, Deontology, and Environment and Climate committees of CCBE; to the LSRA; the Family Justice Training Working Group; the ICC Commission on Arbitration and ADR; the Legal Practitioners Disciplinary Tribunal and the Law Society panel for replacement solicitor nominees; the Mediation Council/Shadow Mediation Council; and the Solicitors Disciplinary Tribunal. Council also approved nomination of a Law Society Pension Trustee.

Council heard details of interaction with government on several issues, in particular on the issue around EPAs. Feedback from the profession is that this system is failing people who are trying to do the right thing for themselves and their families. The Law Society hosted a webinar that included the director and representatives of the Decision Support Services. There were over 500 registered and 330 participants, with over 120 questions submitted at the event.

Council heard details of some positive interaction by the Law Society on the *Family Courts Bill*.

The director general noted the significant work of the Conveyancing Committee on the *Sellers' Guide*, which was launched in recent weeks.

Council heard details of the ongoing Solicitors Services campaign, which is promoting what the Law Society offers to members. Thousands of solicitors use these services, and the Law Society is highlighting how this gives them a competitive advantage.

Council noted the proposed withdrawal of services by criminal barristers and that the Law Society is taking a different path but is engaging in relation to the reform of legal aid fees and structures with the Department of Justice and DPENDR.

The director of policy presented to Council on strategic direction and the Policy Department. Referring to the new strategy, the director outlined how the Policy Department will have an active role in the advancement of strategic priorities. The director outlined recent developments in the policy team, as well as planned activity in the year ahead.

It was noted by members of Council that the *LSRA Act* is due for review this year, and a report is awaited. This is a serious issue for all practitioners, particularly around the area of complaints. A low number of overall complaints are referred for investigation, with many deemed vexatious/unreasonable. This causes enormous stress to members who must deal with the protracted complaints process. Members noted that we may need to further highlight what the Law Society is doing to address issues with the complaints process.

The director of finance and operations presented the risk register to Council for review and discussion.

Council, on behalf of the Law Society, offered condolences to former President Michael V O'Mahony on the death of his wife Jacquie.

Council, on behalf of the Law Society, offered congratulations to the seven solicitors who recently achieved the designation of SC, including former President Michelle Ní Longáin.

GUIDANCE NOTE

TRANSFER OF PORTFOLIO OF MORTGAGE LOANS FROM ULSTER BANK IRELAND DAC TO ALLIED IRISH BANKS PLC*

**This note is authored by AIB and is for information only. It is not endorsed in any way by the Law Society or the Conveyancing Committee.*

● This note relates to the transfer of certain loans by Ulster Bank Ireland DAC to Allied Irish Banks, plc. In order to address any challenges that may arise for practitioners or borrowers (due to the time required to register the volume of charges pursuant to the transaction), AIB confirms that it has agreed the following interim process with Tailte Éireann (TÉ). This aims to facilitate AIB in releasing and discharging redeemed mortgages that form part of the transaction, prior to completion of the registration of the transaction in TÉ.

Redacted Form 56

Following receipt of evidence by AIB that a loan that forms part of the transaction has been redeemed in full – but where the transfer of the charge has not yet been registered in TÉ and has not yet been assigned a dealing number – AIB confirms that it will provide a redacted copy of the Form 56 Transfer Deed (pursuant to which the redeemed loan/charge was acquired, with the relevant loan/charge highlighted) to the redeemed party or their solicitor, along with a deed of discharge executed by AIB.

AIB reports that this will facilitate the party redeeming their loan in lodging an application with TÉ for discharge of the charge. It will also provide sufficient evidence of the chain of title to TÉ to enable TÉ to register the discharge of the relevant charge.

AIB confirms that any TÉ application should refer to 'Project Tasman' for identification purposes, so that TÉ can identify that the application forms part of the transaction and, as such, is covered by the agreed interim process. AIB confirms that there is no requirement for practitioners to lodge the power of attorney and legal statement applicable to the transaction.

Deed of discharge

Where a dealing number has been obtained, AIB confirms that its standard deed of discharge will be amended to recite the dealing number of the relevant application for registration of the charge. AIB reports that this will evidence the chain of title and enable TÉ to process the deed of discharge and, ultimately, register the discharge of the relevant charge. As above, the TÉ application should refer to 'Project Tasman' for identification purposes. g

WILLS

Archer, Ann (deceased), late of 3 Beechwood Avenue, Upper Carrickhill, Portmarnock, Co Dublin, who died on 25 December 2023. Would any person having knowledge of the whereabouts of an original will dated 2 March 2010 or any will made or purported to have been made by the above-named deceased, or if any firm is holding same, please contact Michael O'Dwyer, O'Hare O'Dwyer Solicitors, Greenfield Road, Sutton, Dublin 13; tel:01 839 6455, email: law@ohareodwyer.ie

Bohane, Catherine (deceased), late of 28 Joe Murphy Road, Ballyphehane, Cork, who died on 26 October 2000 and who made her last will on 13 July 1992, by which she appointed her daughter, Elizabeth Drummy, as her executor. Would any person having knowledge of the whereabouts of an original will, or has any information concerning its whereabouts, please contact O'Flynn Exhams LLP, Solicitors, 58 South Mall, Cork; tel: 021 427 7788, email: ame@ofx.ie

Campbell, Frances (deceased), late of Leas House, Leas Cross, Swords, Co Dublin. Would any person having knowledge of the whereabouts of any will made by the above-named deceased, who died on 2 August 2024, please contact Ciara Cornelia, Brian Crowe and Co, Solicitors, Newcourt, 177 Harold's Cross Road, Dublin 6; tel: 01 491 1380, email: ciara@bcrowe.ie

Carr, Eileen M (orse Eileen Margaret) (deceased), late of 45 Copeland Avenue, Clontarf, Dublin 3, who died on 27 April 2024. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Hugh McGarry, George Lynch & Sons Solicitors, Bridge Street, Carrick-on-Shannon, Co Leitrim; DX 68004 Carrick-on-Shannon; tel: 071 962 0017, email: info@georgelynch.ie

Cullen, Bernadette (deceased), late of 16 Adelaide Road, Sandycove, Co Dublin who made her last will and testament on 27 February 2012 and who died on 8 January 2024. Would any person having knowledge of the whereabouts of the said original will of the above-named deceased, dated 27 February 2012, please contact Amy Fitzpatrick, Brendan Maloney & Co, Solicitors, Kilbride Cottage, Killarney Road, Bray, Co Wicklow; tel: 01 286 5700, email: amy@brendanmaloney.ie

Donnellon (otherwise Donnellan), James (deceased), late of Ballyhenry, Shrule, Co Mayo, who died on 14 May 2008. Would any person having knowledge of the whereabouts of a will made by the above-named deceased please contact O'Brien Solicitors, Deerpark Business Centre, Claregalway Road, Oranmore, Co Galway; tel: 091 795 941, email: law@obriensolicitors.ie

Drake-Power, Helen (deceased), late of 'Ross Villa', Ross Lane, Manorhamilton, Co Leitrim. Would any person having knowledge of the whereabouts of any will executed by the above-named deceased please contact William Henry, William G Henry & Co, Solicitors, Emmett Street, Ballymote, Co Sligo; tel 071 918 9962, email: william@wghsolicitors.ie

Fell, Charles Francis (deceased), late of 2 Leeson Park Avenue, Ranelagh, Dublin 6, who died on 24 August 2024. Would any person having knowledge of any will made by the above-name deceased, or if any firm is holding any will or documents, please contact Nancy O'Driscoll, solicitor, 11 South Bank, Crosses Green, Cork; tel: 021 432 3366, email: legal@nancyodriscollsolicitor.ie

Hayes, William (deceased), late of Dromina, Charleville, Co Cork, who died on 12 March 1984. Would any person having knowledge of the whereabouts of any will made by the above named deceased please contact Mary Anne Jones, Mary Anne Jones and Co, Solicitors, Strand Street, Kanturk, Co Cork; tel: 029 51889, fax: 029 51893, email: majsolicitors@gmail.com

Kearney, Neil (deceased), late of Tomdarragh, Roundwood, Co Wicklow. Would any solicitor holding or having knowledge of a will made by the above-named deceased, who died on 1 September 2012, please contact Rolleston McElwee Solicitors, 4 Wesley Terrace, Portlaoise, Co Laois; tel: 057 862 1329, email: dholland@rmclaw.ie

McCarthy, Bernadette (Bernie) (deceased), late of 15 Farney Street, Carrickmacross in the county of Monaghan, who died on 12 June 2021. 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 Messrs G Jones & Co, Solicitors, Main Street, Carrickmacross, Co Monaghan; DX 69001 Carrickmacross; tel: 042 966 1822, email: info@gjones.ie

McDonald, Ursula (deceased), late of Kerlogue Nursing Home, Kerlogue, Co Wexford and for-

RATES

PROFESSIONAL NOTICE RATES

RATES IN THE PROFESSIONAL NOTICES SECTION ARE AS FOLLOWS:

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

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

ALL NOTICES MUST BE PAID FOR PRIOR TO PUBLICATION. ALL NOTICES MUST BE EMAILED TO catherine.kearney@lawsociety.ie and PAYMENT MADE BY ELECTRONIC FUNDS TRANSFER (EFT). The Law Society's EFT details will be supplied following receipt of your email. **Deadline for December 2024 *Gazette*: Wednesday 13 November 2024.**

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*.

merly of The Faythe, Wexford, Co Wexford, who died on 12 September 2023. Would any person having knowledge of any will made by the above-named deceased please contact O'Carroll & Co, Solicitors, 19A Merchants Road, Galway; DX 4001 Galway; tel: 091 565 516, email: info@ocarrollsolicitors.ie

Navin, Michael (deceased), late of Ballycoe, Dungarvan, Co Waterford, who died on 9 February 2012. Would any person having knowledge of the whereabouts of any will executed by the above-named deceased please contact JF Williams & Co, Solicitors, Main Street, Dungarvan, Co Waterford, X35 N594; DX 75004; tel: 058 75024, email: reception@jfwilliams.ie

O'Brien, Patrick (deceased), late of 42 Mount Dillon Court, Artane, Dublin 5, who died on 7 March 2024. Would any person having knowledge of any will made by the above-named deceased, or if any firm is holding same, please contact Loughnane & Co, Solicitors, Courthouse View, Ennis, Co Clare; tel: 065 682 0888, email: info@legalaction.ie

Tarpey, Elizabeth Louise (deceased), late of 86 Heathfield, Kinnegad, Co Westmeath and 841 Cybus Way, Southampton, Pennsylvania 18966, USA, who died on 25 September 2022. Would any person having knowledge of the whereabouts of any will executed by the above-named deceased please contact Hamilton Sheahan and Co, Solicitors, Main Street, Kinnegad, Co Westmeath; DX 235001 Kinnegad; tel: 044 937 5040, email: roisin@hamiltonsheahan.ie

Williams, Marcella (also known as Miriam) (deceased), late of 13 Southville Gardens, Ballinacurra Road, Limerick, who died on 3 August 2024. Would any person having knowledge of any will made by the above-named deceased, or if any firm is holding any will or documents, please contact Kiely McCarthy Solicitors, 1 New Wellington Terrace, O'Connell Avenue, Limerick; tel: 061 461 024, email: info@kielymccarthy.ie

TITLE DEEDS

In the matter of the *Landlord and Tenant Acts 1967-2019* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of the premises known as 1-6 Windsor Mews, 16 Fairview Avenue Lower, Fairview, Dublin 3: an application by GCWAN'S A Properties Limited

Take notice that any person having any interest in the freehold estate or any intermediate interest in the property known as 1-6 Windsor Mews, 16 Fairview Avenue Lower, Fairview, Dublin 3, being the property comprised in an indenture of lease dated 3 May 1949 made between Thomas Cross of the one part and Michael McCabe and Sylvester Wiggans of the other part for the residue then unexpired of the term of 999 years, created by the indenture of lease dated 11 July 1789 made between Jane Bambrick and Joseph Bambrick of the one part, by and with the consent and approval of James Fleming and Elizabeth Fleming, and Alexander Gordon of the other part from 1 May 1789, subject to the yearly rent of one shilling (if demanded) and subject to the rent of £20 adjusted to £17.14.3d reserved and therein described as "all that and those that messuage or dwellinghouse situate in Fair View in the county of Dublin, lately in the possession of William Tisdall, together with the coach house and stable and garden behind the same containing in front to the avenue leading to the said house 38 feet, in the rear 50 feet, and in the depth from front to rear 201 feet be the same more or less, meared and bounded on the north by a house now in possession of William Tisdal, on the south to a lane or passage leading to the rear of said premises and to a house lately built by William Waldron, on the east by the avenue leading to the said house, and on the west by a stable lane at the rear of the garden of said house, together with the use of said stable lane leading from the said avenue to the rear of the said premises".

Take notice that GCWAN'S A Properties Limited intends to submit an application to the county registrar for the county of the city of Dublin for acquisition of the freehold interest and any intermediate interest in the aforesaid property, and any party asserting that they hold superior interest in the aforementioned

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 and city 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 each of the aforesaid premises are unknown or ascertained.

Date: 1 November 2024

Signed: Clark Hill LLP (solicitors for the applicant), 4th Floor, 8-34 Percy Place, Dublin 4

In the matter of the *Landlord and Tenant (Ground Rents) Acts 1967-2019* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* as amended and in the matter of an application by Irish Life Assurance PLC and in the matter of property known or formerly known as Rere 12b, Abbey Street, Dublin 1

Take notice any person having a freehold estate or any intermediate interest in the premises known or formerly known as Rere 12b Abbey Street, Dublin 1, held under lease dated 28 February 1831 and made between Isaac Mathew Dolier, Pierpoint Oliver Mitchell and Jones Hevelly, Commissioners of Wide Streets, of the one part and John Classon of the other part for a term of 999 years from 29 September 1830, subject to the yearly rent of £30 and the covenants and conditions on the lessee's part therein contained, and under lease dated 30 April 1839 between John Davis of the one part and John Classon of the other part for a term of 999 years from 29 September 1838, subject to the yearly rent of £15 and the covenants and conditions on the lessee's part therein contained.

Take notice that Irish Life Assurance PLC, being the person entitled to the lessee's interest in the said leases, intends to apply to the county registrar for the city of Dublin for the acquisition of the freehold interest and any intermediate interests in the property, and any party asserting a superior interest or any intermediate interest in the property is called upon to furnish evidence of title to same to the undermentioned solicitors within 21 days from the date of this notice.

In default of such notice being received, the applicant intends to proceed with the application before the county registrar for the city of Dublin for such directions as may be appropriate on the basis that the persons beneficially entitled to the superior interests including the freehold reversion in the lands are unknown or unascertained.

Date: 1 November 2024

Signed: Dentons Ireland LLP (solicitors for the applicant), 20 Kildare Street, Dublin 2

In the matter of the *Landlord and Tenant (Ground Rents) Acts 1967-2019* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* as amended and in the matter of an application by Irish Life Assurance plc and in the matter of property known or formerly known as 6 Marlborough Street, Dublin 1

Take notice any person having a freehold estate or any intermediate interest in the premises known or formerly known as 6 Marlborough Street, Dublin 1, held under lease dated 11 April 1871 between James Duffy of the one part and Terence Brady of the other part for a term of 300 years from 11 April 1871, subject to the yearly rent of 18 pounds, nine shillings and three pence (£18.9s.3d) and the covenants and conditions on the lessee's part therein contained.

Take notice that Irish Life Assurance PLC, being the person entitled to the lessee's interest in the said lease, intends to apply to the county registrar for the city of Dublin for the acquisition of the freehold interest and any intermediate interests in the property, and any party asserting a superior interest or any intermediate interest in the property is called upon to furnish evidence of title to same to the undermentioned solicitors within 21 days from the date of this notice.

In default of such notice being received, the applicant intends to proceed with the application before the county registrar for the city of Dublin for such directions as may be appropriate on the basis that the persons beneficially entitled to the superior interests including the freehold reversion in the lands are unknown or unascertained.

Date: 1 November 2024

Signed: Dentons Ireland LLP (solicitors for the applicant), 20 Kildare Street, Dublin 2

In the matter of the *Landlord and Tenant (Ground Rents) Acts 1967-2019* and in the matter of the *Landlord and Tenant (Ground Rents) (No.2) Act 1978* as amended and in the matter of an application by Irish Life Assurance plc and in the matter of property known or formerly known as 11 Abbey Street, Dublin 1

Take notice any person having a freehold estate or any intermediate interest in the premises known or formerly known as 11 Abbey Street, Dublin 1, held under lease dated 5 November 1824 and made between the Honourable and Reverend John Pomeroy Frederick Darley and Leland Crosthwaite, Commissioners of Wide Streets, of the one part and Philip Dooley of the other part for a term of 999 years from 1 November 1824, subject to the yearly rent of £10 and the covenants and conditions on the lessee's part therein contained.

Take notice that Irish Life Assurance PLC, being the person entitled to the lessee's interest in the said lease, intends to apply to the county registrar for the city of Dublin for the acquisition of the freehold interest and any intermediate interests in the property, and any party asserting a superior interest or any intermediate interest in the property is called upon to furnish evidence of title to same to the undermentioned solicitors within 21 days from the date of this notice.

In default of such notice being

received, the applicant intends to proceed with the application before the county registrar for the city of Dublin for such directions as may be appropriate on the basis that the persons beneficially entitled to the superior interests including the freehold reversion in the lands are unknown or unascertained.

Date: 1 November 2024
Signed: Dentons Ireland LLP (solicitors for the applicant), 20 Kildare Street, Dublin 2

In the matter of the *Landlord and Tenant (Ground Rents) Acts 1967-2019* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* as amended and in the matter of an application by Irish Life Assurance PLC and in the matter of property known or formerly known as Rere 82, 82B and 83 Talbot Street, Dublin 1

Take notice that any person having a freehold estate or any intermediate interest in the premises known or formerly known as Rere 82, 82B and 83 Talbot Street, Dublin 1, held under lease dated 23 May 1940 between Edward Carolin Harte, Elizabeth Grace Lister, Maud Brabazon Francis, and Martha Harte of the one part and Prescotts Dye Works Limited of the other part for a term of 99 years from 1 May 1939, subject to the yearly rent of €320 and the covenants and conditions on the lessee's part therein contained.

Take notice that Irish Life Assurance PLC, being the person entitled to the lessee's interest in the said leases, intends to apply to the county registrar for the city of Dublin for the acquisition of the freehold interest and any intermediate interests in the property, and any party asserting a superior interest or any intermediate interest in the property is called upon to furnish evidence of title to same to the undermentioned solicitors within 21 days from the date of this notice.

In default of such notice being received, the applicant intends to proceed with the application before the county registrar for the city of Dublin for such directions as may be appropriate on the basis that the persons beneficially entitled to the superior interests including the freehold reversion in the lands are unknown or unascertained.

Date: 1 November 2024
Signed: Dentons Ireland LLP (solicitors for the applicant), 20 Kildare Street, Dublin 2

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of 24 Quay Street, Skerries, Co Dublin: Robert Derham, applicant

Take notice any person having any interest in the freehold estate of the following property: 24 Quay Street, Skerries, Co Dublin. Take notice that Robert Derham intends to submit an application to the county registrar for the city of Dublin for acquisition of the freehold interest in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid premises are called upon to furnish evidence of the title to the aforementioned premises to the below named within 21 days from the date of this notice.

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

Date: 1 November 2024
Signed: Owen O'Sullivan (solicitors for the applicant), The Cross, Skerries, Co Dublin

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* as amended and in the matter of an application by Ivan Allingham and Imelda Allingham of 26 Wolfe Street in the town of Sligo, formerly known as William Street, Sligo, barony of Carbury, parish of St John's, and town and county of Sligo

Take notice any person having a freehold interest or any intermediate interest in all that the premises 26 Wolfe Tone Street, Sligo, in the town of Sligo, formerly known as Williams Street, Sligo, barony of Carbury, parish of St John's, and town and county of Sligo, and containing 0.03 hectares, held by way of indenture of assignment dated 23 June 1982 between Frances Mary Cullen of the one part and Ivan Allingham and Imelda Allingham of the other part for all the unexpired residue of the term of years granted by an indenture of lease dated 6 September 1876 and made between Simmion Rawson and Eliza Austin of the one part and George Kerr of the other part for the term of 150 years from 25 March 1876, subject to the yearly rent of 25 pounds, and also the unexpired residue of the term of years granted by an indenture of lease dated 27 March 1895 and made between Elizabeth Anna Austin of the one part and George Kerr of the other part for the term of 131 years from 29 September 1894, subject to the yearly rent of 12 pounds.

Take notice that Ivan Allingham and Imelda Allingham intend to apply to the county register for the county of Sligo

for the acquisition of the freehold interest, together with all intermediate interests in the aforesaid property, and any party asserting that they hold a superior interest or an intermediate interest in the aforesaid property (or any part of same) are called upon to furnish evidence of title to same to the below named within 21 days from the date of this notice.

In default of any such notice being received, Ivan Allingham and Imelda Allingham 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 register for the county of Sligo for such direction as made be appropriate on the basis that the person or persons beneficially entitled to the superior interest including the freehold reversionary interest in the property are unknown or unascertained.

Date: 1 November 2024
Signed Kelly MacGowan & Co (solicitors for the applicants), Stephen Street, Sligo

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

Any person having a freehold estate or any intermediate interest in all that and those the property known as 'St Winnows', 4 Stocking Lane, Rathfarnham, Dublin 16, and the adjoining lands, being a portion of the property the subject of a lease dated 2 July 1956 between Mary Smyth of the one part and Joseph Barnes of the other part for the term of 350 years from 25 March 1956 at the yearly rent of £35, the property the subject of the lease being therein described as follows: "all that messuage or tenement known as Rookwood Lodge together with the garden in front thereof and the paddock and large field adjoining, all of which said premises are situate at Ballyboden, Rathfarnham, in the barony of Newcastle and county of Dublin".

Take notice that Rycroft SLR Limited, being the person being entitled to the lessee's interest in the said lands ('the applicant') intends to apply to the county registrar of the county of Dublin to vest in them the fee simple and any intermediate interests in the said property, and any party asserting that they hold a superior interest in the said property is called upon to furnish evidence of title to same to the below named within 21 days from the date of this notice.

In default of any such notice being received, the applicant will proceed with the hearing of the application before the county registrar for such directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interests including the freehold reversion in the aforesaid property are unknown or unascertained.

Date: 1 November 2024
Signed: Dillon Eustace LLP (solicitors for the applicants), 33 Sir John Rogerson's Quay, Dublin 2

In the matter of the *Landlord and Tenant Acts 1967-2019* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of an application by Derrol O'Neill

Take notice any person having any interest in the freehold estate of the following property: all that and those the premises at 179C Cabra Road, Dublin 7, also known as 1A Quarry Road, Dublin 7, forming Folio DN163391L of the register of leaseholders, county of Dublin.

Take notice that Derrol O'Neill, of 17 Drumalee Road, North Circular Road, Dubin 7, intends to submit an application to the county registrar for the county of Dublin for acquisition of the freehold interest in the aforesaid properties, and any party asserting that they hold a superior interest in the aforesaid premises (or any of them) are called upon to furnish evidence of the title to the aforementioned premises to the below named within 21 days from the date of this notice.

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

Date: 1 November 2024
Signed: Doyle Legal (solicitors for the applicant), Sky Business Centre, 57 Clontarf Road, Dublin 3; DX 106003 Artane

In the matter of the *Landlord and Tenant (Ground Rents) Acts 1967-2019* and in the matter of the property known as 35 Parliament Street, Kilkenny, Co Kilkenny: an application by John Bolger and Mary White

Take notice any person having an interest in any estate in the above property that John Bolger and Mary White (the applicants) intend to submit an application to the county registrar of the county of Kilkenny for the acquisition of the fee simple interest and all intermediate interests in the aforesaid property, and any person asserting that they hold a superior interest in the property is called upon to furnish evidence of title to the below named within 21 days from the date hereof.

In particular, any person having an interest in the lessor's interest in a reversionary lease of 11 November 1935 between Isabel P Fleming of the one part and Rev John Godfrey Fitzmaurice Day (Lord Bishop of Ossory) and Rev John Percy Phair (Dean of Ossory), as trustees in the estate of James Saint John of the other part, in respect of property described therein as "premises coloured yellow on the map endorsed, containing in front to Parliament Street, formerly Coal Market, 19 feet and in depth from front to rear 74 feet, at present incorporated and used with the adjoining premises coloured green and between which said premises coloured yellow and the premises coloured green there is now no defined boundary, and which said premises hereby demised are the northern portion of the premises described in the books of the General Valuation Office Dublin as 29 Parliament Street in the parish of Saint Mary and City of Kilkenny, which said demised premises are now bounded on the north by the premises described in said Valuation Office books as 31 Parliament Street, on the south and east by the premises coloured green on the said map hereon endorsed, and on the west by Parliament Street aforesaid, the only access to the said premises hereby demised being through the southern portion of the premises coloured green, 29 Parliament Street" and now known as 35 Parliament Street, Kilkenny, Co Kilkenny, should provide evidence to the below named within 21 days hereof.

In default of such information being received, the applicants intend to proceed with the application before the county registrar and will apply for orders and directions as appropriate on the

basis that the person or persons entitled to the superior interests, including the freehold interest, are unknown and unascertained.
Date: 1 November 2024
Signed: Hoey & Denning LLP (solicitors for the applicants), High Street, Tullamore, Co Offaly

In the matter of the *Landlord and Tenant (Ground Rents) Acts 1967-2019*: notice of intention to acquire the fee simple

To: Thomas Fuller, late of Castle Street, Dunmanway, Co Cork, his executors, administrators, successors or assigns. Description of the lands to which the notice refers: all that and those the land, hereditaments, and premises known as The Red House, Castle Street, Dunmanway, Co Cork, as described and coloured red in the map annexed to the deed of assignment dated 11 May 1976 agreed between Mary Eileen Noyes of the one part and James Carroll of the other part. Particulars of the lease or tenancy: held under a lease for the term of 147 years agreed between Thomas Fuller as lessor and Daniel Lynch as lessee dated 4 November 1878, to run from the 29 September 1878. Part of the lands excluded: none.

Take notice that Kathleen Carroll, as legal personal representative in the estate of James (otherwise Jimmy) Carroll, being the person entitled under the above-mentioned acts, as amended, proposes to purchase the fee simple and all intermediate interest in the lands and premises described in the foregoing paragraphs.
Date: 1 November 2024
Signed: O'Brien Solicitors (solicitors for the applicant), Market Square, Dunmanway, Cork

In the matter of the *Landlord and Tenant Acts 1967-2019* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of certain premises situate at 1 and 2 Upper Gladstone Street, Clonmel, in the county of Tipperary: an application by Philip Kenny & Co Limited

Take notice any person having a freehold interest or any intermediate interest in all that and those the property known as and situate at 1 and 2 Upper Gladstone Street, Clonmel, in the county of Tipperary (the property), held under a lease dated 18 December 1838 between John Kiely, Ellenor Kiely, Anne Kiely and Maria Kiely of the one part and Morgan Jones of the other part for a term of 220 years, and lease dated 27 September 1957 between Philip Kenny of the one part and Philip Kenny & Co Limited of the other part for a term of 99 years.

Take notice that Philip Kenny & Co Limited intends to submit an application to the county registrar for the county of Tipperary for acquisition of the freehold interest and any intermediate interest in the property, and any party asserting that they hold a superior interest in the property are called upon to furnish evidence of the title to the property to the below 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 Tipperary for directions as may be appropriate on the basis that persons beneficially entitled to the superior interest including the freehold reversion in the property are unknown and unascertained.
Date: 1 November 2024
Signed: Binchy Law LLP (solicitors for the applicant), Quay House, Clonmel, Co Tipperary

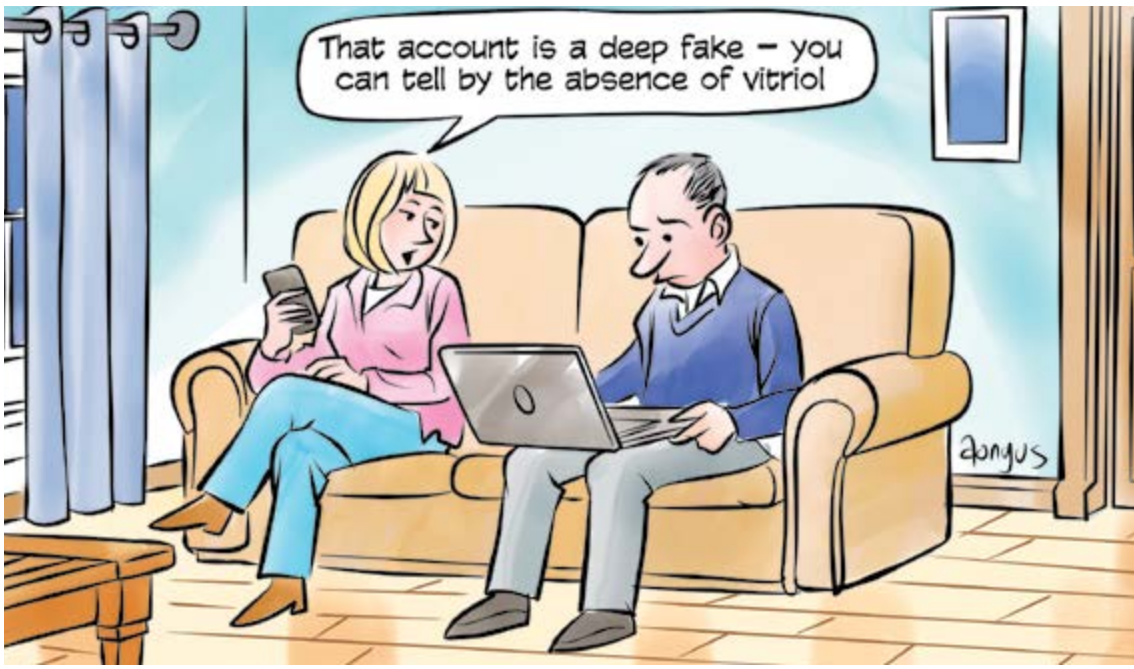
PRO BONOBO

The spy who spammed me

● The US Department of Defense is looking to partner with tech companies to create deepfake internet users so convincing that neither humans nor computers will be able to detect they are false, *The Intercept* reports.

According to a procurement document, the Special Operations Command is "interested in technologies that can generate convincing online personas for use on social media platforms, social networking sites, and other online content".

The Pentagon has already been caught using fake social media users to further its interests. In 2022, Meta and Twitter removed a propaganda network using spurious accounts operated by US Central Command.



That's just, like, your opinion, man

● When Portland, Oregon, police stopped a stolen a car, they found a bag that said 'definitely not a bag full of drugs'. It was, in fact, full of drugs, *The Guardian* reports.

When the car was stopped, officers noticed the ignition had been tampered with and spotted the bag of 'not drugs'.

"The driver and passenger were both arrested," said a police spokesman. "Inside the vehicle was a substantial number of packaged drugs, including methamphetamine and blue fentanyl pills, multiple scales, money and a loaded firearm."

Notwithstanding the bag's disclaimer, the two suspects are unsurprisingly facing charges of drug possession and possession of a stolen vehicle.

"And these definitely are not handcuffs."

King Conker's nuts of steel

● Bonobo (yes, we're doing the pseudonym thing now) is cheered to discover that the winner of the World Conker Championships has been cleared of any wrongdoing after he was found to have a steel nut.

The metal replica was found in the pocket of 'King Conker' David Jakins, a first-time winner despite competing in the King of Sports since 1977. However, organisers found no evidence that it was used in the competition. The retired engineer said: "We are gentlemen at the World Conker Championships and we don't cheat. I've been playing and practising for decades. That's how I won. I admit I had the steel conker in my pocket, but I didn't play with it."

We salute the conkering hero, steadfastly holding his own.

Art imitates life

● A Dutch museum has recovered a piece of art that looks like two empty beer cans, after a lift engineer binned it, thinking it was rubbish. That is, actual rubbish – not a critical opinion.

RTÉ reports that the work, *All The Good Times We Spent Together*, by French artist Alexandre Lavet, looks like two discarded and dented beer tins. But they are actually meticulously hand painted. A spokeswoman for the LAM museum in Lisse said that artworks are often left in unusual places – hence their positioning in a lift.

"We try to surprise the visitor all the time," she said." g

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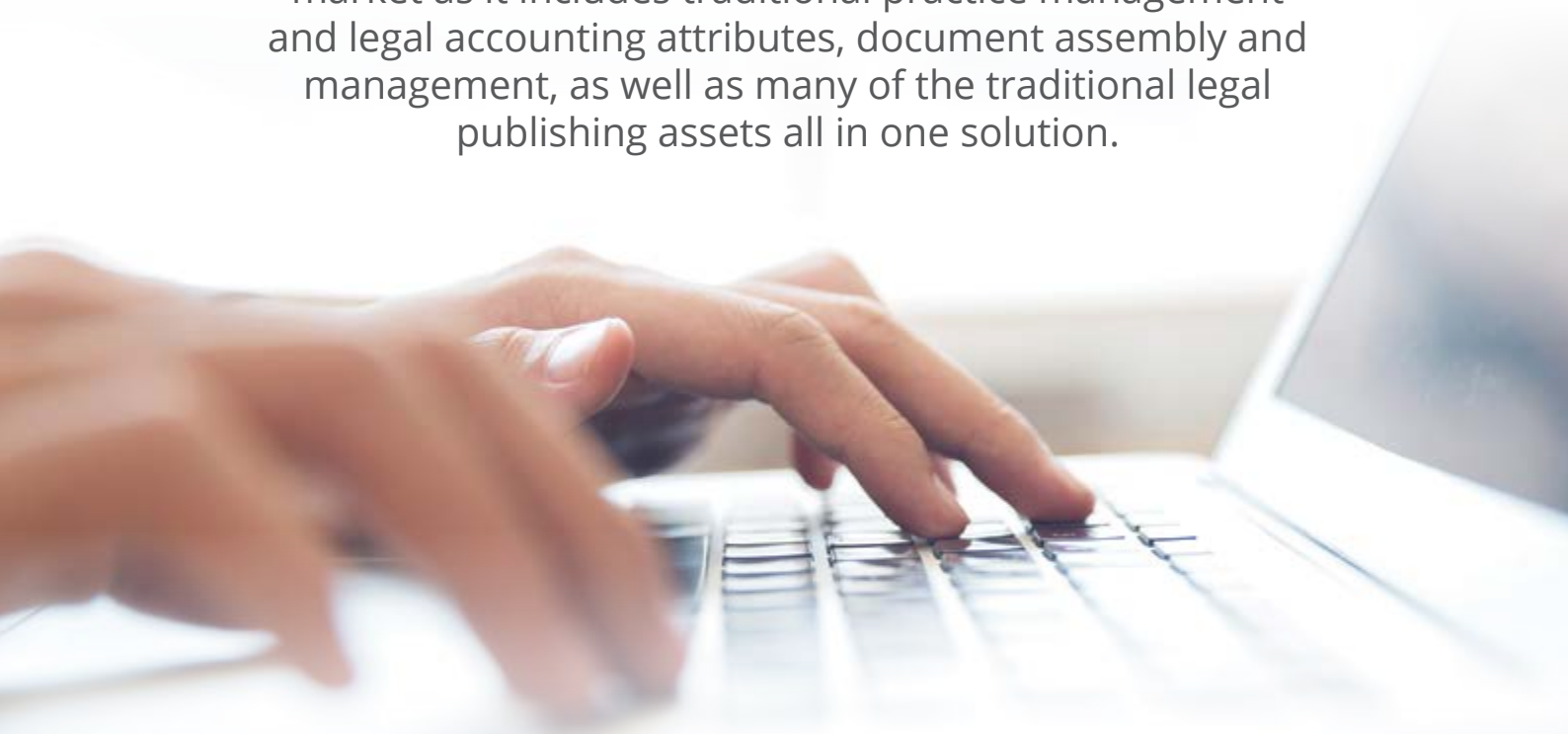

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