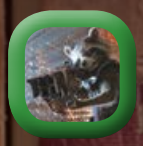
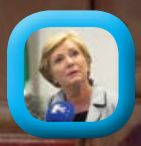
Taking aim
The Law Society has set its sights on 'claims-harvesting' websites



Guardians of the galaxy
The independence of the guardian *ad litem* service must be protected



Take two
Part 2 of the *Gazette*'s interview with Justice Minister Frances Fitzgerald

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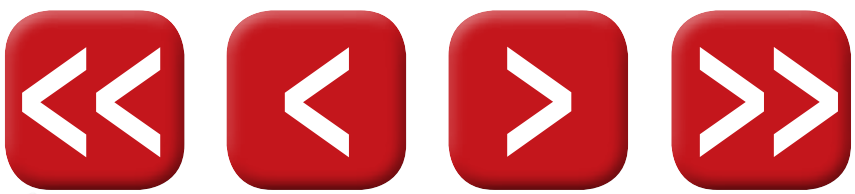

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Difficulty staffing your discovery obligations?

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Dan is a qualified barrister and Head of Legal Recruitment with Wallace Myers International. In 2010, he founded Ireland's first specialist eDiscovery staffing company which provided barristers and solicitors to law firms, organisations and banks on a contract basis as a way of reducing the costs associated with discovery. Since then, Dan has brought his expertise into Wallace Myers International where he now continues to staff and manage both small and large scale discovery projects.

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Please contact Dan Fox BL, Head of Legal Recruitment.
26, Windsor Place, Lower Pembroke St, Dublin 2. Phone: 01 619 1800

RAISING ALL BOATS

It's been just over two months now since the profession propelled me into the position of president. The experience to date has been something of a whirlwind. What has struck me has been the innate decency of colleagues, the goodwill bestowed on me, the confidences they share with me, and the warmth and generosity of their hospitality. All such attributes I have experienced in abundance wherever I have gone and from whatever group of colleagues, including the more than 1,000 solicitors I have met or addressed at meetings throughout the country.

As lawyers, many of us take the legislative process seriously only after the enactment of specific legislation. Why get oneself worked up over a bill that might not see the light of day? However, the exception must be the *Legal Services Regulation Bill*, which has been knocking around Leinster House now for a number of years, but has yet to get through the legislative process. This, we understand, is likely to be passed by June of this year, according to the minister herself, whom I met recently along with the director general and director of regulation, in what was a very positive engagement from a Law Society perspective.

Position papers

Having been involved in this legislative journey from the outset, what strikes me is the immense amount of research and preparation that the Law Society has put into studying the legislation and marshalling the myriad of arguments against certain proposals. These reference why we favour amendment or removal of various provisions that we feel are unwise.

These position papers have always been superbly drafted. This is evident from the very positive manner in which they have been received by the Department of Justice, and this minister in particular. However, as they say, it is 'not over till the fat lady sings' and the coming months will tell whether the hard work done by the Law Society on your behalf will result in legislation that we can work with. I believe it will.

As we all know, this time of year in practice can be particularly difficult in making ends meet, paying the bills and (not least!) the Law Society's subscription by the end of January. In November, I shared with you an economic analysis of our profession, which showed recovery in our sector to be both patchy and diverse. Recent data in the New Year suggest further growth in the economy but, critically, predict that this will be driven by domestic demand.

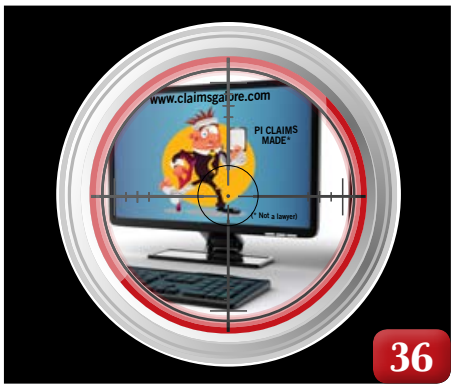
Economic tide

If that new economic tide can (to borrow that great Lemassian phrase) 'lift all boats', then maybe after years of difficulty and struggle for many practices, we might all (and not just the large firms) begin to see a real and more sustained recovery.

Finally, if I may strongly exhort you to consider coming along to the Law Society's annual conference from 8-9 May. As you will see from the details within, it is to take place in the stunning Lough Erne Resort outside Enniskillen in Co Fermanagh. It's good to extend hands across the border, just as our Northern colleagues did five years ago when they held their conference in Enniskerry – and so we'll go to Enniskillen, just a short two-and-a-quarter hours from Dublin! It promises to be remarkable value, a great way to fulfil CPD requirements, with impeccable speakers and a superb social programme. I hope you can support me. You deserve the break!

Kevin O'Higgins
President

> The recovery in our sector has been both patchy and diverse



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nationwide

News from around the country

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

KILDARE

Colleagues remembered

The Kildare Bar Association took part in an emotional memorial Mass for deceased members of the legal profession at the end of November, which was attended by members of the Courts Service, the gardaí and the Prison Service. Colleagues paid tribute to recently deceased solicitor Anne Nowlan (Newbridge). The event was organised by Teresa Brophy (Courts Service).

The association will begin its 2015 CPD programme on 18 February at the Keadeen Hotel, Newbridge, at 6.30pm, with talks on the new *Companies Act* (by Brian Walker) and advising clients in custody (by Dara Robinson and Helen Coughlan).

GALWAY

A very Russian election

The Galway Solicitors' Bar Association held its AGM on 5 December in Galway Courthouse. In what has been described as an "almost Russian election", the new committee was elected, with James 'Putin' Seymour continuing as president for an unprecedented fifth year. Over 30 hours of free CPD is scheduled for members in 2015. The annual subscription is €50 per solicitor, which should be forwarded to Cairbre O'Donnell (treasurer, GSBA), c/o John C O'Donnell &Sons, Atlanta House, Prospect Hill, Galway.

WEST CORK

Justice in the 21st century

The West Cork Bar Association (WCBA) held its annual conference at Inchydoney Island Lodge and Spa recently. The two-day conference on the theme of 'Justice in the 21st century' was fully subscribed and was officially opened by Ms Justice Mary Laffoy.

Speakers included Mick Levens and Sgt Ben Flahive (restorative justice facilitators), John Lonergan, Dr Michael Naughton (Innocence Network UK), David Langwallner (Irish Innocence Project) and Fergus Finlay.

Attending the conference were *(front, l to r)*: Fergus Finlay, Mick Levens, Ms Justice Mary Laffoy, Dr Michael Naughton and Roni Collins (WCBA); *(back, l to r)*: Macaire McCauley Adams (WCBA), Colette McCarthy (president, WCBA), Maria O'Donovan (secretary, WCBA) and Veronica Neville (vice-president, WCBA)

CORK

Cream of the southern crop

Cork-based Joan Byrne (Mullins Lynch Byrne) tells us that the cream of the southern solicitors crop will be in the Maryborough Hotel and Spa, Douglas, on Friday 20 February 2015 for the Southern Law Association's annual dinner. Two Jackeens will attend as guests of honour, namely President Kevin O'Higgins and director general Ken Murphy. Mr O'Higgins has been warned not to ask for his usual Guinness and has told *Nationwide*: 'When in Rome…'

On 15 December, the SLA held its Christmas golf outing at Cork Golf Club, Little Island. A beautiful day played a major part in the quality of the golf delivered. David O'Mahony was overall winner (33 points for 15 holes), closely followed by Niall O'Sullivan and Eddie Cogan. Louise Murray and Elaine Sweeny topped the ladies section. The Easter outing will take place in Mitchelstown Golf Club on 27 March 2015.

KILKENNY

Marble City puts it up to Hillary Clinton

Dynastic politics with wife replacing husband are not just confined to the US presidential elections. Solicitors in Kilkenny are leading the way by electing Yvonne Blanchfield (unopposed) as the association's president. Eagle-eyed readers of *Nationwide* might recall that Yvonne accompanied her husband and then president of the Kilkenny Bar Association, Owen O'Mahony, when he hosted a meal for visiting Chicagoan Judge James Flannery back in July 2010. Maeve Meaney was elected secretary at the December AGM. Yvonne and Maeve take the reins from Laurence Grace and Owen Sweeney.

LOUTH

Dundalk pilot to be rolled out nationwide

Wi-fi facilities have been installed at Dundalk Courthouse, with coverage throughout the building. This is due to lobbying by officers of the County Louth Solicitors' Bar Association and the Courts Service, in particular Noeleen Halpin. Dundalk is taking part in a pilot project, to be rolled out nationwide, starting first with venues where the High Court sits, then to Circuit, followed eventually by District Court venues. The benefits are already evident.

Louth solicitors are looking forward to the Newry and Banbridge Solicitors' Association annual dinner on 6 February. The 'return fixture' is the direct consequence of last summer's event organised at Bellingham Castle by the association.

The retirement of Judge Matt Deery will be marked by a dinner on 6 February at the Nuremore Hotel, Carrickmacross. Judge Deery is viewed by solicitors north and south of Dundalk as a model judge who discharged his duties in exemplary fashion, whether sitting in Court 28 or on circuit. We wish him a long, healthy and happy retirement.

New head of regulatory legal services

Eugene O'Sullivan has been appointed as the Law Society's first head of regulatory legal services in the Regulation Department. Eugene reports to director of regulation John Elliot. He took up the position on 1 January.

His appointment marks a fundamental reassessment of the Society's approach to the management and resourcing of legal services for regulatory purposes. As part of this reassessment, the Regulatory Litigation section will undergo a name change to the Regulatory Legal Services section.

Eugene was the senior partner and head of the litigation department in Poe Kiely Hogan Lanigan in Kilkenny and has a wealth of experience in civil and criminal litigation. Since 2010, he has been a member of the Society's Regulation of Practice Committee. He is an accredited mediator in alternative dispute resolution.

Four Courts consultation room rates increase

The cost of the Law Society's consultation rooms in the Four Courts has increased by €5 per two-hour period. This is the first increase in six years. There was very significant investment in the facilities in 2012, including the addition of new services such as wi-fi and remote printing, among other improvements. The new rates are very competitive compared with alternatives:

- **€50 for one hour (paid on the day),**
- **€70 for two hours,**
- **€250 for a full day.**

All of the above are subject to VAT. Consultation rooms can be booked online at www.lawsociety.ie/fourcourtsbookings.

Protecting the brand

In order to protect the Society's 'brand integrity', members are reminded that the Law Society of Ireland logo is reserved for the exclusive use of the Society. Members should not use the logo for any purpose, including on their firm's website, within their email signature, on social media, on letterhead or any other printed material.

LAW SOCIETY OF IRELAND

New improved cartel programme urges whistleblowers to tell all

The Competition and Consumer Protection Commission has released details of an "improved" cartel immunity programme.

The new programme will allow a member of a cartel to avoid prosecution if they come forward and reveal their involvement in illegal cartel activity before the commission has completed any investigation and referred the matter to the DPP. This removes a previous bar on an instigator company qualifying for immunity. However, it maintains a ban on immunity for a company that coerced others to join or remain in the cartel.

Commission chair Isolde Goggin said: "Cartels result in increased prices, lower quality products and narrower choice for consumers. They represent the most serious form of anti-competitive behaviour. The detection, investigation and prosecution of cartels is one of the highest priorities for the commission."

Judicial conferences update

The Courts Service has informed us of the following dates for judicial conferences, which are held under the auspices of the Committee for Judicial Studies:

- The District Court Conference will take place on Friday 22 and Saturday 23 May 2015 – no cases should be listed for any District Court on Friday 22 May 2015, save on the instruction of the judiciary,
- The Circuit Court Conference dates are confirmed for Friday 3 and Saturday 4 July 2015 – no cases should be listed for any Circuit Court on Friday 3 July 2015, save on the instruction of the judiciary,
- The Supreme Court, Court of Appeal and High Court Conference 2015 will take place on Friday 17 July 2015 – no cases should be listed for the Supreme Court, Court of Appeal or High Court on Friday 17 July 2015, save on the instruction of the judiciary,
- The National Conference 2015: will take place on Friday 20 November 2015. No cases should be listed for any court on Friday 20 November 2015, save on the instruction of the judiciary,
- The National Conference 2016 will take place on Friday 18 November 2016 – no cases should be listed for any court on Friday 18 November 2016, save on the instruction of the judiciary.

Provisional conferences dates in 2016 and 2017 are as follows:

- Supreme Court, Court of Appeal, and High Court Conference: Friday 15 July 2016.
- Supreme Court, Court of Appeal, and High Court Conference: Friday 14 July 2017.

LAW SOCIETY OF IRELAND

DATE FOR YOUR DIARY

8-9 May 2015

Law Society Annual Conference

Lough Erne Resort, Enniskillen

- Northern Ireland's Hotel of the Year 2014
- Host venue to the G8 Summit 2013
- Home of the Nick Faldo Championship Golf Course

CONFERENCE RATES

FULL DELEGATE PACKAGE, €300:

- Access to full conference,
- Black Tie Gala Dinner on Friday 8 May,
- B&B accommodation for one night sharing with another delegate or registered accompanying person, and
- A light lunch on Friday and Saturday, all in Lough Erne Resort.

If you will not be sharing and request a single room, a single supplement of €75 will be charged.

ACCOMPANYING PERSON PACKAGE, €200: One night's B&B accommodation (Friday 8 May) sharing with a delegate, Black Tie Gala Dinner on Friday 8 May, light lunch on Saturday 9 May.

ADDITIONAL NIGHT, €200: B&B accommodation per room.

Register online at: **www.lawsociety.ie/AnnualConference**

Law Society defends patients' right to seek redress

Law Society President Kevin O'Higgins and Cork-based solicitor Ernest Cantillon appeared before the Joint Oireachtas Committee on Health and Children on 27 January to rebut claims by the Medical Protection Society (MPS) that legal costs were a significant driver of increasing indemnity insurance for doctors in the private sector.

The British-based MPS provides indemnity cover for most Irish consultants and has claimed that Irish legal costs are far higher than elsewhere in the western world.

Mr O'Higgins reminded committee members that, while solicitors serve both the best interests of patients and also defend health professionals, hospitals and the State, crude discussions on economic costs alone failed to encapsulate the human cost of medical negligence. "The consequences for a plaintiff and their family from catastrophic medical injury must always be to the forefront. Clearly, where a patient has been a victim of medical negligence, they are entitled to seek redress," he said.

Law Society President Kevin O'Higgins *(right)* and solicitor Ernest Cantillon rebutted claims relating to the rising cost of professional medical negligence insurance

The Society identified the expanding range of medical procedures now being undertaken, in addition to healthcare resourcing, as contributory factors to claims.

The Society disagreed with the MPS and consultant representative groupings – who appeared before the committee on 22 January – on the proposal to cap general and special damages. "On behalf of the patient, the Law Society asks why a patient, who has already suffered due to medical negligence, be penalised once more in respect of future earnings and care costs?" O'Higgins said.

The Society's submission to the Joint Oireachtas Committee on Health and Children is available at www.lawsociety.ie. The committee discussion can be viewed at www.oireachtas.ie.

Courtney's triumph at passing of biggest act in history of State

The 1,448-section and 17-schedule *Companies Bill* has been enacted as the *Companies Act 2014*, *writes Paul Egan*. This act, passed on 23 December 2014, is the biggest in the history of the State. It replaces the *Companies Acts 1963-2013*. It is expected that the new act will be commenced in June 2015.

For one solicitor in particular, Dr Tom Courtney (a partner and head of company compliance and governance at Arthur Cox), this is a personal triumph among many milestones in a stellar legal career.

The *Companies Act* is very much the child of Courtney in his capacity as chair of the Company Law Review Group. Formed in 2000 under Minister Michael McDowell, the remit of the CLRG is to "promote enterprise, facilitate commerce, simplify the operation of the *Companies Acts*, enhance corporate governance and encourage commercial probity". In its first report, the CLRG urged the consolidation of company law.

But Courtney's proposal went one step further by redesigning the statute between the law applicable to private companies limited by shares and the law applicable to other company types. This means that most practitioners and users of company law will focus on parts 1 to 15 of the act, without having to concern themselves with parts 16 to 25 relating to public, unlimited, guaranteed and other companies.

Tom Courtney, chair of the Company Law Review Group, was the main driver behind the new legislation

Courtney has established himself as Ireland's leading company law author. Barely two years after qualification as a solicitor, Courtney had written the first edition of *The Law of Private Companies*. A second edition arrived in 2002 and a third, under the title *The Law of Companies* in 2012. In between these volumes in 1998, he wrote *Mareva Injunctions and Related Interlocutory Orders* and, in 2004, was awarded his Doctorate in Laws by the National University of Ireland.

Law Society President Kevin O'Higgins, commenting on the act's passing, said: "Tom Courtney is a wonderful example to all solicitors – combining work in a busy practice, authorship of leading textbooks and leading on the formation of public policy in a dynamic branch of the law."

Court of Appeal defended against unfair criticism

The new Court of Appeal was established on 28 October 2014. At its first sitting, Mr Justice Sean Ryan (president of the Court of Appeal) said that the new court came with "a ready-made backlog of civil and criminal cases, which represents a formidable challenge".

How well has the court been performing since its establishment?

Recently, RTÉ's Sean O'Rourke invited director general Ken Murphy and law lecturer at NUI Maynooth, Seth Barrett-Tillman, to debate the issue on his radio show on 15 January 2015.

The law lecturer was unimpressed by the court's performance: "This new court has been open for 11 weeks. And it has only decided nine cases. That's less than one case a week … The judges who were appointed were all experts, who were already on the bench. They should know how to get the court moving. They have now been on the bench for almost three months. And almost no meaningful work has been done. They haven't even done enough work to keep up with new filings at the appellate level. They've done about four cases a month. There are about 25 to 75 new filings at the appellate level a month … At nine cases in 11 weeks, they're falling only further behind. And they're doing nothing to address the backlog."

Seth Barrett-Tillman: 'Almost no meaningful work has been done'

Ken Murphy: 'What's happening in reality is more important'

Misleading

Murphy was quick to ride to the defence of the Court of Appeal, saying: "I have to begin by saying that what Seth has presented, I'm sure in good faith, is a completely false and misleading presentation of what's happening in the Court of Appeal.

"I yesterday went and spoke, through the Courts Service, with the people who are involved in the Court of Appeal, to get some hard facts in relation to this and the evidence.

"There were approximately 1,400 cases referred under the article 64 procedure from the Supreme Court to the Court of Appeal. That was their initial workload. It has been sitting for effectively six weeks, for the month of November and for a couple of weeks in the month of December. The courts began sitting again on 12 January 2015.

"There are ten judges in the Court of Appeal. They took as a priority looking at the build-up of serious criminal appeals – appeals against severity of sentence and appeals by the DPP against leniency of sentence. Rape, murder, child abuse, drugs, robbery, all the panoply of these cases.

"As of the establishment day, there were 100 sentences appealed against sentence by convicted persons. Those are obviously urgent because these people are in prison. They're complaining that their sentence was too long, it was excessive and, therefore, these should be dealt with as a matter of urgency.

"In addition, there were 40 appeals against leniency by the DPP that argued that the sentences weren't long enough. Of those 140 cases, 120 of those have already been dealt with by the court – 120 out of 140."

"So you're saying the figure of nine judgments is wrong?" queried Sean O'Rourke.

"It is completely misleading. Seth is obviously concerned by the number of judgments that are published on the Courts Service website. It was considered more important – I think correctly – by the court to deal expeditiously with these decisions. Those decisions, the judgments and the issues of principle of the cases, are being written up. And my understanding is that those judgments are about to be published. Some of them actually, a great many of them, are going to be published next Monday [19 January].

Responding, Mr Barrett-Tillman said: "Ken is making excuses for the fact that [the website] is not up to date… Why would they hold back 120 judgments? Are they magically going to produce 120 over the next weekend? The point is that there are 120 judgments ready to go. There were probably 40 ready a month ago. Or 40 ready two months ago. Why aren't they on the website?"

The director general responded: "As I said, four to five cases per day of these criminal appeals are being disposed of and I think that's far more important than how many judgments have been written up on the website. What's happening in reality is more important… I would appeal to Seth that before he comes in to criticise the Court of Appeal in the future, he would do his research and find out what's actually happening, as distinct from what's appearing on the website."

Revolution in conveyancing

The biggest revolution in Irish conveyancing in Ireland has begun, with the start of the implementation phase of the Law Society's eConveyancing Project. E-conveyancing will make all interactions between solicitors, lenders and the Property Registration Authority (PRA) entirely electronic for the first time. It will greatly reduce transaction times and costs while increasing security and transparency.

Home buyers will see transaction times reduced to as little as five working days once the system is up and running.

The system will operate via a secure central hub that will see solicitors, lenders, and the PRA share information in real time. Once the solicitors for both a buyer and a seller are ready to complete a transaction, the closing will happen instantly. The current large time lag between completion and the registration of ownership will be removed, and all funds will transfer electronically.

Director general Ken Murphy says: "We want to enable a person who agrees to buy a property on a Monday morning to be the registered owner by the following Friday. The costs of the conveyancing process should also reduce, while opportunities for fraud or errors are virtually eliminated."

Gazette team celebrates on the double at magazine awards

The *Gazette* scooped two top gongs at the Irish Magazine Awards last December. We retained the 'cover of the year' title from last year, while Mark McDermott was named 'Editor of the Year' in the business magazines category.

In a ceremony attended by Ireland's top publishing houses, the *Gazette* was shortlisted in four categories: 'Business Magazine of the Year', 'Design Team of the Year', 'Cover of the Year' and 'Editor of the Year'.

In awarding the *Gazette* the 'Cover of the Year' title, the judges commended the magazine for "the clever use of the image of the 'monkey selfie'," saying that they were "impressed with the magazine's topicality in dealing with the hot legal topics of the day and the use of what wouldn't be regarded as a typical cover for a legal magazine. Using an amusing take on the age-old cliché: 'If you pay peanuts…' the story successfully captures the attention of readers."

The judges added that "the *Gazette*'s quirky style and the eye contact of the monkey succeeded in drawing the reader in. The cover stands out and grabs attention."

Editor of the Year Mark McDermott was commended for the impressive publication. "His approach presents a highly professional image of the solicitors' profession and allows for the publication of articles of the highest calibre and relevance."

Bystanders were left wondering "do these guys even look at the magazines they claim to be evaluating?"

PIC: CIAN REDMOND PHOTOGRAPHY

Monkey see, monkey do – the *Gazette* team celebrates its winning cover

Behind the scenes at your glorious *Gazette*

The *Gazette* goes to great pains to deliver the best content we can. We don't just use 'off the peg' pictures – we do them bespoke, baby. On the left: the making of this month's cover; centre: where it all happens – the designer's station; right: editorial discussion

Make new CPD regulations your New Year resolution

New CPD Scheme regulations (*Solicitors (Continuing Professional Development) (Amendment) Regulations 2014*) came into effect on 1 January 2015. Solicitors are advised to familiarise themselves with these new regulations, which amend the 2012 CPD regulations (*Solicitors (Continuing Professional Development) Regulations 2012*. Copies of both CPD regulations are posted on the Law Society's website.

2015 annual requirement?
The 2015 CPD cycle will run from 1 January 2015 to 31 December 2015. There is no carry-over of hours from one cycle to the next. Verification of compliance with the CPD scheme continues to be tied to your annual practising certificate application.

Hours per year?
Solicitors to whom the regulations apply are required to complete 16 hours' CPD during 2015. Of these 16 hours, a minimum of three hours must comprise management and professional development skills, and at least one hour must comprise regulatory matters.

There is a maximum limit of seven hours' CPD, which may be completed within a single day, and a maximum of five hours' CPD may be claimed for time spent in relevant e-learning in any one CPD cycle.

Ways of completing CPD?
There are three different ways of undertaking the minimum 2015 CPD requirement: that is, by way of group study format and/or by e-learning and/or writing relevant material that is published.

Group Study: an organised session of CPD undertaken by three or more persons, for a period of not less than 30 minutes.

E-learning: education or training (or both) that is

generated, communicated, processed, sent, received, recorded, stored and/or displayed by electronic means or in electronic form provided through:

- The internet or other computer network connections, sound only, sound and vision formats, or a combination of both,
- By the provision of an electronic file, a CD-ROM and/or DVD,
- And other technologies and formats that may be advised from time to time.

A maximum of five hours of the annual CPD requirement may be claimed for time spent in relevant e-learning.

Writing relevant material that is published: material that is published in a legal periodical or textbook may count for CPD. Solicitors should also note that reference to 'legal periodical' also includes those published in printed form and/or online.

A maximum of three hours of the annual CPD requirement may be claimed for time spent writing a relevant article or section of a legal periodical or textbook.

Modification of the minimum 2015 CPD requirement
The scheme allows for modifications of the minimum CPD requirement and the current scheme booklet details the particular circumstances in which the minimum CPD requirement may be reduced, such as:

a) Being a senior practitioner,
b) Maternity/parental/carers/adoptive leave,
c) Illness/retirement/unemployment/substantive reasons cases,
d) Part-time practice, and
e) Part-year practice.

Automatic audit in event of failure to comply with CPD requirements
Solicitors should note that, in the event of a failure to comply with annual CPD requirements, they will be automatically required to provide proof of compliance with their CPD obligations for a period of two years, in addition to the cycle in which they failed to comply.

What changes do the new 2014 CPD regulations introduce?
The 2014 regulations, in amending the 2012 CPD regulations, introduce a sum for failure by a solicitor to comply with the Society's CPD audit. The 2014 regulations enable the Society to require payment of a sum not exceeding €300 by way of contribution towards costs in situations where a solicitor has refused, neglected or otherwise failed to respond appropriately in a timely manner, or at all, to the Society's correspondence in the course of an investigation as to compliance with the CPD regulations.

Full and detailed explanations of the modifications, together with clarification on all aspects of the scheme, are provided in the current scheme booklet. Further details may also be obtained by contacting the CPD Scheme Unit on 01 672 4802 or by email: cpdscheme@lawsociety.ie.

Society expresses 'grave concerns' over cuts to legal services

The Law Society has expressed its "grave concerns about the capacity of the legal services market to withstand any further cuts", as outlined by the Department of Public Expenditure and Reform, *writes Mark McDermott.*

The Society made its comments following a meeting last October and subsequent discussions with Mr Sean Bresnan, principal officer and portfolio manager (professional services) at the Office of Government Procurement (OGP).

At that meeting, Mr Bresnan indicated that the department intended to pursue further reductions (10% was suggested) in its legal services spend, in addition to possible structural changes in its procurement model.

In a letter to Mr Bresnan, dated 5 November 2014, the Society stated that it wished to "place on record its serious concerns regarding any further reductions in legal fees paid by the State.

"While the Society supports the concept of value for money – which can be achieved through efficiencies, obtaining high-quality legal services, avoiding unnecessary duplication and so forth – the Society's position must be read in the context of:

a) A reduction of circa 20% in wages and salaries in the legal sector since 2008, and a similar reduction in turnover,
b) Cuts to professional fees under the *Financial Emergency Measures in the Public Interest Acts* of 8% in 2009; and a further 5.5% in 2013,
c) Increased cost pressures relative to income, which has placed further pressure on the viability of practices,
d) Successive reductions in legal aid expenditure (both criminal and civil), and
e) Private sector collapse in core areas, such as conveyancing."

As a consequence, the sustainability of solicitors' practices throughout the country has suffered a significant impact in recent years: "Public sector work ensures that some practices remain sustainable and available to provide important legal services to communities and citizens, as well as securing local employment."

Risk assessment

In relation to any further cuts, the Society comments that "the sustainability of a readily accessible legal market could be severely hampered by further reductions in State expenditure.

"The social function of legal advice at a local level (particularly in non-urban settings) cannot be ignored by the State in an aggressive pursuit of 'lowest cost'," the letter says. "In that regard, we are interested to know what risk assessment will be undertaken by the OGP in respect of any revised procurement model and fee structure, prior to implementation".

The Society has requested that certain issues be incorporated within DPER's consideration of legal services expenditure and wider procurement structures. "There is a belief that some tenders are operated in favour of the incumbents. The Society is aware of a 25% turnover in suppliers (between incumbents and new suppliers) applying to the wider procurement market."

The Society expresses the view that it is likely that turnover is lower in relation to legal services. It has asked DPER to remain true to its promise that any analysis on 'tenders won by whom and where' will be shared in order to ensure increased buy-in to any revised procurement model.

It says that it would welcome discussion on unjustifiable thresholds applying to some tenders and has asked DPER to ensure that "contracting authorities must take care not to set restrictive conditions for admission of legal practitioners to panels or for tendering competitions. For example, criteria such as unduly high insurance levels, previous State sector experience, etc, must be avoided."

Administrative costs

A key determinant for many firms when deciding whether to participate in a competition is, firstly, to assess the administrative cost of participating. Time otherwise spent on client files and business development must be assessed against the perceived fairness of the procurement process – and the likely outcome.

The Society states: "It will come as no surprise to you that more of our members wish to participate, but under a more commercially efficient process." The Society maintains that it has a "key role" in articulating what that process might look like.

Accountability mechanisms play an important role in guaranteeing the integrity of tendering competitions. The Society points out, however, that members have shared their experiences of investing considerable resources in a competition – only to be notified that the competition has been withdrawn. "Firms, for fear of compromising future competitions, are reluctant to complain or seek a review," the Society says.

FOCUS ON MEMBER SERVICES

Exceptional cover for €50 a year

Over the past ten years, more than 60 solicitors' families have received upwards of €3.5 million between them in payments from the Group Life Assurance Scheme.

All current practising certificate holders under the age of 70, with a few exceptions, are members of the scheme. The premium – which in 2014 was€50 – is included in the practising certificate fee.

The scheme is operated by Generali PanEurope and provides cover of €58,000. A health declaration is not normally required, although the insurers reserve their rights to request this.

If you are a solicitor in the full-time service of the State and therefore exempt from holding a practising certificate, or a judge or county registrar, you may apply to join the scheme. Of course, you must be a member of the Law Society and pay the premium of €50.

During the practising renewal period, the scheme allows for 'days of grace' for those covered by the scheme on 31 December of the previous year. For example, in 2014 the 'days of grace' ran from 1 January to 1 February and covered all who were members of the scheme on 31 December 2013.

In the event of the death of a scheme member, any payout will form an asset in the deceased's estate. One of the few conditions of the scheme is that the insured must be less than 70 years of age at their date of death.

If you would like to find out more about the scheme or to make a claim, contact Yvonne Burke at 01 672 4901 or email y.burke@lawsociety.ie.

Spotlight on the future of the profession

Prof Stephen Gillers: 'Lawyers should use technological developments to break out of the traditional geocentric model recognised by legal regulation'

The *Hibernian Law Journal* examined the topic of 'The future of the legal profession' in its annual lecture held on 25 November.

Speakers were Prof Stephen Gillers (Elihu Root Professor of Law at NYU), Prof Alan Paterson (University of Strathclyde and Law Society of Scotland), Ken Murphy (director general) and Prof John Flood (McCann FitzGerald Chair of International Law and Business, UCD). The event was chaired by Mr Justice Michael Peart and sponsored by Eversheds.

Broadly, the talks centred on the effect of technology on the legal profession, ethical practice, the new legal services market and the globalisation of law.

Stephen Gillers addressed the fact that lawyers are currently working within set jurisdictions – an outdated approach in his opinion, given the technological developments that allow the practice of law to have a much wider scope than the traditional, geocentric model recognised by legal regulation.

Alan Paterson examined the potential difficulties in the regulation of the legal profession in the future. He looked at the development of alternative business services, such as outsourced e-discovery, online personal injury and family legal services, as well as multidisciplinary practices. The potential for cost-and-efficiency benefits was weighed against the potential for injustice and a lack of accountability.

This area was further explored by John Flood, who drew a distinction between the output and input of lawyers and legal services. Technological developments have led to an evolution in the 'output' of a lawyer. Where the profession was traditionally holistic, the diffusion of elements of a lawyer's work could save time and cost, he said. He noted the wider change in large businesses and the growth of in-house legal services. Flood argued, however, that our current legal education system – the 'input' – was out of sync with this reality, with the risk that lawyers were unprepared for the future.

The three talks were analysed by Ken Murphy from the Law Society's perspective. He gave an overview of the changes he had seen in his time with the Society and gave an insight into how professional bodies around the world were engaging with the evolution of the legal profession.

The *Hibernian Law Journal* is now in its 15th year and will publish in July.

A&L – A1 for M&A

A&L Goodbody has been named the top Irish law firm for mergers and acquisitions in 2014 by Thomson Reuters, Bloomberg, Mergermarket and Experian Corpfin.

The firm instructed on more M&A deals in 2014 than any other Irish law firm – following a similar ranking achieved in 2012 and 2013.

Mark Ward, head of M&A at A&L, says: "To achieve this ranking three years running is a first in the Irish legal market. It demonstrates both the strength of our brand and our unique ability to collaborate across our business on the type of large, complex deals that dominated the M&A market in 2014."

Law School proudly flies the Irish flag in Florence

Robert Lowney, Mayte Martin (NELLIP), Maura Butler and Alan Bruce (NELLIP) at the Florence conference

In 2012, the Law Society's Legal Practice Irish course was awarded the European Language Label by the European Commission. As a result, the course was added to a list of best-practice training projects on the commission's eJustice website.

In 2014, the Network of European Language Labelled Initiatives selected relevant language-learning programmes that align with the current political priorities of the commission in the field of language learning. Maura Butler (course manager) and Robert Lowney (course administrator) were invited to make a presentation on the Law Society's course at a conference in Florence on 13 November.

At the seventh international conference ICT for Language Learning, Maura and Robert shared their development of Irish language training in a paper entitled 'Multidisciplinary language education with ICT for vocational training'.

Teachers, researchers, practitioners and project managers from all over the world shared their findings, expertise and experience in integrating innovative technologies and solutions with language-teaching and learning.

Companies Act 2014 seminar sell-out

Due to overwhelming demand, a second date for the Bloomsbury Professional *Companies Act 2014* seminar has been arranged. This will take place on 5 March 2015 in the Radisson Blu, St Helen's, Stillorgan, Co Dublin.

To avoid disappointment, book your place by emailing: jennifer.simpson@bloomsbury.com or call 01 637 3920.

THERE'S AN APP FOR THAT

Come together

APP: ONEDRIVE **PRICE:** FREE

OneDrive **– the app formerly known as *SkyDrive* – is a free app for iPad and is my new best friend, *writes Dorothy Walsh*.**

It's Microsoft's cloud storage and synchronization solution. So, another *Dropbox* or *iCloud*, yeah? Why would you download yet another such app?

Well, there are a few reasons. First, *OneDrive* gives a lot of us (notwithstanding our love for all things Apple) what we really want – and that is an app on our iPads that allows us to work with Microsoft *Word* documents, *Excel* spreadsheets and *PowerPoint* presentations as though we were working on a PC.

While *iCloud* is great for all things Apple, most of us have Windows PCs in our offices, and *iCloud* will not store such documents for us, let alone let us access, edit or share them.

Finally, while the likes of *Dropbox* is great, it's basically a storage box for documents and files. It doesn't have a productivity feature – *OneDrive* does and it works really well.

Much as I love Apple's *Pages* app, there's a little bit of 'open in another app', clicking, tapping and converting documents before they can be edited and sent on to other recipients.

Our office PCs are all Windows-based and, therefore, all of the documentation produced in our office are Microsoft *Word* documents, *Excel* spreadsheets, and so on. When I receive an email or open a *Dropbox* document with a *Word* document attached, I generally opened it as a *Pages* document, worked on it and emailed it back to the office, having converted it back to a *Word* document. There can sometimes be compatibility issues for the recipient if they are not using an Apple device to view and edit the document. This is cut out, obviously, by having a Microsoft app on the iPad that allows the Microsoft *Word* document to be opened and edited in its natural format.

What I really find great about *OneDrive* is that, when I am working on a document or a file in the office, I can store it on the PC and share it with the *OneDrive* folder in a couple of clicks. I can access that document, file or folder from my iPad straight, without conversion. *OneDrive* offers approximately 15GB of free cloud storage, but additional storage can be purchased. *OneDrive* can be downloaded to your office PC or to any other PC you work on and can be accessed from any other device, such as your iPad.

PIC: JOE HANLEY

The Kerry Law Society recently held its annual dinner in Ballyroe Heights Hotel, Tralee. Special guests included Mr Justice Carol Moran (High Court), Mr Justice Ray Fullam and Judge James O'Connor

Dr Gabriel Brennan (Law Society eConveyancing senior advisor and Law School course manager) recently celebrated the publication of her book, *The Impact of eConveyancing on Title Registration: A Risk Assessment*

General cluster in Cork

At the Cork Cluster event, organised by the Law Society on 14 November 2014 were *(from l to r)*: Richard Hammond (Hammond Good Solicitors, Mallow), Joan Byrne (Mullins Lynch Byrne, Cork), Michael McGrath BL, Attracta O'Regan (head of Law Society Professional Training), Paul Keane (Reddy Charlton Solicitors, Dublin), Kevin O'Higgins (Law Society President, Anthony Coomey (PJ O'Driscoll's, Bandon), Katherine Kane (Law Society Skillnet), Sandra Meade (O'Hanlon Tax Ltd), Barry MacCarthy (MacCarthy Solicitors, Charleville)

Celebrated BBC correspondent shares his experiences

It was a case of *Despatches from the Barricades*, *Days from a Different World* and questions about *Unreliable Sources* that drew a huge crowd to Blackhall Place on 22 January, to hear celebrated journalist John Simpson, recount his experiences in the world's war zones.

Mr Simpson was welcomed to the Law Society by President Kevin O'Higgins. All proceeds from the event – a total of €4,000 – went to Irish Rule of Law International.

PIC: LENSMEN

John Simpson (World Affairs Editor at the BBC) was the special guest at an 'Evening with John Simpson' at Blackhall Place on 22 January, where he was interviewed by RTÉ Richard Downes

Attended by over 200 people, the evening was a wonderful opportunity to hear about Mr Simpson's extensive career as a journalist for the BBC.

Currently world affairs editor at the BBC, Mr Simpson has reported from more than 125 countries, including 41 active war zones, and has interviewed some of the world's most famous and controversial leaders, including Osama Bin Laden, Saddam Hussein and Colonel Gaddafi.

PIC: LENSMEN

John Simpson (world affairs editor at the BBC) was the special guest of the Law Society on 22 January. *(Front, l to r)*: David Barniville SC (chairman, Bar Council), Richard Downes (RTÉ), Kevin O'Higgins (Law Society president), John Simpson and Michael Irvine (past-president). *(Back, l to r)*: Brendan MacMahon, Irene Mac Mahon, Emma Dwyer (Irish Rule of Law), Ken Murphy (director general), Michael Collins SC, Mary Keane (deputy director general), Mairead O'Driscoll, Cillian MacDomhnaill and John D Shaw (past-president)

Master of brevity: Judge O'Brien calls time on bench

PIC: MICHAEL O'ROURKE

Judge Eamon O'Brien (centre) with legal practitioners and members of the Carlow Court Service, Probation Service and gardaí on his final day in Carlow's court

Judge Eamon O'Brien has retired as a judge of the District Court. His last-ever court sitting took place at Carlow District Court on 21 January 2015. "It has been an honour to serve the people of Carlow," Judge O'Brien declared, as he called time on his career on the bench.

Judge O'Brien qualified as both a solicitor and barrister and was a Council member of the Law Society. Prior to his elevation to the bench, he served as coroner in Limerick for 15 years, going on to serve as District Court judge on the Southwest Circuit.

Judge O'Brien took up the position of Carlow's District Court judge in December 2012, bringing his own practical, prompt approach to the business of administering justice.

During his time on the bench in Limerick, the *Limerick Post* reported on 27 September 2011 that, after handling 115 applications at Limerick District Court as part of the annual licensing court sitting, Judge O'Brien called on Limerick solicitors to adhere to the sentiment that "brevity is one of the fine arts in court"!

Judge O'Brien was one who followed his own advice and was celebrated for his swift approach in getting through a day's court list.

Supt Gerry Redmond spoke of Judge O'Brien's "kindness and courtesy to all in court". "We could never accuse you of dilly-dallying! The first day I stood before you in court, I could hardly catch my breath," he joked.

Addressing the court, Judge O'Brien commented: "I was only a short time here – we were only getting used to each other, but here we are. You have to be philosophical about these things and I thank you all for your good wishes."

Acting with a clear conscience

The Law School hosted a highly successful lecture recently titled, 'Conscience, professionalism and the law' as part of the President of Ireland's Ethics Initiative. The lecture was run in collaboration with the UCD School of Philosophy. *(From l to r)*: Michelle Nolan (Law Society Skillnet), Brian McAufield (Assistant Secretary to the President of Ireland), Dr Christopher Cowley (UCD School of Philosophy), Dr Kimberley Brownlee (guest lecturer), Ken Murphy (director general), Attracta O'Regan (head of Law Society Skillnet), Antoinette Moriarty (student counselling service manager)

I want to move it, move it!

New Year resolutions might have come and gone – but one that should still be at the top of your list is to take part in this year's Calcutta Run, which takes place on Saturday 16 May.

To help you get started, the Calcutta Run committee has joined forced with double European cross-country champion and two-time Olympian Fionnuala Britton to deliver an exclusive eight-week training plan for the Calcutta Run 2015. As well as offering two training schedules for both the 5k and 10k events, Fionnuala will be offering advice each week to help participants to get to that starting line on 16 May.

The organising committee is asking you to recruit colleagues, family and friends (even your dog) to join in the 5k and 10k walk or run (the choice is yours) on the big day.

Last year, over 1,100 runners and walkers pounded the pavements to raise an amazing €180,000 for the homeless charity projects run by GOAL and the Peter McVerry Trust (a housing and homeless charity). Since its inception 17 years ago, the Calcutta Run has raised over €3 million for its nominated charities, allowing them to continue to develop specific programmes in Calcutta and Dublin.

The Peter McVerry Trust recently announced the opening of two new homeless services in Dublin and Kildare. These are providing 50 badly-needed beds for people experiencing homelessness.

Both the 5k and 10k courses start and finish at Blackhall Place, Dublin 7, and wend their way through the beautiful Phoenix Park. As a reward for all that hard work, participants will be invited to relax and enjoy a BBQ and bar on the grounds of Blackhall Place and to enjoy a family fun day.

There are many ways you can support the Calcutta Run – by becoming a 'Supporter Firm' or putting together a team for the 'DX Team Challenge', so no excuses! For those with enough energy left in the tank after the event, they can hit a club for the after-party party!

The ambition this year is to see more runners enjoying this great day out and raising more funds to reach our target of €180,000 for the nominated charities. Visit the Calcutta Run website today to sign up and join in the training programme: www.calcuttarun.com.

Top marks as charities reap Revolution rewards

PIC: GARRETT FITZGERALD PHOTOGRAPHY

Waterford Law Society (WLS) held a hugely popular table quiz at Revolution Bar, John Street, Waterford, recently. The quizmaster was the redoubtable 'Flash' Gordon, proprietor of the pub. Over 40 solicitors attended, and this looks like becoming an annual event.

The beneficiaries were St Luke's Conference of St Vincent de Paul (Tramore), South East Simon Community, and Waterford Lismore Lourdes Diocesan Hospitality. Among those attending the presentations were *(from l to r)*: Jim Hally (then president of WLS), Rosa Eivers (treasurer, WLS), Dennis Douglas (president, St Luke's Conference of St Vincent de Paul), and Frank Halley (secretary, WLS).

The new officers in charge of Waterford Law Society have a hard act to follow, as the outgoing team have had a very busy run of events in 2015. Other social highlights in 2014 included the summer barbecue at Dunmore East and the autumn event in Mother McHugh's pub in Fenor.

Stepping up to the plate is the new president Nicholas Walsh (HD Keane & Co), who will serve a two-year term, Frank Halley (secretary) and Nicola Walsh (treasurer). The outgoing president Jim Halley and all Waterford solicitors wish them well.

Suicide awareness night

Ernest J Cantillon Solicitors held a very successful fundraiser in aid of Suicide Aware in the Sugar Cube, Cork, on 11 December 2014, when over €3,500 was raised for the charity. Lyndy Cantillon explains the firm's reason for choosing Suicide Aware: "It's a Cork-based charity and is a cause that, unfortunately, is close to everybody's heart. There was fantastic support from the Cork Bar and the Southern Law Association, as well as from local radio station Red FM." Looking sweet in the Sugar Cube were *(from l to r)*: Jody Cantillon (Comyn Kelleher Tobin) and Anne Wallace, Sinead Carroll and Lyndy Cantillon (all Ernest J Cantillon, solicitors).

viewpoint

HERE COME THE GALS

It is vital that the role, independence and funding of the guardian *ad litem* service are safeguarded from interference, argues Colm Roberts

Colm Roberts is a solicitor at the Law Centre, Pope's Quay, Cork

An RTÉ news item recently raised a concern on the failure of some guardians *ad litem* (GALs) not having proper garda vetting. The journalist further identified the failure of any individual body taking responsibility for the regulation of the guardian *ad litem* service. It was stated that the Courts Service would be taking over, temporarily, the responsibility to furnish a list to the judiciary confirming which guardians *ad litem* had garda vetting.

I would suggest that the problem is much deeper and wider than guardians *ad litem* not having garda vetting. The purpose of this article is to attempt to identify the issues that need to be addressed, so that a properly funded, independent, accountable guardian *ad litem* service can be finally established and regulated by an appropriate authority.

It is well established by section 3(2)(b) of the *Child Care Act 1991* and commonly stated that the interests and welfare of the child are the first and paramount considerations in child-care proceedings. It is for the courts to determine this and, further, to ensure that the principle is not hijacked to the detriment of the rules of law and fair procedures.

No party or person has exclusive ownership of this principle, and it is my experience that unnecessary conflict is often caused in these disputes by parties or persons using clumsy or incorrect language in order to claim ownership of this term, in order to avoid properly establishing the facts or to change the narrative.

GAL trouble

In a recent decision of the District Court, reported widely in the national press and reported in detail in the Child Care Law Reporting Project, a District Court judge, in outlining the basis of his decision, gave a most helpful and comprehensive outline of the law in this area.

The judge raised concerns on the role of the guardian *ad litem*, the importance of its independence being preserved, and also raised a flag about possible interference by the Child and Family Agency (CFA) or 'Tusla' (as it now prefers to be called).

Section 26 of the *Child Care Act* authorises the court to appoint a guardian *ad litem* for a child if it is satisfied that it is necessary and in the interests of the child, and of justice, to do so.

Further, section 26(2) states that costs incurred by that person acting as a guardian *ad litem* should be paid by the Child and Family Agency and, further, the Child and Family Agency may apply to the court to have the amount of such costs or expenses measured or taxed by the court.

The act, however, is silent on several important matters, including:

- Who can act as a GAL?
- The circumstances in which the court should consider appointing a GAL,
- The role of a GAL,
- The limitations of a GAL's evidence,
- Whether a GAL should attend court,
- Whether a GAL can or should give evidence,
- If the GAL is to give evidence, at what stage he/she should do so?
- Whether a GAL can have, or is entitled to legal advice or legal representation, and
- If entitled to legal representation, in what circumstances?

In the majority of cases, in my experience, the GAL is of great assistance to the court and brings a rigour, independence and expertise that would not be available otherwise.

Irregular practices

The concern is that, due to the lack of guidelines and regulations, practices have arisen in an *ad hoc* and inconsistent manner – without any legislative basis – which in some courts are being accepted as lawful.

As matters stand, anyone can be appointed as a guardian *ad litem*, though generally speaking, the courts are careful to ensure that the guardian *ad litem* does satisfy the Children Acts Advisory Board (CAAB) guidelines of 2009 (see *Giving A Voice to Children's Wishes, Feelings and Interests*, May 2009). The CAAB guidelines are a useful template, but regrettably, they do contain some significant discrepancies (see pages 15 and 16) which require revision. Regardless, they are only of an advisory nature and are not legally binding.

In the District Court decision referred to above, the judge addressed some of the identified gaps. He said it appeared to the court that a GAL could be described as a person appointed by the court who "is independent of the parents and the Child and Family Agency, who establishes and promotes the wishes, feelings and interests of the child, insofar as is practicable, having regard to the child's age and understanding, and who expresses a professional view as to what is in the child's best interests and welfare, and presents this to the court with recommendations and advice as to what should happen the child."

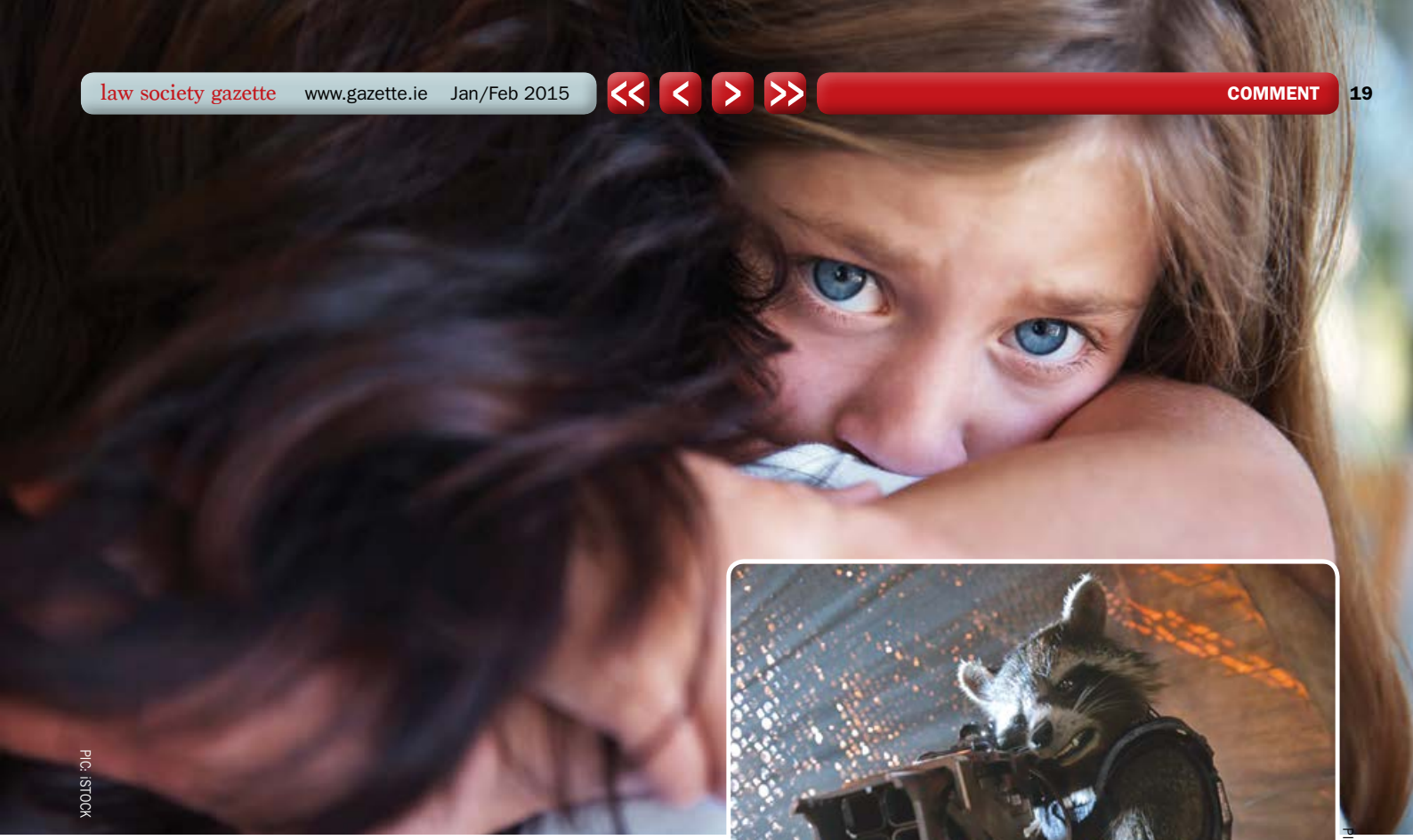
> **'The GAL service must be vigilant that the service is not perceived as a rubber stamp for the Child and Family Agency'**

I endorse this definition and hope that it will get statutory acknowledgement in the near future.

The judge continued: "If one accepts this definition as the role of the guardian *ad litem*, then it would appear that the entitlement of the guardian *ad litem* to cross-examine is more limited than may be operating in practice in many child care cases before the District Court."

He further stated that the guardian *ad litem* should not become involved in the adversarial nature of the determination of disputed facts.

He added that the most appropriate occasion for the guardian *ad litem* to ask



PIC: iSTOCK

PIC: WIKIMEDIA COMMONS

Rocket Raccoon: putting the 'guardian' in *ad litem*

such questions would be at the conclusion of the examination-in-chief, and before the cross-examination of the witness.

Independent GALs

The judge said it was essential to the proper working of the GAL system that the guardian ensured the independence of their role in their interactions with the parties and other witnesses.

In that decision, the court emphasised the importance of the GAL's role in advising the court, but equally stated that it was the role of the court to make decisions, and not the GAL. It also reminded the GAL it was not the role of the GAL to prove the case in child-care proceedings, as that was solely the responsibility of the CFA.

He continued: "The court cannot stress strongly enough the importance of the independence of the guardian being safeguarded. The guardian must be seen to be independent of the Child and Family Agency and of the parents."

Further, the GAL service must be vigilant that the service is not perceived as a rubber stamp for the CFA. This is a complaint often made and it can only be properly rebutted by the GAL acting independently and also being perceived as such.

The court also referred to section 26(2) and a letter from Gordon Jeyes (chief executive of the CFA) and commented as follows: "Any effort by the agency to fix costs of guardians *ad litem* is not in accordance with the legislation and could be seen to represent an undermining of the independent role of guardians *ad litem* by the Child and Family Agency seeking to exercise a financial control in relation to guardians *ad litem* that it does not have in law."

Because the CFA is currently financially responsible for the GALs remuneration, there is a perception by some in the CFA that they are entitled to complain against a GAL if he or she expresses a view contrary to theirs. This perception, though not acceptable, is inevitable without greater clarity and change. As long as this *ad hoc* disorganised and inconsistent service continues, the benefit and the importance of the GAL service will be undermined.

GAL guidelines

It is likely that some mechanisms will have to be put in place in relation to identifying and articulating the wishes of children – both in public and private law proceedings – in the near future.

With that in mind, the Government should publish clear guidelines to the judiciary, setting out:

- The circumstances in which a guardian *ad litem* should be appointed,
- The role of the guardian *ad litem* and the limitations of same,
- The format of their report, and when and to whom it can be released,
- The circumstances in which a guardian *ad litem* is entitled to legal advice,
- The circumstances in which a guardian *ad litem* may be entitled to legal representation, and
- Whether the guardian *ad litem* should participate in proceedings, or whether he/she should just provide a report.

How the role of the guardian *ad litem* role can be accommodated within the adversarial nature of these proceedings also needs to be considered, so as not to undermine the existing rules of evidence and the administration of justice.

An independent authority needs to be set up immediately that would have responsibility for ensuring the qualifications of the guardians *ad litem*, their ongoing education, professional standards and their payment.

Such an authority should also be empowered to consider and determine complaints against any GAL, whether of bias, prejudice, discourtesy or otherwise, by any interested stakeholder. Its relationship with the courts and other institutions, such as the Ombudsman, should also be clearly set out.

As matters stand, it is up to the judiciary and the Courts Service to address all these issues – but without the manpower or time to do so. It is time we stopped making it up as we go along and coordinate the various voices into a clearly understood chorus.

news in depth

PROFESSION'S PERFECT PARITY

It's 92 years since Ireland's first woman solicitor was admitted and, in 2015, there is, for the first time, a female majority in the profession. Teri Kelly takes stock

Teri Kelly is the Law Society's director of representation and member services

Quietly, and without much fanfare, a major landmark for the solicitors' profession was passed at the end of 2014. For the first time, the number of female practising certificate holders exceeds their male counterparts. To our knowledge, this is the first time a female majority has existed in any legal profession anywhere in the world.

The fact that there are now 4,623 female practising solicitors (compared with 4,609 male practising solicitors) is a remarkable achievement. It is even more incredible when we consider that the first female solicitor in Ireland was not admitted to the roll of solicitors until 1923.

Until that time, there had been no law expressly prohibiting women from working as lawyers – it was merely accepted custom that women were considered unfit for the work. In fact, the *Solicitors Act 1843* provided that any 'person' with the required qualifications was entitled to train as a solicitor. However, when a few brave women did apply to sit the solicitors' examinations or become a member of the Bar, their application was invariably dismissed.

> **The English Law Society successfully argued that a woman was not a 'person', relying on the long-established common law principle that no woman should hold a public office**

Step by step

Gwyneth Bebb and three other women (Karin Costeloe, Maud Ingram and Lucy Nettlefold) took a step further when, in 1913, they brought a case to compel the English Law Society to permit them to sit the solicitors' exams. The society successfully argued that a woman was not a 'person', relying on the long-established common law principle that no woman should hold a public office, and the action failed.

It was an Irish woman, Georgina Frost, of Sixmilebridge, Co Clare, who was the first to successfully challenge the prohibition of women to hold public office in Ireland or Great Britain. Frost brought her case to the High Court and the Court of Appeal, before eventually finding satisfaction at the House of Lords. She was finally named clerk of the petty sessions for the district of Sixmilebridge and Newmarket-on-Fergus in 1920.

During the First World War, women fulfilled many of the jobs previously held by men who were away fighting at the front. The experience shifted public opinion towards the belief that women could fulfil a variety of roles in society, and led to the publication of the *Barristers and Solicitors (Qualification of Women) Bill 1919*. That bill evolved into the *Sex Disqualification (Removal) Act*, which also gave equal access to voting, public functions, jury service and civil posts to both sexes.

The act became law in Britain and Ireland in 1919 and finally recognised women as 'persons', enabling Frost's petty sessions clerk appointment – and all the appointments of women that came after her.

Proud Mary

Mary Dorothea Heron was admitted as Ireland's first woman solicitor in 1923. Heron worked at her uncle's firm in Belfast until 1946, mainly doing probate work. This was not unusual. There was a perception in these early years that women solicitors were largely engaged as assistants in conveyancing or probate work. In fact, many of these women did not hold practising certificates, which was a convention permitted by the Law Society at the time.

The number of women solicitors was very small from the 1920s through to the 1950s. Eric A Plunkett (secretary to the Law Society from 1942-1973) noted that, from 1923-1953, only 107 women had been admitted to the solicitors' profession and remarked: "The number, however, is increasing, although in proportions still too small to cause alarm to the advocates of male predominance in the profession."

The number of women slowly started to climb in the 1960s. In 1960, no female solicitors were admitted to the role, and only 39 female solicitors were admitted over the entire decade. In contrast, 273 men were admitted during this period.

The women's movement and the expansion of higher education through the 1970s and 1980s served to drive up the number of women entering the profession. From the mid 1990s, the number of women entering the profession started to exceed men, and it has been expected for some time that, eventually, women would become the majority.

Other professions not traditionally regarded as careers for women have seen a similar move towards equality, though not to the same extent as the solicitors' profession. Chartered Accountants Ireland reports that 39% of its members are female. The Medical Council of Ireland states that 41.3% of doctors are female.

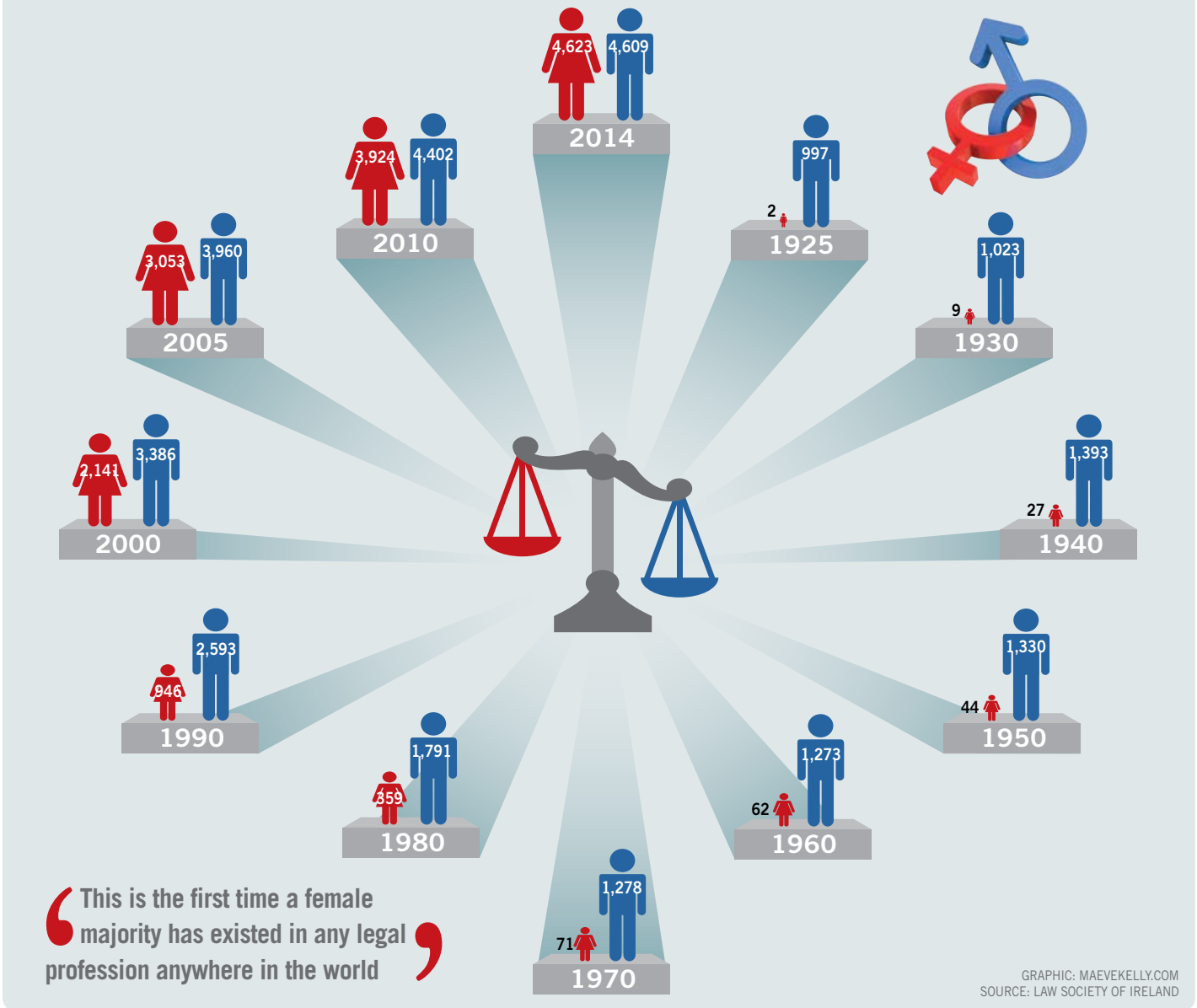
But does it matter? Will the fact that there is now a female majority in the profession change it in any way?

"I don't think it changes a thing," says director general Ken Murphy. "Lady Justice is blind, and all are equal before the law. Being a solicitor takes intelligence, determination and hard work – gender doesn't come into it, nor should it. However, I do think this current balance is something we can be proud of – that within 90-odd years, women have moved from being excluded from our profession to a point of perfect equality."

You've come a long way baby

Women currently dominate the State's senior appointments in law and justice. Last year saw the appointment of the first female Garda Commissioner,

NUMBERS OF FEMALES AND MALES WITH PRACTISING CERTIFICATES SINCE 1925



Nóirín O'Sullivan, and the third female Minister for Justice, Frances Fitzgerald. These appointments can be added to the first woman Chief Justice of the Supreme Court, Susan Denham; the first woman Director of Public Prosecutions, Claire Loftus; the first woman Chief State Solicitor, Eileen Creedon; and the first woman Attorney General, Máire Whelan.

Geraldine Kelly (Geraldine Kelly & Co, Solicitors) and former president of the Dublin Solicitors' Bar Association, qualified in 1988 and has witnessed the rise of women first-hand. "It makes me very proud, as a female solicitor, to see so many women achieving such success," she says. "However, I don't know if having a female majority in the profession will change it in any way – I haven't noticed any changes yet."

Norma O'Sullivan, who qualified in 2013 and is a solicitor with KPMG Legal Services, is grateful for the women who have so capably forged a path for her and other young female solicitors: "There have been several high-profile women in the legal profession who have set a high bar for young female law graduates, giving us the inspiration and confidence to refuse to be restrained by gender," she says. "With the benefit of higher education, travel and a wider range of work experiences, today's young Irish female solicitor is confident, highly ambitious, and less concerned about stereotypes or obstacles, with career progression being very much her focus."

The first female president of the Law Society, Moya Quinlan (1980/81), who qualified in 1946, has said that women lawyers are "lawyers who just happen to be women". She says the fact that she is a woman has not made her experience as a lawyer any different than a man's. When told that women are now the majority of the solicitors' profession, she did not want the issue to in any way divide solicitors: "The legal profession is going through a rough time," she said. "Focusing on men and women is a waste of time. We are all lawyers. What we need is a united profession."

The author wishes to thank Mary Redmond for her chapter, 'The emergence of women in the solicitors' profession in Ireland,' in The Law Society of Ireland, 1852-2002, *edited by Eamon G Hall and Daire Hogan, which heavily informs the historical analysis in this article.*

news in depth

DISTRICT COURT AIRS CHILD CARE CONCERNS

District Court judges have criticised the failure of certain State agencies to follow up on matters of concern in child care cases. Carol Coulter reports

Carol Coulter is director of the Child Care Law Reporting Project

Recent child-care cases have again shown a wide variation in the reasons why the Child and Family Agency (CFA) seeks orders protecting children – either by taking them into care or with supervision orders.

Among the cases reported on the website of the Child Care Law Reporting Project were the return of two children to their parents after respectively spending five and three years in care since birth, and care orders for children who escaped from the home in which their mother was keeping them and not allowing them to attend school.

The cases reveal a wide variation in the reasons behind orders sought by the CEA to protect children, either by taking them into care or with supervision orders. These range from drug or alcohol addiction on the part of parents leading to neglect, to serious behavioural or health problems on the part of the children, and a small number of cases of abuse. The cases also demonstrate the role of the courts in laying down guidelines for the conduct of child care cases.

> **'The judge directed the CFA to carry out an internal independent investigation into its handling of the case, describing the delay as 'inordinate, inexcusable and entirely unacceptable'**

Judicial criticism

In the case where the court refused care orders for children who had been in interim care for five and three years respectively, granting a supervision order instead, the judge delivered a 40-page judgment dealing with such issues as:

- The background to the case,
- The constitutional position of the family and the child,
- The jurisprudence of the European Court of Human Rights on the rights of the family,
- The interpretation of the child care legislation,
- The thresholds required for the making of different levels of care order,
- The admissibility of evidence, and
- The role of guardians *ad litem* in child care cases.

The judge directed the CFA to carry out an internal independent investigation into its handling of the case, describing the delay as "inordinate, inexcusable and entirely unacceptable". He also directed the guardian *ad litem* (GAL) to write to HIQA and the Ombudsman for Children, notifying them of the delays and asking that they consider exercising their statutory powers to carry out an investigation into them.

The case concerned two children (in a family of four siblings) born in Ireland, the first one days after their parents arrived here from another jurisdiction. the second two years later. The mother's two older children had been taken into care following evidence that the older child had been sexually abused. The parents denied any involvement in the abuse, and no perpetrator was ever identified. However, they were informed by social workers in the other jurisdiction that the third, unborn child would be taken into care at birth.

The parents then fled to Ireland and, almost immediately, the mother gave birth in a local hospital. Following the receipt of documentation from the other jurisdiction, the gardaí invoked section 12 of the *Childcare Act* at the hospital and delivered the child into the custody of the HSE the day after her birth. An emergency care order was granted by the local District Court on the same day.

The parents got married a month before the birth of the second child (the fourth born to the mother) two years later, who was taken into care under an emergency care order six days after birth. The parents had supervised access with both children and the judge said that, from the evidence given to the court, the access had been positive.

Right to a fair hearing

The judge said the failure of the CFA to call evidence from the other jurisdiction relating to serious allegations against the parents was fundamental to his determination of the case. He said that to decide the case in the absence of hearing evidence from the other jurisdiction would violate the respondents' constitutional right to a fair hearing. It was for the CFA to prove its case, and it had failed to do so by not calling sufficient evidence.

"Reasonable concern or suspicion is not sufficient to enable this court to make care orders. This court only makes care orders on the basis of proved facts," he said.

He also directed the CFA to carry out an enquiry as to why the EU provisions allowing for the transfer of a family law case to the jurisdiction that is the habitual residence of the family was not used in this case. He said it was clear that the other jurisdiction was the habitual residence of the parents, who were the holders of parental responsibility for the child.

PIC: ISTOCK

Referring to the parents, he said: "The court cannot condone such actions as were taken by the respondents in this case. As a result of the outcome of this case, the respondents may be of the opinion that 'the end justifies the means'. This court wishes to inform the respondents in the strongest possible terms that it strongly disapproves of the reasons they moved to Ireland."

Failure to follow up

In another case, a different judge said he would allow an application from the guardian *ad litem* to have a question referred to the Ombudsman for Children relating to why concerns that were known as long ago as 1999 were not followed up.

The case concerned three children in their early and mid-teens who had escaped from a house in which they were kept by their mother and not allowed out, including to attend school. An older sister had previously left home. They had experienced emotional and physical abuse and neglect, and there were also allegations of sexual abuse against their mother. The court was told their father, who seldom visited the house, had failed to be a protective factor and did not propose that the children live with him.

The second child told social workers the children had made an escape plan. "They used a ladder that they had moved. The side gate was locked as their [older] sister had got out that way. They brought a few things they had: money, an iPad, a book from the library on bullying, a phone number for fostering services, a number for the Samaritans. They spoke about testing the plan when their mum had gone out," the social worker said.

The court was told of concerns in 1999 about a burn on the second child, which had not been attended to, and concerns in 2001 about the children's school attendance. An educational welfare officer told the court that the parents had been before court 16 times before 2000 for the non-school attendance of her daughters. The mother said she was home-schooling them.

By 2009, although registered, the mother had failed to comply with the assessment process and was informed that her children were being taken off the home-schooling register. She was told to put them into a recognised school, but this never happened. However, this was not followed up. The court granted care orders until the children were 18.

There are now reports from almost 200 cases on the CCLRP website, www.childlawproject.ie, and there is also a growing number of considered written judgments on chil-care cases published on the Courts Service website. It is to be hoped that, together, these will assist all the professionals involved in developing consistency and best practice in bringing child care applications that are timely and appropriate to each family's circumstances.

A matter of life and DEATH

On 26 December, the High Court permitted doctors to withdraw life support from a 26-year-old pregnant woman, leading to the inevitable death of her unborn child. Michaela Herron and Kevin Power analyse this daunting case

Michaela Herron is a solicitor with the Clinical Litigation Unit of the State Claims Agency

Dr Kevin Power is a solicitor and former practising medical doctor. He joins the Healthcare Unit of Mason, Hayes & Curran as a partner in February

NP was 15 weeks pregnant when she was declared clinically dead on 3 December 2014 in a Dublin hospital. She had been placed on life support due to the presence of a foetal heartbeat. Her father, PP, did not support the regional hospital's intention to maintain life support in an attempt to attain foetal viability. He issued plenary proceedings against the Health Service Executive on 19 December, asking the court to rely on its inherent jurisdiction to permit withdrawal of care. Independent legal representation was appointed for the unborn child and for NP. In view of the importance of the matters raised, the court sat as a divisional court for the hearing on 23/24 December.

Maternal condition

Readers are advised that they may find the following details distressing. Seven consultants (both treating doctors and expert witnesses) gave evidence, including obstetricians, neurologists, neurosurgeons and intensivists.

NP met the criteria for brain death. In evidence that the court described as 'devastating', Dr Colreavy, NP's treating intensivist, described the extent of her condition. Her eyes were so swollen that her eyelids wouldn't close. A hole in her skull (from surgery attempted to reduce pressure in her brain) was leaking brain tissue. There was fungal growth at the site of the hole and pus at a drain site. She had total body oedema (puffiness). Serious infection was inevitable. There was evidence of cardiovascular instability with an attendant risk to placental perfusion. Uterine temperature was elevated. She was receiving high doses of multiple drugs (many not licensed in pregnancy) to maintain somatic support and prevent infection. The treating obstetrician described the brain as 'liquefying' and pouring toxins into the bloodstream. He described her as having "all the signs of the perfect storm and it does not seem to be improving".

Prospect of foetal survival

The uncontradicted medical evidence demonstrated there was no reasonable prospect that the unborn child would be born alive. Experts were particularly influenced by the gestational age at which brain death had occurred

PIC: PAUL SHERWOOD

at a glance

- The legal rationale behind the *PP v HSE* judgment was that article 40.3.3 applies and that the rights of the unborn, who is living, must prevail over the rights of the mother
- However, in determining how far they should go to vindicate the unborn's rights, the court must enquire as to the practicality and utility of continuing life-support measures and, in particular, whether there is a realistic prospect that the unborn will be born alive
- The unborn's right to life is to be assessed by reference to its best interests
- In this case, as there was no realistic prospect of the unborn being born alive, in its best interests, somatic support should be withdrawn

PIC: ISTOCK

PIC: ISTOCK

(accepted as 15 weeks). The medical evidence suggested that maternal brain death prior to 16/17 weeks gestation was associated with a very low (though not negligible) prospect for foetal survival. In German research (referred to in the judgment as 'the Heidelberg study'), two foetuses (out of seven where maternal death occurred before 17 weeks) were born alive (although one died within 30 days of delivery). In 'Maternal brain death – an Irish perspective', while the authors considered maintenance of somatic support futile where death occurs at less than 16 weeks gestation, they accepted that this was an 'arbitrary cut-off point'.

Expert obstetricians Boylan and McKenna argued that, if somatic support were to be maintained, delivery would be appropriate at 28-32 weeks, when the chances of survival are higher than at 24 weeks' gestation (while considered to be the cusp of viability, the survival rate at this point is only 25%).

PP argued that prolonged somatic support measures were experimental, with no proper basis in medical science or ethical principle. Medical opinion was unanimous that care should be withdrawn, as there was no reasonable prospect that the foetus would be born alive. Continuing somatic support in these circumstances was described as "experimental medicine" (Dr Colreavy) and as "going from the extraordinary to the grotesque" (Dr McKenna).

The findings

The court held that there was no realistic prospect of continuing somatic support leading to the delivery of a live baby and that its continuance would cause the unborn "distress". The court stated that "medical evidence in this case goes only one way" and that the evidence was "persuasive to a conclusive degree that ongoing somatic support for the mother is causing her body increasingly to break down and that the overwhelming infection from various sources, will, as a matter of near certainty, bring the life of the unborn to an end, well before any opportunity for a viable delivery of a live child could take place". The court was not influenced by any consideration that the unborn may be born alive, but impaired, as the case centred only on whether the unborn could survive at all.

The plaintiff argued that article 40.3.3 of the Constitution was not engaged, as this case did not involve abortion, and that the objective of the Eighth Amendment was to copper-fasten the protection provided by statute that criminalised abortion.

The HSE argued for a wider application, although they argued that the obligation to defend and vindicate the unborn's right to life was not absolute.

Counsel for the unborn argued that article 40.3.3 applied, but that the foetal right to life took precedence over the rights of its deceased mother.

Counsel for NP argued that the court should infer what NP's wishes would be and strive to have the unborn delivered as, given what had occurred, she could not have a death without indignity.

> PP may have significant implications for maternal decisions that involve a threat to foetal life, the classic example being the competent refusal of a caesarean section

The court held that article 40.3.3 had a wider application and was not confined to abortion: "...while article 40.3.3 may have come into law in the context of section 58 of the *Offences Against the Person Act 1861*, which criminalised procuring a miscarriage, on a plain-language interpretation it is also seen as acknowledging, in simple terms, the right to life of the unborn, which the State shall, as far as practicable, defend and vindicate".

The court accepted that the mother's death did not preclude her rights (notably to respect and to die with dignity) being considered in the balancing exercise required by article 40.3.3, but found that, in these circumstances, the rights of the unborn "must prevail" over these maternal rights and the family's grief.

Foetal best interests

Once article 40.3.3 was engaged, the court then turned to the question of how far it should go in vindicating and defending the unborn's right to life. In this regard, it drew considerable guidance from the High Court's decision in *Re a Ward of Court (withholding medical treatment) (No 2)*. That court held that the right to life ranked first in the hierarchy of personal rights, but that this interest is not absolute, in the sense that life must not be preserved and prolonged at all costs, no matter what the circumstances.

The court cited the use of the "best interests principle" in *SR (a ward of court)* (involving withdrawal of ventilation of a six-year-old child with catastrophic brain injury) and explicitly stated that they found it "appropriate for application in this case". The court explicitly referred (quoting *SR*) to circumstances that should be taken into account when determining whether life-saving treatment should be withheld, including the pain and suffering of the child, both in respect of any proposed treatment and – should he survive – the longevity and quality of his life.

The court in *PP* concluded that, in vindicating the foetal right to life, they must enquire as to the practicality and utility of continuing life-support measures. Given the medical evidence and the 'perfect storm' the unborn was facing, and in the best interests of the foetus, it authorised – at the discretion of the medical team – the withdrawal of ongoing somatic support.

Potential implications

While the evidence was clear that there was no "realistic prospect" this unborn would be born alive, the medical evidence suggests

FOCAL POINT

interpreting foetal best interests

In assessing the foetal right to life by reference to its best interests, the court applied the same reasoning as it would to a born life. However, it is the first time the foetal right to life has been assessed in this way, and it raises questions as to how a future court may address other clinical circumstances on the fringes of article 40.3.3 and obstetric practice.

Might a future court accept that, in the case of a foetus with a fatal abnormality and no realistic prospect of being born alive, it is in the foetus's best interests not to have the pregnancy continue (which would arguably be in line with the Supreme Court's approach in *Roche v Roche* and the State's position in *D v Ireland*)? Or further again, in the case of a foetus with a realistic prospect of being born, but destined to die within hours, days or even weeks, perhaps after great suffering, might its best interests be invoked in interpreting its right to life?

Of course, a future court may well draw a distinction between the withdrawal of life support, as opposed to taking a positive step to terminate life (which was implicitly recognised in *PP*). However, in light of the centrality of the foetal best interests test applied in *PP*, could such a distinction be constitutionally justified in circumstances where a foetus was destined to suffer intensely for the prospect of only a few hours of *ex utero* life?

If so, a court may need to take the unusual position that the best interests of the foetus are not applicable to the assessment of its right to life *ex utero* or, perhaps, that its right to life must prevail over its own best interests.

that cases will inevitably arise where a realistic prospect does exist (although what constitutes a realistic prospect is likely to require further judicial enquiry, as suggested by former attorney general Michael McDowell SC).

The inescapable logic of the judgment is that somatic support of the unborn's dead mother will be constitutionally required in those cases, probably to at least 28 weeks' gestation. Of course, somatic maintenance in these circumstances, while rare, does occur in this and other jurisdictions. (For instance, in October 2014, a foetus whose mother died at 23 weeks gestation was born alive in Milan after somatic maintenance to approximately 32 weeks' gestation.) In the Irish constitutional context, the extent and severity of any maternal deterioration during such maintenance is likely to be irrelevant (except insofar as it affects foetal life or best interests), as *PP* establishes that, while the rights of the mother (to respect and to die with dignity) and of others (the family's grief) are engaged, the rights of the child, who is living, must prevail in these circumstances.

PP may have significant implications for maternal decisions that involve a threat to foetal life, the classic example being the competent refusal of a caesarean section. Whether a competent mother would be obliged (by force if necessary) to undergo a caesarean section in such circumstances has never been judicially determined in this jurisdiction.

Where a competent mother's refusal of a section poses a risk to foetal life, it is generally argued – assuming article 40.3.3 applies – that the foetal right to life prevails, as life sits atop the hierarchy of rights (per *AG v X*) (provided the procedure does not pose a real and substantial risk to maternal life).

The contrary argument is twofold – that article 40.3.3 does not apply to non-abortion contexts (as its objective was to copper-fasten the prohibition on abortion) and that the right to life is an 'umbrella' right encompassing others (such as the right to liberty or health) and that a traditionally 'lower right' such as the right to refuse treatment can prevail over the foetal right to life.

While *PP* did not directly address or resolve this issue, the very clear finding that article 40.3.3 applies to "in simple terms, the right to life of the unborn" makes an order of that nature more likely and may have an impact upon many non-abortion threats to foetal life. Some had argued that the Supreme Court's approach in *Baby O* and *Roche v Roche* precluded 40.3.3 being applied to non-abortion scenarios.

Of course, a future court may still find that the constitutional rights of a living woman to refuse treatment are capable of prevailing over the foetal right to life. It is notable, though, that the decision that the foetal right to life prevailed appears to have been a very straightforward one, and the court did not see the need to elaborate in any detail on the balancing exercise that it had performed. Together with the wording of article 40.3.3 itself, this suggests that, if it is even possible constitutionally for a maternal right (of less than life) to prevail, it would have to be a very compelling right indeed.

While it is possible, as some have argued, that *PP* is very much confined to its (unusual and tragic) facts with little significance to other cases, it is more likely that it will have a wider impact, although the extent of that impact is as yet unclear. It is also inevitable that, in an area noted for a dearth of legislation and case law, *PP* will act as a guide to the interpretation of article 40.3.3 – both in legal chambers and on hospital wards.

look it up

Cases:

- *Attorney General v X* [1992] IESC 1
- *Baby O v Minister for Justice, Equality and Law Reform* [2002] IESC 44
- *D v Ireland* (ECHR 26499/02)
- *PP v HSE* [2014] IEHC 622
- *Re a Ward of Court (withholding medical treatment) (No 2)* [1995] 2 IR 79
- *Roche v Roche* [2010] IESC 10
- *SR (a ward of court)* [2012] 1 IR 305

Literature:

- 'One life ends, another begins: management of a brain-dead pregnant mother – a systematic review' ('the Heidelberg study')
- 'Maternal brain death – an Irish perspective', Farragher, Marsh and Laffey (*Irish Journal of Medical Science*, vol 174, no 4)

CIRCLE OF *trust*

Mark McDermott is editor of the Law Society Gazette

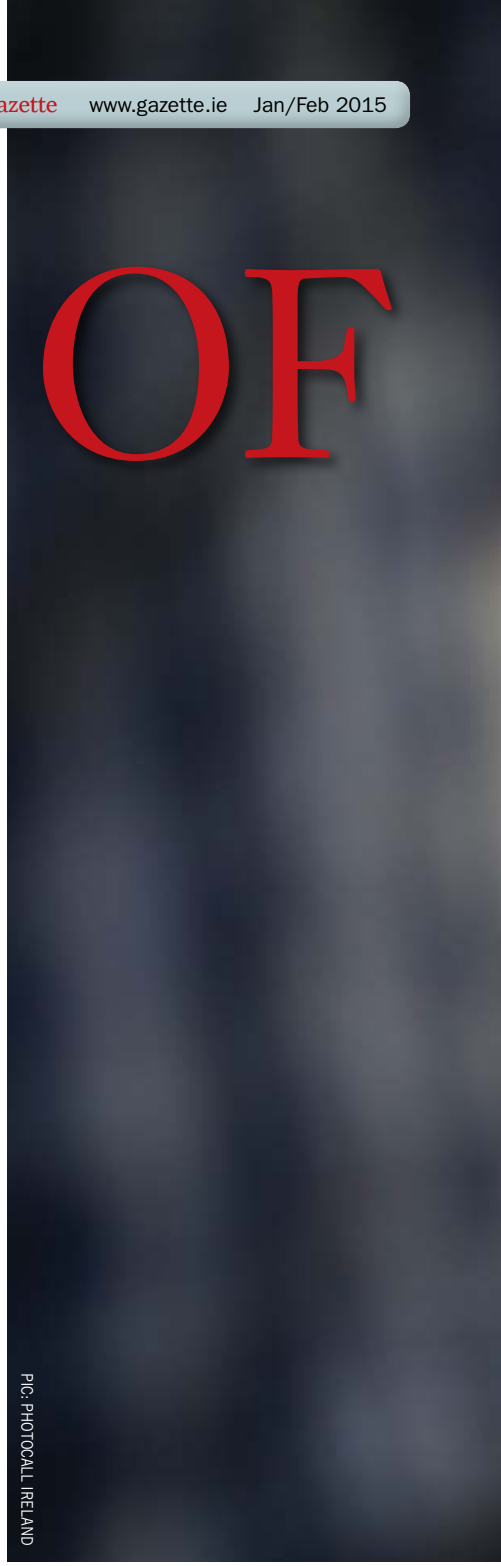
In part 2 of her interview with the *Gazette*, Minister for Justice Frances Fitzgerald speaks to Mark McDermott about the Policing Authority and whether Ireland's direct provision centres are fit for purpose

In the first part of our interview (last issue, p30), Minister for Justice Frances Fitzgerald spoke about the Garda Inspectorate's report into failures in the investigation of serious crime. She referred to "systemic failings" that were "quite serious in terms of crime investigation" and described the report as "a line in the sand and we move forward from here in terms of the reform agenda, which includes the new Policing Authority, which is the most radical change in terms of garda accountability in decades". Since then, the Government has appointed a new Garda Commissioner, Nóirín O'Sullivan, and has nominated Josephine Feehily as the Chairperson-Designate of the new independent Policing Authority. How will the Policing Authority work and what role will it play in the reform agenda?

"It will be a very important part of it," replies the minister, "because we are making sure that you now have another layer of oversight, which is in line with changes internationally. Instead of police reporting to the Department of Justice, they will be supervised by a Policing Authority for their policing plans, strategy, how they're spending their money, what they're prioritising. There will be hearings in public and, obviously, private meetings where necessary – but the idea is to have public meetings. The people who are on the Policing Authority will be put in place by the public appointments service. It will be a public, transparent process. The minister retains functions arising from overall responsibility to the Dáil, and particularly for budget, for public service numbers and for security."

Does the Policing Authority report directly to the Minister for Justice?

"It's an independent body, another layer of supervision. Generally, the Policing Authority reports to two committees in the Dáil – the Public Accounts Committee and the Justice Committee. However, the minister retains constitutional responsibility in relation to policing matters. Obviously, I will have ongoing contact with the Policing Authority in relation to certain issues."



PIC: PHOTOCALL IRELAND

at a glance

- The new Policing Authority and garda accountability – the most radical development in decades
- On GSOC, the reported bugging of its offices, and earning trust
- Addressing the criticisms of Ireland's direct provision centres for migrants and asylum seekers
- Plans for her political future?

> You can't deport people to certain countries at present that are in a state of war or in internal upheaval … But neither can we be a country that is an open door for people who want to traffic in human beings

Will there be overlap between it and GSOC?

"I don't think so. GSOC has quite a separate life of its own in terms of dealing with complaints and doing investigations and, certainly in the immediate future and probably longer term, there are no plans to change it. So you will have GSOC doing its independent investigations, while the Policing Authority can commission reports directly and refer matters to GSOC where necessary.

"I think this Policing Authority is very much about more community accountability. I see it moving from a police force to a police service. People always thought about policing as crime investigation. Now, policing is about prevention. Yes, it's about investigation, but it's also about dealing with victims appropriately. I think the move to the Policing Authority reflects that."

Water under the bridge

What has the minister to say about GSOC and the reported bugging of its offices? Was its chairman right to seek the assistance of an external agency in trying to determine whether its offices had been bugged, particularly if he felt that any such bugging would have had to be sanctioned at the highest level – in other words, in the minister's office?

Minister Fitzgerald responds: "I don't know that he thought that, but you know, that really is water under the bridge. We are where we are in relation to it. It had a lot of ripple effects in a variety of ways. I felt that Justice Cooke's report was excellent and really dealt with that issue. It's about moving forward now. I mean, look – there are always going to be tensions between GSOC and the gardaí. I'd be surprised if there weren't, but it has to be a constructive tension.

An Coimisiún Imscrúdúcháin
(Nithe Áirithe i dtaobh an Gharda Síochána agus daoine eile)

Commission of Investigation
(Certain Matters relative to An Garda Síochána and other persons)

For the Urgent Attention of all Criminal Practitioners

The Commission of Investigation into Certain Matters Relative to An Garda Síochána and Other Persons (the Fennelly Commission) was established in May of this year. The Terms of Reference of the Commission may be accessed in full at S.I. 192/2014. The purpose of this notice is to draw to the attention of the Solicitor's profession in particular, paragraphs 1. (h) and (i):

(h) To establish whether any telephone conversations between solicitors and their clients were recorded by the said telephone recording systems.

(i) To establish whether any information obtained from the said telephone recording systems by An Garda Síochána was used by it either improperly or unlawfully and, in particular, whether any recordings as may have been made by An Garda Síochána of Solicitor/Client telephone conversations were used for any purpose whatsoever.

The Commission is considering a number of options in how it can best approach (h) and (i) above but it needs the assistance of all Solicitors who are engaged in criminal law practice in the State.

The Commission requests that all Solicitors who made calls to or from Garda Stations between 1995 and 2013 to furnish to the Commission details of all telephone numbers used for such calls.

The Commission will use these numbers to endeavour to establish:

(i) whether any call to or from that number has been recorded; and,

(ii) whether that recorded call has been accessed by any person.

The Commission will not be listening to any recorded conversations and all telephone numbers will be treated in the strictest of confidence.

The Commission is in consultation with the Law Society on this aspect of its Terms of Reference and it would be happy to speak with any Solicitors who want more information about the process it is engaged in.

THE COMMISSION CAN BE CONTACTED AT:
Telephone: 01 6629151 • Email: Info@fennellycommission.ie • Address: Floor One, St Stephen's Green House, Earlsfort Terrace, Dublin, 2.

We have to have cooperation, and I understand that, now, for example, in terms of GSOC getting reports back from the gardaí, there's been a massive improvement and I think the commissioner has made that very clear.

"What I say to the gardaí is that GSOC is 'the only show in town' in relation to complaints. It has to work – and they have to work together. I don't expect them to even like one another very much, but I expect them to work together and to progress complaints and show the public that they and GSOC have their jobs to do. It's not just the Garda Síochána. GSOC has to continually earn trust. I'm not very happy about the kind of leaks that we saw. I think we're in a new situation now, and it is about trust and confidence both ways, and earning credibility."

Direct provision and human rights

Before moving into politics, Minister Fitzgerald's background was in social work and family therapy. Given that background, how does she respond to the huge amount of criticism about Ireland's direct provision centres, on how they have failed asylum seekers, and the adverse impact they have had on families going through that process?

"Well look, we've set up a working group. We had the first meeting on 10 November last. The NGOs are involved. The departments are involved. I've asked them to look at what improvements can be made. So that's an acknowledgement that aspects of it are not working as well as we would like them to. We want to provide accommodation and a service where people's dignity is respected. It's very difficult to get on with normal family life in some of the circumstances.

"The main problem is the length of time [the process takes] and we have to get the single procedure in place – which will be in place later in the year. That legislation will go through and will make an enormous difference.

"The new single procedure won't apply to all the people here at the moment. I've asked my officials to examine this issue with a view to trying to ensure that it covers as many of the people who are here, and already in the process, as possible. But we have over 1,000 people on deportation orders, 800 of whom are in direct provision. We have over 1,000 people going through the courts, 700 of whom are in direct provision. In addition, there are over 2,000 failed protection applicants in the system at the leave-to-remain stage of the process, 800 of whom are in direct provision. Taking account of people who might fall into more than one of these categories, this involves approximately 1,800 persons in direct provision, which is over 40% of those living there. So that explains some of the reasons why people are here.

"It's very hard. You can't deport people to certain countries at present that are in a state of war or in internal upheaval. So this is a complex situation. But neither can we be a country that is an open door for people who want to traffic in human beings; nor can we have an open door for every economic migrant. This is about refugee status and about assessing it properly."

Does Minister Fitzgerald think that Ireland has covered itself in glory in how it has dealt with asylum seekers and migrants?

"Actually, I think we've done reasonably well, when you look at the crisis we were facing when almost 8,500 people had no accommodation in Dublin and we had to provide accommodation, much like at the present where there's an accommodation crisis. This is not an easy issue to resolve. We do not detain people. We do not have detention. Where there is a right to work in other countries, it's very circumscribed. I don't agree with overall universal calls for a right to work. I don't think any country can agree to do that to people who arrive here who need to be assessed. I don't think that's acceptable, but I am concerned about the long delays."

> **'I don't spend my days planning how I'm going to get to what might be considered 'the next step'**

She doesn't see it as a human rights abuse issue on a major scale?

"I do see the delays as having very serious implications for people, and I do think that when you have those kinds of delays you're certainly moving into an area where human rights are compromised and that's my big concern.

"But in terms of the way we manage the system, I want to see improvements for children, for families, mental health issues, all of that – whatever improvements we can make. But I think there is also a balance to be struck. We have an obligation that we have to meet internationally, legally, of course, in terms of assessment and status. But I also believe – and I repeat – we can't be a magnet for people who would be unscrupulous in terms of arriving here."

Political future

Has she any plans to become leader of Fine Gael, and possibly taoiseach?

"The way I've always operated is that I consider myself very privileged to be a TD, and I think most TDs would say that, in fairness. To have people supporting you, to have people out there working for you to be elected, to have had the opportunity to be Minister for Children, and then Minister for Justice, I'm really delighted with that.

"I don't spend my days planning how I'm going to get to what might be considered 'the next step'. I consider it a privilege to be where I am right now and I work as hard as I can. I'll try and deliver the areas I've talked to you about. That's my goal and I really don't waste time on those kinds of machinations.

"Maybe if I'd gone into politics when I was younger, I might have thought I could lay out a path – but actually, in politics, I have to say I don't know how much anyone can ever really lay out a path."

FOCAL POINT

slice of life

Women of influence

"Geraldine Ferraro was the first woman to run for vice-president in America, and I met her when I was working with the Women's Political Association. The role that Hillary Clinton has played and continues to play has been phenomenal in terms of women's leadership.

"All of those women who came into the Dáil and who led the way: Monica Barnes, Nuala Fennell, Gemma Hussey, Nora Owen, Máire Geoghegan-Quinn. Mary Raftery's legacy continues to inform modern Ireland and, of course, our female presidents Mary Robinson and Mary McAleese.

"Leadership matters, and I'm very impressed with the work of a very good friend of mine called Nancy Kline who writes about leadership and creating a thinking environment for decisions."

Page-turner

"I'm quite an avid reader. I like biographies. One of the most recent books I bought was about philanthropy, *A Path Appears: Transforming Lives Creating Opportunities*, by Nicholas D Kristof and Sheryl WuDunn."

Headphone heroes

"Coldplay and Chris Martin and Amy Winehouse. I'm a big Leonard Cohen fan, and then there's Alicia Keys. I'm an opera and ballet fan, too. I lived in London for seven years and was a regular at Covent Garden."

Opportunity COSTS

The solicitors' profession needs to be confident and forthright on the issue of legal costs, writes Cormac Ó Culáin

Cormac Ó Culáin is the Law Society's public affairs executive

The Irish Times' provocative headline on the first Saturday of the New Year – 'Legal costs in Ireland are now the highest in Western world' – is a useful starting point from which to draw attention to some of the issues and flaws in the debate on legal costs. The headline was quoting as fact a recent report by the Medical Protection Society (MPS), 'Challenging the cost of clinical negligence – the case for reform'. The MPS is a major player in the Irish market for clinical indemnity insurance.

The MPS argues that legal fees, and the notion that solicitors are hungrily pursuing medical negligence claims to replace lost income, all play a significant part in the rise in professional indemnity costs for medical professionals.

As the Fitzpatrick economic report (see last issue, p18) on the solicitors' profession outlines, the issue of legal costs is not straightforward. Definitions differ. Services differ. Processes differ: "Efforts to bring clarity to the question of legal costs also need to make the distinction between legal costs and the professional fees of legal advisors … total legal costs can include outlays such as expert fees (medical, accounting, engineering), court/registration fees, ,enforcement costs and others. Many of these costs are set by the State and have increased successively in recent years."

at a glance

- The issue of legal costs is not straightforward – a distinction must be made between 'legal costs' and the professional fees of legal advisors
- Total legal costs can include outlays such as court/registration fees, expert fees (medical, accounting, engineering), enforcement costs and others. Many of these costs are set by the State and have increased successively in recent years
- Between 2008 and 2013, the State Claims Agency reported a 255% increase in medical fee expenditure. In recent years (between 2011 and 2013), medical fee expenditure rose by 93% – whereas expenditure on legal fees over the same period rose by 38%

The devil is in the detail

Plaintiff costs? Legal fees? Non-compensation costs? All interchangeable in the debate on legal expenditure. That legal spend (fees and costs) are a matter of public policy is an obvious. This is particularly the case where the State – through the State Claims Agency (SCA) – and ultimately the taxpayer indemnifies clinicians' public work. In addition, the agency subsidises the risk exposure of clinicians' private work where the claim is above the MPS indemnity cap agreed with the State.

Examining the SCA's annual reports, the costs of both clinical and non-clinical cases (relating to 117 public authorities and agencies) are broken down between legal, medical, engineering and other.

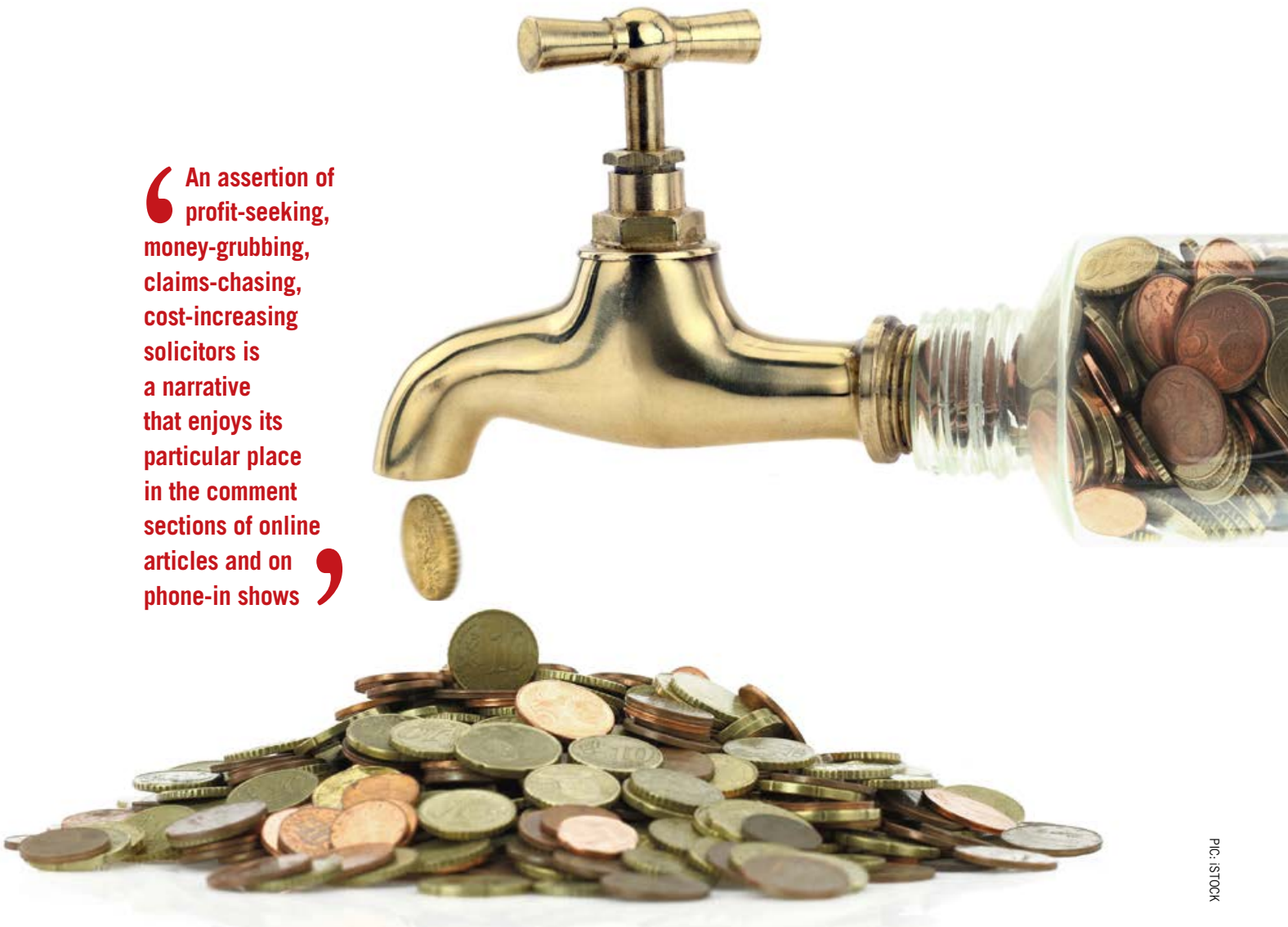
Between 2008 and 2013, the SCA reported a 255% increase in medical-fee expenditure. In recent years (between 2011 and 2013), medical-fee expenditure rose by 93%, while expenditure on legal fees over the same period rose by 38%.

While total plaintiff legal fees – which likely entails legal, medical, actuarial and other fees – have decreased since a 2011 peak, it is determined by a range of factors, some of which are set out below.

Determinants of total costs

An increase in activity gives rise to a comparable increase in expenditure. In the context of clinical claims, the SCA confirms that 400 new claims were notified in 2009,

> An assertion of profit-seeking, money-grubbing, claims-chasing, cost-increasing solicitors is a narrative that enjoys its particular place in the comment sections of online articles and on phone-in shows



PIC: iSTOCK

peaking in 2012 at 772 new claims. In 2014, new clinical claims notified dropped to 609, a quarter of which were attributable to maternity services.

The success rate/outcomes of State-defended cases and the number of State redress schemes administered by the SCA must be taken into account when discussing total plaintiff costs. Contributory factors to increasing legal activity include improved patient advocacy and empowerment and an increasing complexity of clinical work, giving rise to comparable complexity in legal cases. The addition of further agencies to the SCA's remit and the wider resourcing of our healthcare system are also factors.

External factors and reforms in the area of electronic medical records, disclosure practices and other quality standards all play a part. The level of expert fees, the extent of medical and actuarial opinion (as are invariably required) on liability and causation, medical cost inflation, and the risk profile of MPS members in Ireland all affect 'plaintiff costs'.

The 2012 auditor general report on the Clinical Indemnity Scheme (the scheme through which the SCA administers medical negligence claims) provides useful background to these issues.

The priority of mediation over contesting claims is welcome. According to the SCA, "fewer than 3% of clinical negligence cases handled by the SCA result in a contested court hearing", and the CIS has recorded a threefold increase in the use of mediation for clinical negligence cases in 2012/2013. While reliance on mediation is "stubbornly low", developments are slowly being progressed in adverse event and risk management. Judicial resourcing, which affects court hearings, availability, and case management, must also be considered.

Generalised claims by the MPS such as "plaintiff costs are among the highest in any country in which we have members" bring little to the debate where they are not substantiated by their own internal data or litigation policies.

The reliability of data used by analysts and the media should also be queried. For example, the World Bank collects data on legal costs (as part of their 'enforcing contracts' league table). Data is collected from most economies based on a theoretical commercial contract case.

The Irish data for 2012 was based on just five respondents. With such a glaring statistical weakness, it is all the more worrying that 2012 data was then relied upon within the regulatory impact assessment to the *Legal Services Regulation Bill* as evidence of weak cost competitiveness.

Excitable commentary on legal fees leaves little room for sober qualifications. Balanced debate – particularly with cross-country comparisons – can only be achieved when consideration is given to taxation rates, stamp duty, rising court fees (a review of the relevant court fees orders through the years is available to all) and court processes.

Likewise, clear definitions of 'attorney' or 'legal activities' and disaggregating solicitor

fees from the wider pool of 'legal costs' would immensely assist policymakers and the public.

An independent evaluation of the World Bank report identified a number of weaknesses reflecting those above. An excerpt of the evaluation is reproduced in the Fitzpatrick economic report.

National data on legal fees

The Central Statistics Office monitors prices of 'legal activities' (which includes solicitors, barristers, trademark attorneys, sheriffs, and so on), as part of its experimental Services Producer Price Index (SPPI). The CSO states: "In most cases, these services are provided to business customers only, and so individual prices should not be considered indicative of more general price trends in the economy. The index excludes consumers who are not covered in the Consumer Price Index."

The Society welcomes the fact that the CSO has commenced a redevelopment of the SPPI, involving a review of the sample and process to ensure that the data reflects practice size, service and region.

While this is awaited, use of the SPPI (for example in Forfás reports, Competitiveness Council statements, and other policy documents) should be treated with extreme caution, if used at all.

Definitions

A useful example of how legal fees, costs, outlays and settlements are conflated is the government departments' appropriation accounts.

Notwithstanding limited guidance on the matter, departments alternate between 'legal fees', 'awards', 'compensation costs' and simply 'compensation'.

This data is invariably repeated in commentary and regrettably assumes the character of evidence that solicitors are in continuous receipt of a windfall.

Repeated reductions in government fees to solicitors under the Financial Emergency Measures in the Public Interest (FEMPI) legislation and changes to public sector tendering unfortunately don't make news. For example, the State Claims Agency has reduced fees paid to solicitors and counsel by 25% in recent years.

Accordingly, commentary on legal fees in the absence of clear definitions (for example, guidance to the appropriation accounts' use of the word 'lawyers'), activity levels and nature of cases should always be questioned.

> **Sober and serious considerations of unmet legal need, vindication of rights, and compensation for injury don't quite get the keyboard going**

Consumer is king: transparency is key

The legal services market is just that – a market. If the price of a service is above the purchasing power or choice of the consumer, they are free to shop around. Some colleagues may regret that others have sold their services at lower prices – in some cases below cost – thus compounding the deflation, but this is the competitive and dynamic reality in which any business finds itself.

It would be naïve to suggest that the market for legal services is akin to that for widgets – clearly the nature, complexity and regulation of the service distinguish it. That said, however, increasing specialisation, new technologies, and changing pricing structures are all moulding a new market. Neither should clients' increasing bargaining power be underestimated. After all, solicitors need clients!

Cui bono? The positive for the consumer (and in the long term, I suggest, the practitioner) is that we are varying our offering, adding value, flexibility and new modes of working, bringing with it a focus on value as much as on costs.

Managing client expectations on costs has long been a statutory and ethical obligation, by virtue of section 68 of the *Solicitors (Amendment) Act 1994*.

The practice note 'Do's and don'ts of section 68 letters' (republished on p48) is a vital reminder that transparency, communication, and accountability are at the core of defending our legal work and attendant fees. The Law Society's consumer leaflet on legal costs also serves to bring increased consumer confidence to the issue.

Reforms proposed under the *Legal Services Regulation Bill* build on and supplement existing transparency measures. Existing and future measures have the objective of protecting both the practitioner and the purchaser.

An assertion of profit-seeking, money-grubbing, claims-chasing, cost-increasing solicitors is a narrative that enjoys its particular place in the comment sections of online articles and on phone-in shows.

Certainly, headlines such as 'Legal costs in Ireland are now the highest in the western world' are effective 'click' bait.

Sober and serious considerations of unmet legal need, vindication of rights, and compensation for injury don't quite get the keyboard going. Themes of facilitating commerce and industry, economic growth and employment rarely figure in the commentary on the legal services market and solicitors.

Genuine discussions on legal costs are invariably non-linear. Practitioners are best placed to articulate value. Transparency measures – existing and anticipated – serve all stakeholders well.

FOCAL POINT

state claims agency, expenditure 2008-2012

	2008	2009	2010	2011	2012	2013	% Change 08-13
State Claims Agency expenses	€	€	€	€	€	€	
Legal fees	8,119,000	9,130,000	12,560,000	13,612,000	16,497,000	18,759,000	+ 131%
Medical fees	753,000	1,036,000	1,295,000	1,386,000	3,317,000	2,674,000	+ 255%
Engineering fees	119,000	103,000	95,000	176,000	278,000	265,000	+ 123%
Other fees	382,000	447,000	723,000	836,000	992,000	1,107,000	+ 190%

SHOOT to thrill

Eamonn Maguire is advertising regulations executive at the Law Society of Ireland

In 2015, the Law Society set its sights on the widespread problem of 'claims-harvesting' websites and the impact they have on personal injury litigation. Eamonn Maguire calibrates his scope

Although the economy appears to be pulling itself sluggishly out of its recessionary cycle – with a justifiable air of cautious optimism returning to the profession – these remain straitened times for many practitioners. It is no secret that 2014 was a year when the Society took a more robust approach to the manner in which solicitors and their firms could advertise their professional services. This is set to continue in 2015, with the Society's priority being to implement strategies that tackle the widespread problem of 'claims-harvesting' websites and the impact they have on personal injury litigation.

Despite such a proactive approach, the pervasive activities of non-solicitors – who with increasing regularity are now providing 'legal services' – remains a thorn in the side of the Society's Regulation Department. Indeed, with personal injury services now being offered from within the financial services sector, as well as 'claims-harvesting' websites run by non-solicitors, it makes sense for the Society, while monitoring how its members advertise, to also distinguish how the law in respect of advertising may extend beyond solicitors in private practice.

How does the law govern such activities?

The core statutory provision that may be applied to non-solicitors is to be found in section 5 of the *Solicitors (Amendment) Act 2002*: "A person who is not a solicitor shall not publish or cause to be published an advertisement:

a) Which expressly or impliedly undertakes to provide a specified service, being a service of a legal nature that could otherwise be provided by a solicitor, for or in expectation of a fee, gain or reward that is directly related to the provision of that service, and
b) Which, if published or caused to be published by a solicitor, would not be in compliance with paragraph (h) or (i) of subsection 2 or subsection 4 of section 71 (as amended by section 4 of this act) of the principal act."

What constitutes a person as defined by the act? Section 18 of the *Interpretation Act 2005* sets out that a 'person' encompasses both a corporate (whether a corporation aggregate or a corporation sole) and an unincorporated body of persons, as well as an individual.

Section 5 breaches

Therefore, persons, whether natural or corporate, who are non-solicitors who advertise legal services that could be performed by a solicitor could be held to be in breach of

at a glance

- Personal injury services are now being offered from within the financial services sector, and 'claims-harvesting' websites are being run by non-solicitors
- Persons who are non-solicitors who advertise legal services that could be performed by a solicitor could be held to be in breach of section 5 of the *Solicitors (Amendment) Act 2002*
- Accepting direct or indirect referrals of personal injury claims that emanate from a 'claims-harvesting' website operated by a third party may constitute professional misconduct

> Persons who are non-solicitors who advertise legal services that could be performed by a solicitor could be held to be in breach of section 5

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DATE	EVENT	DISCOUNTED FEE*	FULL FEE	CPD HOURS
5/6 March 2015	English & Welsh Property Law and Practice Course	€441	€588	9 Hours General (by group study)
6/7 March & 17/18 April & 22/23 May	Certificate in Adjudication – A practical 6-day workshop-based course to provide participants with knowledge and skills required in effective and ethical adjudication	€960	€1,280	Full CPD General Hours requirement for 2015 (provided relevant sessions attended)
25 March 2015	Companies Act, 2014 – Overview and Key Provisions – presented in partnership with the Business Law Committee	€150	€176	5 General (by Group Study)
ONLINE COURSES: To Register for any of our online courses OR for further information email: Lspt@Lawsociety.ie				
Online	Conscience, Professionalism & the Lawyer	€45		Approx. One Hour Regulatory Matters (by eLearning)
Online	New Terms of Business - Contract Precedent	€45		Approx. One Hour Regulatory Matters (by eLearning)
Online	Responding to a Regulatory Investigation & Data Protection – the current regulatory position	€45		Approx. One Hour Regulatory Matters (by eLearning)
Online	The LinkedIn Lawyer: The "How to" Guide	€55		Approx. 5 hours M & PD Skills (by eLearning)
Online	Advanced LinkedIn	€55		Approx. 5 hours M & PD Skills (by eLearning)
Online	Search Engine Optimisation (SEO)	€55		Approx. 5 hours M & PD Skills (by eLearning)
Online	Twitter for Lawyers: The "How to" Guide	€55		Approx. 5 hours M & PD Skills (by eLearning)
Online	Facebook for Lawyers: The "How to" Guide	€55		Approx. 5 hours M & PD Skills (by eLearning)
Online	How to use an iPad for business and lifestyle	€136		Approx. 5 hours M & PD Skills (by eLearning)
Online	How to use a Samsung for business and lifestyle	€136		Approx. 5 hours M & PD Skills (by eLearning)
Online	How to create an eNewsletter	€90		Approx. 5 Hours M & PD Skills (by eLearning)
Online	Touch Typing	€40		Approx. 5 Hours M & PD Skills (by eLearning)
Online	Microsoft Courses – Word - all Levels, PowerPoint – all levels, Excel	From €80		Approx. 5 Hours M & PD Skills (by eLearning)

For full details on all of these events visit webpage www.lawsociety.ie/Lspt or contact a member of the Law Society Professional Training team on:
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The 2015 CPD requirement is 16 hours in total, to include a minimum of 3 hours Management & Professional Development Skills and a minimum of 1 hour Regulatory Matters. Please note FIVE hours on-line learning is the maximum that can be claimed in the 2015 CPD Cycle
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section 5. As previously intimated, an example of such a breach would include the various 'claims-harvesting' websites in existence online, some of which are operated by non-solicitors and act as portals to legal services without naming on the face of the website the solicitors to whom work is being referred and/or who are enjoying a benefit as a result. Such breaches permit the Society to initiate proceedings, seeking to either have the offending website amended or taken down altogether.

So how and on what basis might the Society seek such an injunction? This is where section 18 of the *Solicitors (Amendment) Act 2002* steps in, under which the High Court is empowered to prohibit by order (or by provisions the court thinks appropriate) persons acting in contravention of the *Solicitors Acts 1954-2011*.

> The law provides further protection to solicitors from the sharp practice of non-solicitors, particularly in respect of personal injury litigation

Critically, this provision applies not just to solicitors but, as per section 18(1)(a), extends to "any other person" (as previously defined) and, as a result, may be relied upon to bring to bear any person outside the profession who is held to be in breach of section 5.

In addition to these statutory provisions and the willingness of the Society to exercise them appropriately against non-solicitors who are advertising legal services in contravention of these provisions, solicitors and non-solicitors may expose themselves to a potential liability under the torts of maintenance and champerty.

The High Court decision in *Thema Intl Fund v HSBC Inst Trust Services (Ireland)* not only made clear that the civil torts of maintenance and champerty continue to subsist under Irish law, but that they would apply to third party commercial/professional funding of specific litigation.

FOCAL POINT

conduct unbecoming

Section 7 of the *Solicitors (Amendment) Act 2002* amends the definition of misconduct in section 3 of the 1960 act to include a solicitor having any direct or indirect association with a person who is acting in contravention of this provision. Consequently, accepting direct or indirect referrals of personal injury claims that emanate from a 'claims-harvesting' website operated by a third party may also constitute misconduct on the part of a solicitor.

Further, Society members currently enjoying a benefit derived from litigation borne from maintenance and/or a champertous relationship should also take caution. Part III of the *Civil Liability Act 1961* may hold solicitors engaged in such practices as being equally liable as concurrent wrongdoers in tort. Therefore, if a (non-solicitor) person is held to have committed the civil torts of maintenance or champerty, a solicitor with an association with that person may find themselves in difficulty.

Therefore, if you are reading this as a non-solicitor currently advertising services that are legal in nature and, as a result, are concerned about whether you may fall foul of the above provisions, you must ask:

- Is your organisation, virtual or otherwise, capable of being a 'person' within the meaning of section 18 of the *Interpretation Act 2005*?
- Does your organisation's website constitute an 'advertisement' that undertakes to provide a specified legal service that could otherwise be provided by a solicitor?

If the answer to either of these questions is 'yes', you may be advertising in breach of the *Solicitors (Amendment) Act 2002*. These provisions represent the law and, as such, any breach will be met by the Law Society in a swift and robust manner. In addition, if you are presently funding litigation in a manner that might constitute maintenance and/or a champertous relationship (or, indeed, you are enjoying a benefit thereunder), you should exercise caution. Such practices not only remain illegal under Irish law (and thus any decision is rendered unenforceable) but, for a solicitor who is engaged in such activities, there may be very real and significant consequences in terms of disciplinary measures.

look it up

Cases:

- *Thema Intl Fund v HSBC Inst Trust Services (Ireland)* [2011] 3 IR 654

Legislation:

- *Civil Liability Act 1961*
- *Interpretation Act 2005*
- *Solicitors (Amendment) Act 2002*

Taking care of BUSINESS

LawCare began in 1997 as a support group for solicitors with alcohol addiction. Now a registered charity, LawCare has had a presence in Ireland since 2008. Maggie Armstrong talks to new CEO Elizabeth Rimmer

at a glance

- Since 2008, 228 case files have been opened by LawCare from Irish solicitors
- In 2014, 22 new case files were opened from Irish solicitors, with a further 73 calls received. The most common issue for callers was stress (86%), with the reasons cited as financial worries (27%) and workload (23%)
- In 2013, 26 new case files were opened from Irish solicitors, almost half of whom were trainees or qualified less than five years. The most common issue for callers was stress (77%), with the reasons cited being financial worries (31%) and workload (19%)

Maggie Armstrong is a Dublin-based journalist

"People who go into law, they're very bright people, they're highly intelligent, they like to push themselves, they're competitive – the sort of people who might find it difficult to say they're having a problem with something, because they might perceive it as a sign of weakness."

So says Elizabeth Rimmer, LawCare's new CEO. She arrives to the charity with a mission: to improve the working culture that can undermine such talented people.

"There's a culture of long hours. People are under pressure to make their billing targets and bring money into the firm if they're in a commercial firm. If they're in the public sector, public cuts make it harder for those solicitors to generate income for their firm. Also, you're representing your clients' interests and making sure you do the best for them. You want to be successful for them. I think that all makes for a highly stressful occupation."

LawCare is a free and confidential helpline for Law Society members who are under strain, whether with mental or physical health problems. The problems can be personal and highly sensitive – depression, anxiety, physical illness, addiction – or something going on in the workplace, such as bullying or stress. You don't need to be on the brink of catastrophe in order to call. LawCare is there to help solve it, and their phone line (freephone: 1800 991 801, email: help@lawcare.ie) is open not only to lawyers but also to their families and staff.

> **"The idea of LawCare is to be an available resource in circumstances where stress levels, for example, become so overwhelming that someone feels that they simply cannot cope"**

Elizabeth is the charity's second CEO, having taken over from Hilary Tilby. Before joining LawCare in September, Elizabeth was executive director at the Institute of Group Analysis and, before that, at Alzheimer's Disease International.

She began work as a solicitor in clinical negligence, and the experience was sobering. "I found it quite a challenging environment," she says. "I got a traineeship in a firm that was highly regarded in clinical negligence, and then got kept on as an assistant solicitor, so it was great. But what I found hard with medical negligence and litigation was the adversarial component to it. People were coming to you after terrible things had happened to them or gone wrong. They came to you thinking that they were going to get all the answers to their questions. You came to realise that the process is designed to financially compensate people for their loss – but that you can never financially compensate people for their dreadful experiences. I found that quite stressful so questioned whether I really wanted to do this.

"I found it hard having people in my room crying, telling me very distressing stories. I felt so sorry, and really empathised with their position and thought, what a terrible tragedy and now there's this litigation that's going to go on for four or five years and you think, you can't put this to rest. I did an MA in medical law and ethics at King's College and took a year out to reassess."

That was when Elizabeth found a part-time job with Alzheimer's Disease International, answering phones and

ALL PICS: CIAN REDMOND PHOTOGRAPHY

FOCAL POINT

tales from the front line

Irish coordinator Mary Jackson describes the type of cases they have dealt with since 2008.

"Bullying seems to be on the increase right across the call spectrum. We spoke with a trainee whose boss dealt with her purely by email. She was getting up to 42 emails a day, though they were sitting in the same room together. Bullying can take a very unpleasant, invidious form," says Mary.

In another case, "a caller rang us who was a sole practitioner, who had just been diagnosed with a life-threatening illness. It meant he would have to give up work for six months. He was very anxious, fearing the worst of what would happen to him and to his practice. It occurred to me that we had dealt with an English lawyer who had had identical surgery to what he was facing. We put them in touch. The two of them are still in touch. The lawyer told me it was an absolute life-saver.

"We had another lawyer facing the Solicitors' Disciplinary Tribunal. That solicitor had done something grave and he was being fined. There was no malpractice, but he had let his business get into a state of chaos. Facing a courtroom situation, he was petrified. His wife rang. She said he was like an ostrich with his head in the sand. We directed her to the Solicitors Benevolent Association, as the family were in a state of financial hardship. (The SBA is a voluntary charitable body that helps all members in need – whether from the Law Society of Ireland and the Law Society of Northern Ireland. It is a confidential service – more details at www.solicitorsbenevolentassociation.com.)

We asked one of our Irish volunteer lawyers to contact the caller. She arranged to meet him and did what we call 'hand-holding', whereby she accompanied both he and his wife to the Disciplinary Tribunal, sat with him through the hearing and played a big sister role."

sending faxes. A month in, her boss had to leave suddenly – due to stress – and Elizabeth was promoted to his job, which she kept for ten years.

Root and branch

Over tea and biscuits in Dublin, Elizabeth talks lucidly about the way organisations are run in a 'hyperconnected' world. The issue that comes to the fore is wellbeing at work and improving working culture from the roots up.

"This whole well-being agenda about healthier workplaces is certainly becoming more talked about, not just in law but across a range of professions," says Elizabeth. "It makes commercial sense that the healthier the work culture is, you're going to find it easier to recruit people and to retain them – and that female employees who've been with you for ten years and gone off and had a baby can stay on. Creating workplaces that are more flexible, giving people opportunities to work from home, potentially, will pay dividends."

Elizabeth says she notices that many law firms in England have begun giving more time off. "I think there is a lot more flexible working, including working from home, because we live in a hyperconnected world. In LawCare, we don't have an office, we all work from home," she says. "That was what attracted me to the job. I have a young son, so it means I can be at home. I can work, but I can also empty the dishwasher. I can do the school run and I can go to the school assemblies because I'm on my phone

FOCAL POINT

irish eyes

■ Valerie Peart (Pearts Solicitors) is a Council member of the Law Society and a trustee of LawCare in Ireland.

"The idea of LawCare is to be an available resource in circumstances where stress levels, for example, become so overwhelming that someone feels that they simply cannot cope," says Valerie. "The helpline, being staffed by solicitors themselves, provides instant access to a colleague who will listen, first of all, and can make practical suggestions or referral to other care professionals."

Valerie's experience is highly relevant in this capacity. "I run a busy practice. If I'm feeling stressed, I'll take a walk up the [Dublin] quays to clear my head, go back and have a cup of tea. If I was aware that a colleague had gone beyond that point of stress, I would be confident that LawCare would provide a real solution for them."

■ Louise Campbell (policy development executive with the Law Society) is also a trustee of LawCare. She recalls 2007, when the Law Society first considered funding the provision of LawCare in Ireland. Launched from 1 January 2008 to help the Irish profession deal with health issues and related emotional problems, there were initially a large number of calls. Stress and depression seemed to be to the fore, and given the downturn, that was no surprise.

■ LawCare's Irish coordinator is Mary Jackson. Born in Fermanagh and based in Devon, Mary coordinates LawCare's Irish concerns with those overseas and answers the LawCare helpline. "We try really hard to be empathic and non-judgemental," she says. "We are not trained counsellors; we try to broaden out the service". The caller will usually be signposted to a specialist – one in four are referred to counselling – and LawCare makes follow-up calls.

On behalf of LawCare, Mary has given presentations around Ireland (addressing nearly 1,200 solicitors last year) and has talked about practising mindfulness. "Mindfulness is about stopping and bringing your attention to this moment in time. If you do it for three minutes a day, it's a way of calming your thoughts," she says. "It's made me more patient. You become aware that you are a living, breathing human being rather than just a machine that churns out work. It makes you feel more relaxed then, going back into the hurly-burly of work."

■ *The helpline operates 365 days a year, Monday to Friday, 9am to 7.30pm; weekends/British public holidays, 10am to 4pm – (www.lawcare.ie).*

Pictured before the LawCare Ireland meeting at the Law Society on 17 October 2014 were *(front, l to r)*: Louise Campbell, Mary Keane (deputy director general), Elizabeth Rimmer, Valerie Peart (Council member and trustee of LawCare) and Teri Kelly (director of representation and member services). *(Back, l to r)*: Sinead Travers, Keith O'Malley, Emma Cooper and Therese Clarke

or email and I'm going to be home in ten minutes. Flexibility is what people want."

Her organisation, she says, "has an advocacy role to play in making sure you've got a good, productive, 'well-retained' workplace. I would like to see the law societies in the relevant jurisdictions, and the equivalent for the Bar, taking these issues seriously and putting them into their strategies."

Curious as to why lawyers have a dedicated charity to support them, when many professions don't, I ask why people don't just go to HR with a problem. "There's a reluctance for people to come forward because they might think it's going to be a bad mark against their name. Will they ruin their chances of being promoted? Will it be reported to the partners? Our service is totally confidential – we don't report anything. Everyone who works our helpline has been a solicitor. They understand what that environment is like in the way that someone else may not understand it."

LawCare research shows that 16% of those who visit the website come from Ireland. And yet, despite the excellent service offered, LawCare is not getting as many calls as it should: "The awareness is very low," Elizabeth says. "Law Care must be serving a quarter of a million people and we get 500 calls a year. It's an interesting question, why people aren't calling us."

> **'LawCare research shows that 16% of those who visit the website come from Ireland'**

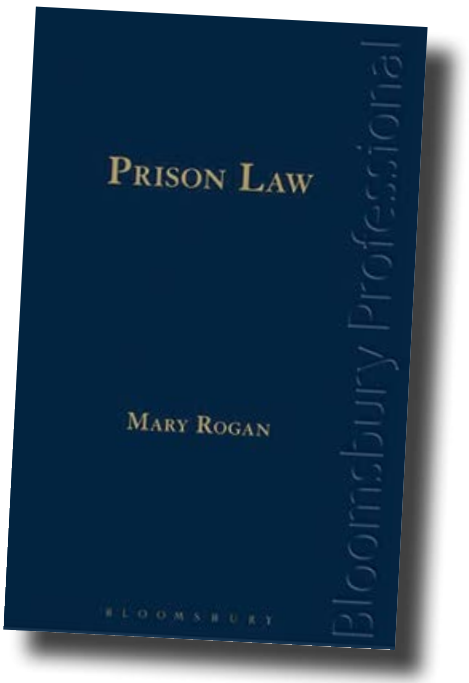
The reason may be stigma, she says. "Mental health is the poor relation in the health services. We're big on public health campaigns and there isn't a huge amount that focuses on how to look after your own mental health. It doesn't get the same recognition that it should because the burden of mental health is huge to society."

Does she have ideas as to where mental health stigma comes from? "It may be as basic as you can't see it," says Elizabeth. "Someone's got a broken leg, you can see it." Another worry, she says, is "the minute you've been 'labelled' with a mental health problem the perception of you is that somehow you're not as competent as other people. What if it happens again? Are you somebody who's going to have to be watched in the work place? Will things unravel around you? There's a fear factor, so it is stigmatised."

What is the CEO's vision? Elizabeth plans to exploit the webx in making LawCare accessible to the new generation of social-media-hooked lawyers and also to people who find it hard to pick up the phone. "I'd like to see us developing a well-being app," she says. Her aim is to remove the stigma felt around discussing problems at work, and her warm and pragmatic approach inspires confidence. "By us raising awareness about the importance of talking about mental health and bringing it into the working culture, these problems can be met. It's not all doom and gloom, and people can get on with their lives."

Prison Law

Mary Rogan. Bloomsbury Professional (2014), www.bloomsburyprofessional.com.
ISBN: 978-1-780434-71-1. Price: €195.



Solicitors needing to advise prisoners as to their rights and entitlements will appreciate this book as an extremely informative and useful resource.

The book begins with a chapter on the prison system and its legal framework, with each subsequent chapter expanding on various elements of the law and prison rules as they apply to prisoners, both within the confines of the prison and in relation to the prisoner's contact with the outside world. The status of particular groups in the prison population is also examined, with the relative positions of (among others) women, foreigners, and the elderly within the prison system being examined.

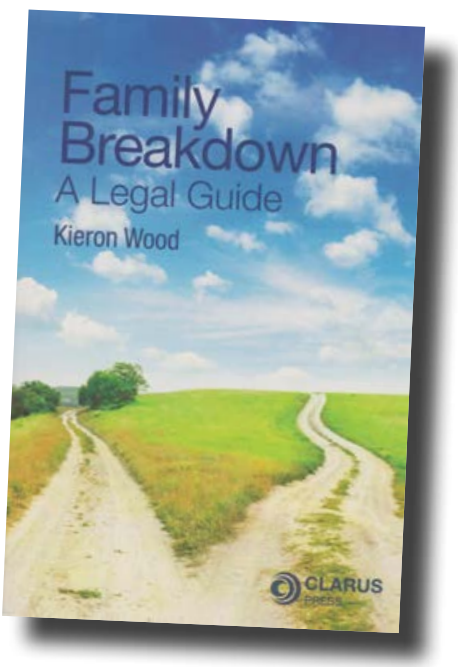
Prison discipline, investigation of breaches of the prison rules, and the manner in which punishments are administered in respect of breaches of these rules are also studied. Also included is a very in-depth study of the rapidly evolving area of remission. Detailed consideration is given to release and transfers, with a review of the rules governing the granting and revocation of temporary release, including a comprehensive account of the recent court challenges and subsequent reforms in this area. In addition, there is a chapter on practical issues for prison law practitioners, with extremely useful information on article 40 (*habeas corpus*) applications and the laws governing judicial review in this area. Helpfully, the *Prison Rules 2007-2014* are also contained within an appendix to the book.

Written in a clear, concise, and uncomplicated manner, this book is an essential tool for practitioners working in the area.

Shane McCarthy is a practising solicitor based in Skibbereen, Co Cork, and a member of the Law Society's Criminal Law Committee.

Family Breakdown: A Legal Guide

Kieron Wood. Clarus Press (2014), www.claruspress.ie.
ISBN: 978-1-905536-65-8. Price: €49.



Written with the general public in mind, this book is to be heartily welcomed and I would recommend it to any one of my clients without hesitation.

It not only comprehensively sets out the legal framework relating to nullity, judicial separation, divorce and civil partnership, but also takes the reader through almost every conceivable eventuality, from domestic violence to pre-nuptial agreements, pensions and wills. Wood is clearly aware of some of the most pressing issues in this area in 2014. Accordingly, his book also contains a chapter on legal aid and one that sets out the various alternatives to court in great detail. In my view, the latter is an important inclusion given the current trend towards alternative dispute resolution. No doubt this chapter will ease the minds of many prospective family law clients who are understandably intimidated by the thought of appearing in front of the court.

Wood acknowledges that this prospect cannot

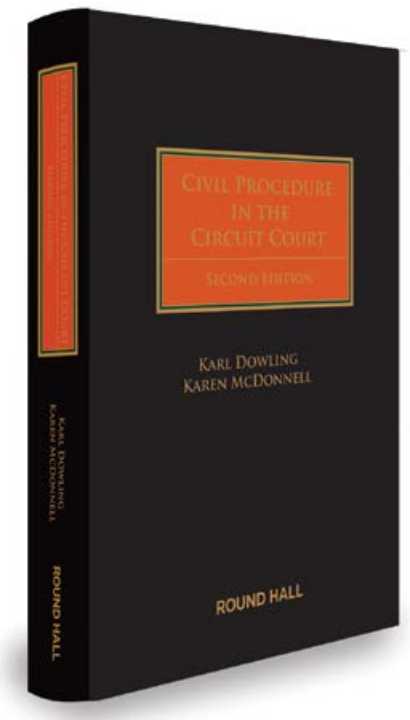
be avoided in many cases, and the chapter 'Your day in court' is highly informative for those who have to engage with the system. The author notes that for many "involved in marriage breakdown, the thought of going to court may fill them with apprehension". However, in my opinion, such apprehension would be hugely assuaged upon reading this particular section of Wood's guide, which takes the reader through the various courts and outlines what should happen at a family law hearing. The inclusion of small (but not inconsequential) details is hugely helpful, as it is my experience that clients can often be confused by the processes of the court when these have not been explained to them. Wood circumvents this by explaining to the reader the function of the call over, the privacy requirements of *in camera* cases, and the roles fulfilled by barristers and solicitors during the case.

At the breakdown of a marriage or civil partnership, parties can often find themselves utterly confused, with information (some of it not all that reliable) coming from all directions. With its balanced mix of law, general information, checklists and precedent forms, as well as an appendix dedicated to frequently asked questions, Wood's *Family Breakdown* is a guide geared towards those very people. In my view, it should be compulsory reading for anyone who is about to come into contact with the family law system.

Betty Dinneen is the managing solicitor of Pope's Quay Law Centre, Cork.

Civil Procedure in the Circuit Court

Karl Dowling and Karen McDonnell. Round Hall (2013), www.roundhall.ie. ISBN: 978-1-858007-18-2. Price: €265. Also available as an e-book from Roundhall's *ProView* app.



In a short review, it is difficult to convey the comprehensive and useful nature of this book. Perhaps the best means of illustrating this is to note that the table of contents alone runs to ten pages. The book itself is a second edition, to take into account significant developments affecting practice and procedure, including (among other things) adjustments to the *Circuit Court Rules* relating to the *Land and Conveyancing Law Reform Act 2009*, the *Personal Insolvency Act 2012*, developments in actions for possession, and well-charging relief.

The initial chapters summarise the jurisdiction of the Circuit Court, together with proceedings before the county registrar. Across several chapters, extensive detail is then provided in relation to the procedural steps required to initiate, defend and process actions in the Circuit Court. Quite usefully, there are a number of actions that detail areas that do not arise in every case and can be a source of angst without access to this information when they do arise, including intricacies with the parties to an action (for example, persons of unsound mind not so found), third party applications, joinder of actions, and moving the case to or from the High Court or to the District Court. Naturally there are also chapters relating to regular issues arising in practice, such as discovery, lodgments and offers, the trial, appeals, enforcement of judgment orders and costs.

Beyond the commentary on actions generally, certain distinct areas of practice also receive special focus, including personal injuries actions, liquor licensing, probate actions, landlord and tenant proceedings, planning, employment and family law. Each of these chapters discusses the procedures in relation to actions within that topic area in significant detail. The book concludes with an appendix containing the various forms for use in the Circuit Court.

While the *Circuit Court Rules* and forms are freely available on the internet, this book provides guidance and insight that will be of immense benefit both to a practitioner taking on an action in a new area of law and to the seasoned practitioner well familiar with their field and faced with some unusual facet in a matter.

Richard Hammond is partner in the Mallow firm Hammond Good.

council report

Council meeting – 5 December 2014

Law Society of Northern Ireland

The Council approved the appointment of the extraordinary members of the Council, representing the Law Society of Northern Ireland: Arleen Elliott, Richard Palmer, John Guerin, Michael Robinson and Imelda McMillan.

Regulations and fees

The Council approved the practising certificate and qualifying certificate regulations, forms and guidance notes for 2015. The Council also approved the fees for 2015, which were being maintained at the same level as for 2014 – that is, €2,500 per solicitor and €2,150 for those qualified less than three years.

Legal Services Regulation Bill

The director general noted that a meeting with the Minister for Justice was scheduled for Monday 8 December to discuss issues relating to the bill, at which the Society intended to raise a number of other issues, including court closures and delays in the taxation of costs. It appeared that the bill would return to the Dáil in January 2015.

Opposition to courthouse closures

The Council noted with approval a submission by the Society and correspondence with the Minister for Justice in opposition to the proposed closure of Skibbereen courthouse, together with similar correspondence with the minister in relation to a proposed review of courthouses and court services in Co Tipperary.

eConveyancing

Patrick Dorgan briefed the Council on developments in recent months on the eConveyancing Project, which was now moving into implementation mode. He noted that the project would effect significant changes to the system of conveyancing. Once implemented, solicitors would exchange information and documents via a central hub. The hub would provide a secure central electronic work area, allowing solicitors, lenders and the PRA to view information, exchange data, and communicate information in order to complete property transactions.

Via interaction with the lenders, the hub would allow solicitors to track the loan transaction, see when loan conditions were satisfied, arrange for the release of loan funds, and create and sign digital documents. Solicitors would be able to pull information directly from the PRA title register into the hub and into the documentation, and this would be linked to their case-management system. Loan funds would be transferred by electronic funds transfer with same-day value.

Once both solicitors were ready to complete, all aspects of the closing would occur almost simultaneously, with documents lodged for registration and funds disbursement happening according to a predetermined sequence, thus virtually eliminating the gap between completion and registration.

Mr Dorgan outlined the history to the project, which had started in 2005 as a consequence of a Law Reform Commission recommendation and was now Government policy. A core ethos of the move toward e-conveyancing was to take advantage of advances in technology. Thus, the aim was not to make electric the current paper-bound, inefficient and cumbersome conveyancing process, but rather to reform, re-engineer and redesign the conveyancing system. In the new manifestation, a conveyancing transaction would be more aligned with a commercial transaction.

Because the Society had neither the financial resources nor the technical expertise to deliver a project of this magnitude, it had identified a technology partner with a proven track record in the delivery of electronic property services who was willing to share its knowledge, expertise, intellectual capital and financial resources with the Law Society to deliver the project in Ireland.

Mr Dorgan noted that the project had Government support and, as recently as October 2014, the chief executive of the Banking and Payments Federation Ireland had acknowledged that the lenders were fully committed to the introduction of e-conveyancing and that they would make the necessary investment in internal bank systems, workflows and staffing to enable lenders to participate fully in e-conveyancing.

The projected timeline for implementation envisaged commencement of the design and development phase by June 2015, with beta testing and pilot from January to March 2017 and incremental roll-out of project from April to December 2017. Accordingly, it was intended that a fully electronic conveyancing system would go live at the end of 2017.

The Council discussed the importance of a sustained and ongoing education campaign for the profession. It was clear that change was inevitable and it was important that the profession understood and was enabled to manage that change. Mr Dorgan confirmed that there would be extensive user-testing of the system by practitioners and it was intended to use agile project management throughout the process, so that functionality was tested on a consistent basis. In due course, the eConveyancing Hub could be adapted to provide for e-litigation, e-probate and other e-legal services.

It was agreed that making Revenue stamping electronic had removed much of the drudgery and risk from the architecture of the conveyancing system and had solved a number of unforeseen back-office issues by the introduction of an electronic platform. It was important that practitioners understood that the proposed e-conveyancing system would similarly remove a considerable amount of time and effort from the conveyancing process, without removing the requirement for the application of legal expertise to the core elements of a conveyancing transaction.

Collapse of Setanta Insurance

The Council agreed that a detailed *eBulletin* should issue to the profession setting out all of the steps taken by the Society to try to resolve the Setanta issue, together with the response of the MIBI and the Minister for Transport, the thrust of the legal advice received, and the matters to be considered by a solicitor acting for a claimant. The Society would also try to get some clarity on how claims could be processed against the Insurance Compensation Fund.

Office of Government Procurement

The Council discussed correspondence with the Office of Government Procurement in relation to its ongoing review of the procurement of services from the legal market sector. It was noted that a reply to the president's letter seeking clarification in relation to a number of issues was still awaited.

Regulation of Lobbying Bill

The Council noted a submission by the Society on the *Regulation of Lobbying Bill*. It was clear that the bill would have an impact on the profession and on practitioners' relationships with their clients. Concerns were expressed about the impact of the bill on legal professional privilege and solicitor/client confidentiality. The submission identified ameliorating provisions in British legislation and in the transparency code applying to European Institutions and the *Lobbying Code of Conduct* in Australia.

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practice notes

GUIDANCE AND ETHICS COMMITTEE

The dos and don'ts of section 68 – re-visited

It is now 20 years since the introduction of section 68, the requirement for solicitors to give information in writing to their clients about legal fees and outlays. Section 68 information is extremely important for our clients, the consumers of the legal services we provide.

In order to assist members to comply fully with their statutory obligations, this practice note – first published in 2010 – is re-published below. It has been reviewed, updated and expanded to deal with typical problems that have been identified when complaints to the Law Society are made by clients or when adverse comments are made about section 68 practices in firms in the reports of the Law Society investigating accountants. All firms are encouraged to study this practice note and, in the light of its contents, to review their own systems to ensure full compliance.

The section 68 letter can be complementary to a firm's 'terms of business' document, which sets out the terms of the contract for legal services that the firm offers. Some of the issues that cause difficulties in relation to costs are addressed in the Law Society's precedent terms and conditions of business document.

Section 68(1) – initial information in writing about legal charges

Do:

- Recognise that all clients need to budget for all expenditure in relation to their legal business.
- Recognise that strict compliance with all aspects of s68 protects both consumers and solicitors and manages the client's expectations.
- In all cases, give the client information in writing in relation to the legal charges that will be incurred in their case or transaction.
- Explain that 'charges' include fees and any money that will be paid to another person or organisation on the client's behalf.
- Always include information in relation to VAT.
- Give the actual amount, an estimate, or the basis of legal charges within the following requirements:
  - Give the actual amount of the legal charges, if this is practical and possible,
  - Give the basis of charge, if this is practical and possible,
  - Give the details of how the client will be charged in their particular case, if the basis of charge is being used.
- If time is the basis of charge, time records must be maintained and must be available for inspection in the event of a dispute. The hourly rate should be given.
- In litigation cases, explain that even if the case is successful, some fees and outlays may not be recovered from the other side, and say what these are likely to be.
- Remember that, in litigation cases, s68(1) is not solely about information about legal fees and outlays. It also requires solicitors to give important information about the circumstances in which the client may be required to pay costs, even when they win their case. Giving this information is not optional.
- Also, in litigation cases, s68(1) requires solicitors to explain the circumstances in which the client may be liable for the costs of any other party, for instance, if the case is lost.
- Explain that the contract for legal services is between the solicitor and the client, and the client is always the person responsible for the payment of the costs. Explain that this means that, in litigation cases, where the client wins their case and is awarded costs, but the costs cannot be recovered from the other side – for instance, because they have no money – the client must pay the costs. The award of the costs does not relieve the client of the responsibility to pay their own solicitor. They will be liable for the full amount of the costs.
- Inform the client at the outset if the solicitor intends to ask for money up front or for the discharge of costs and/or outlays at intervals prior to the conclusion of the case or transaction.
- Ensure that the client understands that, if a case or transaction for which s68 information has been given does not proceed to conclusion, the firm is entitled to charge for work properly done. This information can be given in the s68 letter itself or in the firm's 'terms of business' document, if used.
- Arrange for the client to sign a copy of an up-to-date s68 letter. This is the solicitor's best defence in the event of a complaint that the necessary information was not given. If a signed copy is not on file, it may be difficult to prove that the client received it.
- Maintain your files in a way that makes compliance with s68(1) easy to check in the event of a complaint being made to the Law Society or a Law Society accounts regulation inspection being made.
- Where a client transfers from one firm to another in the middle of a case or transaction, the second firm must issue a new s68 letter. This is a new contract for legal services between the client and the second firm.

Precedents and client information leaflet

Do:

- Check out the precedent s68 letters on the members' area of the Law Society website (www.lawsociety.ie).
- Check out the Law Society client leaflet *Information in Relation to Legal Charges* in the 'legal guides' section of the public area of the Law Society website. The leaflets can be purchased from the Law Society.
- Use the leaflet in conjunction with the s68 letter to achieve compliance with the section, including the important additional information to be given in litigation cases, as set out above.
- Be aware that giving the client the leaflet on its own does not fulfil the solicitor's s68 obligation.

Section 68(1) – revising legal charges information already given

Do:

- Recognise that, in order to make properly informed decisions about their case or transaction, a client should be made aware from the outset that they must budget in the knowledge that there is a possibility that unforeseen events or complexities may arise in the course of their case or transaction, which will require additional legal work to be done, which will mean that additional fees will have to be paid.
- Always include a clause in the s68 letter allowing for revised s68 information if unforeseen events or complexities arise.
- Diary the s68 letter for review at regular intervals during the progress of the case or transaction to check if unforeseen events or complexities have arisen that will mean that the information in the first letter must be changed to take account of the extra legal work that will have to be done.
- If it becomes necessary, issue revised s68 information setting out the information about increased fees and outlays.
- Be aware that, if a firm fails to issue revised s68 information when this should have been done, if a complaint to the Law Society is subsequently made, the Complaints and Client Rela-

tions Committee may direct the solicitor to charge less fees.
- Be aware that failure to issue a revised letter when this should have been done is viewed as an issue of professional misconduct.

Section 68(2) – prohibition on percentage charging
Don't:
- Don't state the professional fee as a percentage of any award or settlement, except in debt collection cases.

Section 68(3), (4) and (5) – dealing with the client's award or settlement in litigation cases
Do:
- Ask the client if they are agreeable to any outstanding costs being deducted from their award or settlement.
- Get the client's written authority to make the deduction.
- Explain that any moneys that the solicitor, with the client's authority, formally undertook to pay to another party out of the proceeds of an award or settlement must be paid out, even if the client changes their mind when the award or settlement comes in.

Don't:
- Don't make a unilateral deduction from the client's award or settlement in a litigation or other contentious matter without the client's written consent.

Section 68(6) – bills for litigation or other contentious matters
Do:
- Charge a professional fee that is reasonable, and state it separately in the bill.
- State all of the following in the bill:
  - Charges for general expenses, such as stationery and postage.
  - Charges for people or organisations, such as the Property Registration Authority, other government agencies, and so on.
- State the VAT.
- Give a summary of the legal work done for the client.
- Give the total amount of money, if any, recovered from the other side.
- Give details of any charges recovered from the other side.
- Where necessary, give explanations of items that were not recoverable on a party/party basis.

Section 68(3-6) – clients' knowledge of the fees and outlays charged in litigation cases
Do:
- Ensure that the client is informed that, if their case is successful and costs are awarded to them, if these costs are recovered from the other side, the costs will include a contribution to their own solicitor's professional fees. Failure to do so may be deemed to be an issue of misconduct. Unless the information is set out in writing, it may be difficult for a solicitor to show later that their client was fully aware that the fees, or a contribution to the fees, were also received from the other side.
- To ensure that the client in a litigation matter gives all the necessary authorities to their solicitor and is aware of any contribution to their own legal charges, it is recommended that the following steps are taken when a settlement is being discussed:
  - Get authority from the client before a settlement for a particular amount is agreed.
  - If possible, indicate to the client the approximate level of professional fees that the solicitor will charge, and give them the approximate net figure they will receive.
  - Get written authority from the client to deduct legal charges from the settlement – s68(3), (4), (5).
  - Get a written acknowledgement that the proposed settlement is a full and final settlement.
  - Get a written acknowledgement from the client that he/she understands that the solicitor will receive party/party costs as a contribution to the client's bill, if that is the case – s68(6).
  - Get a written acknowledgement from the client that he/she understands that they will be sent a s68(6) bill of costs showing the moneys received from the other side.
- When the bill is sent to the client, include a copy and ask the client to sign and return this copy of the bill.

Section 68(8) – bill disputes
Do:
- Answer any questions the client may have.
- Try to resolve all issues – s68(8)(a).
- If the matter is not resolved, write to the client explaining their right to have the bill taxed or to make a complaint to the Law Society – s68(8)(b).

Sanctions for non-compliance with section 68
Do be aware of the following:
- Compliance with all the provisions of s68 is viewed as a serious issue of conduct both by the Complaints and Client Relations Committee and by the Regulation of Practice Committee. All serious cases of non-compliance will be referred to the Solicitors Disciplinary Tribunal.
- When a complaint is made to the Law Society's Complaints and Client Relations Committee, compliance with s68 will always be investigated. This will happen not only where the complaint is about non-compliance with s68, or about excessive fees, but also when the complaint is about any other matter.
- When the Law Society's investigating accountants visit a firm, they report on their review of compliance with s68 matters. Section 68(6) of the act is a particular focus for their reports. If there are indications in litigation cases that excessive fees are being charged, where it seems that this was achieved by relying on the ignorance of a client that the other side was also making a contribution to the fees, this will be fully investigated. All serious cases, whether happening in an individual case or where a pattern of this practice emerges, will result in a referral to the Solicitors Disciplinary Tribunal.

Effective office systems
Do:
- Have a good office system in place, whether manual or electronic, that will automatically trigger compliance with all parts of section 68.

CONVEYANCING COMMITTEE
PROBATE, ADMINISTRATION AND TRUSTS COMMITTEE
TAXATION COMMITTEE

Dealings with agricultural land

Significant changes have been made to the direct payment schemes by which farmers and others using agricultural land receive subsidies related to that land. Practitioners are referred to the news piece by Oliver Ryan-Purcell, solicitor, published in the November 2014 *Gazette* (p10), which highlights the issues involved.

Further useful information is available in a publication (*CAP 2015: An Introduction to Direct Payments*) available on the Department of Agriculture website at www.agriculture.gov.ie (follow 'CAP 2015 Direct Payments Information Centre'). This contains examples of what happens in commonly arising situations of sales, leases, gifts and inheritances of land and of entitlements during the transition from the existing single payment scheme to the new basic payment scheme and how, in certain circumstances, the right to apply for payments under the basic payment scheme in 2015 (the 'allocation right') will transfer with land.

The committees are grateful to Mr Ryan-Purcell for drawing attention to the matter.

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legislation update

11 November 2014 – 12 January 2015

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

ACTS PASSED

Water Services Act 2014
Number: 44/2014
Provides that, in the future, where a government proposes to initiate legislation that amends the ownership structure of Irish Water, such a proposal cannot be initiated without a resolution from both Houses of the Oireachtas approving the changes and, subject to such resolutions being passed, the proposal would be submitted to a plebiscite of all people eligible to vote on a referendum for an amendment of the Constitution. Provides for amendments to the approved water charges plan for domestic consumers from 1/1/2015 to 31/12/2018. Provides that the minister may, after consulting with the Minister for Public Expenditure and Reform, set maximum charges for periods after 31/12/2018. Where a customer has not paid any water charges, Irish Water shall charge a late payment fee for each year the charges remain unpaid. Amends the *Water Services (No 2) Act 2013* to provide that Irish Water shall be prohibited from either disconnecting or reducing the supply of water to a dwelling due to an unpaid bill. Abolishes the power of Irish Water to require the personal public service (PPS) numbers of its customers. Amends the *Water Services Acts 2007-2013*, the first schedule to the *Gas Act 1976*, schedule 4 of the *Valuation Act 2001* and schedule 5 of the *Social Welfare Consolidation Act 2005*, and provides for related matters.
Commencement: 28/12/2014.

Merchant Shipping (Registration of Ships) Act 2014
Number: 43/2014
Revises the law on the registration, national character, mortgage, sale, transfer, ownership and measurement of Irish ships. Repeals the *Mercantile Marine Act 1955*, s3 of the *Merchant Shipping (Miscellaneous Provisions) Act 1998* and s100 of the *Sea Fisheries and Maritime Jurisdiction Act 2006* and makes consequential amendments to certain acts. Establishes a new centralised Irish Register of Ships. Amends the definition of 'safety convention' in the *Merchant Shipping (Safety Convention) Act 1952* and provides for connected matters.
Commencement: Other than section 69, comes into operation on such day or days as the minister may appoint by order or orders, either generally or with reference to any particular purpose or provision, and different days may be so appointed for different purposes and different provisions.

Health Insurance (Amendment) Act 2014
Number: 42/2014
Amends the *Health Insurance Act 1994* to specify the allowable rate of net premium payable in respect of young adults, to provide for the transfer of an insured person from a restricted membership undertaking to another registered undertaking without the application of any additional initial waiting period, to specify the amount of risk equalisation credits in respect of age, gender and level of cover that is payable to insurers for the risk equalisation fund from 1/3/2015, and to specify the amount of the hospital bed utilisation credit applicable from 1/3/2015. Makes consequential amendments to the *Stamp Duty Consolidation Act 1999* to revise the stamp duty levy required to fund the risk equalisation credits for 2015, and provides for related matters.
Commencement: 25/12/2014.

Social Welfare and Pensions (No 2) Act 2014
Number: 41/2014
Gives legislative effect to the increase in the monthly rate of child benefit, one of the social protection measures announced in the Budget statement of 14/10/2014 and due to take effect from 1/1/2015. Amends the *Pensions Acts* to allow the Minister for Finance to draw down moneys from the central fund to discharge liabilities that may arise to the State in the event of a wind-up of a defined benefit pension scheme in particular circumstances.
Commencement: 1/1/2015.

Protection of Children's Health (Tobacco Smoke in Mechanically Propelled Vehicles) Act 2014
Number: 40/2014
Amends the *Public Health (Tobacco) Act 2002* in order to prohibit the smoking of tobacco products in vehicles where children are present and provides for the investigation and prosecution of such offences by the gardaí.
Commencement: Commencement order(s) required as per s7(2) of the act.

Road Traffic (No 2) Act 2014
Number: 39/2014
Amends the *Road Traffic Act 2002* regarding the endorsement of penalty points.
Commencement: 25/12/2014.

Companies Act 2014
Number: 38/2014
Consolidates, with amendments, certain enactments relating to companies, and provides for related matters.
Commencement: Commencement order(s) required as per s1(2) and (3) of the act.

Finance Act 2014
Number: 37/2014
Provides for the imposition, repeal, remission, alteration and regulation of taxation, of stamp duties and of duties relating to excise, and otherwise makes further provision in connection with finance including the regulation of customs.
Commencement: Except where otherwise expressly provided for in part 1, that part shall come into operation on 1 January 2015. Except where otherwise expressly provided for, where a provision of this act is to come into operation on the making of an order by the Minister for Finance, that provision shall come into operation on such day or days as the Minister for Finance shall appoint either generally or with reference to any particular purpose or provision, and different days may be so appointed for different purposes or different provisions.

Intellectual Property (Miscellaneous Provisions) Act 2014
Number: 36/2014
Amends the *Patents Act 1992* by providing legal certainty that the research exemption enables developers of innovative medicinal products and veterinary medicinal products to undertake the legitimate research and tests required to obtain marketing authorisation without being in breach of existing patents. Amends the *Trade Marks Act 1996* to give effect to article 19(2) of the *Singapore Treaty on the Law of Trademarks*, 27/3/2006. Amends the *Competition Act 2002* and provides for related matters.
Commencement: 23/12/2014.

Appropriation Act 2014
Number: 35/2014
Gives statutory authority for the amounts voted by the Dáil during the year (either in original estimates or in the supplementary estimates). Also provides for the definitive capital carryover from 2014 to 2015.
Commencement: 19/12/2014.

legislation update

SELECTED STATUTORY INSTRUMENTS

District Court (Forms) Rules 2014

Number: SI 596/2014

Amend the *District Court Rules* by the substitution of forms numbered 17.6, 17.7, 17.12A, 17.12B, 24.3, 24.4, 24.5, 24.6, 24.7, 27.10, 27.11 and 27.12 in schedule B and form number 40.02 in schedule C for the forms bearing the like numbers in schedule B and schedule C of the *District Court Rules 1997* (SI 93/1997).

Commencement: 31/12/2014.

Circuit Court Rules (Lugano Convention and Maintenance Regulation) 2014

Number: SI 597/2014

Amend the interpretation of terms and certain orders and forms of the *Circuit Court Rules* to facilitate the operation of the 2007 *Lugano Convention* on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters and the *European Communities (Maintenance) Regulations* (SI 274/2011), giving effect to the Council Regulation (EC) 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations.

Commencement: 19/12/2014.

District Court (General) Rules 2014

Number: SI 598/2014

Amend order 12 and order 45E of the *District Court Rules* in respect of the procedure for various matters, including the giving of notice to the court, newspaper notices, lodging of documents where the court office is closed on the last day for doing so, the size of documents, and the correction of clerical errors.

Commencement: 31/12/2014.

District Court (Personal Injuries) Rules 2014

Number: SI 599/2014

Amend order 40A of the *District Court Rules* to provide that the venue for proceedings extends to the court area within which the tort is alleged to have been committed.

Commencement: 31/12/2014.

Rules of the Superior Courts (Order 76) 2014

Number: SI 600/2014

Amend order 76, rule 29(1) of the *Rules of the Superior Courts* to reduce from €650 to €200 the amount required to be deposited by a creditor or debtor with the official assignee in bankruptcy when presenting a bankruptcy petition.

Commencement: 31/12/2014.

Health Insurance Act 1994 (Minimum Benefit) (Amendment) Regulations 2014

Number: SI 612/2014

Clarify that the amount of the charge payable under section 55 of the *Health Act 1970* is payable in respect of services provided in a publicly funded hospital.

Commencement: 1/1/2015.

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

Solicitors Disciplinary Tribunal

Reports of the outcomes of Solicitors Disciplinary Tribunal inquiries are published by the Law Society of Ireland as provided for in section 23 (as amended by section 17 of the *Solicitors (Amendment) Act 2002*) of the *Solicitors (Amendment) Act 1994*

In the matter of Paul D Madden, solicitor, formerly practising as Paul Madden & Co, Solicitors, The Diamond, Clones, Co Monaghan, and in the matter of the *Solicitors Acts 1954-2011* [10035/DT17/14]
Law Society of Ireland (applicant)
Paul D Madden (respondent solicitor)
On 21 July 2014, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor, in that he:

1) Failed to hand over to the complainant a file belonging to a named client, concerning a road traffic accident dated 28 August 2010, on foot of his former client's authority forwarded under letter dated 11 September 2012, expeditiously, within a reasonable time, or at all,
2) Failed to respond adequately or at all to the complainant's correspondence in respect of a named former client and, in particular, letters dated 11 September 2012, 17 October 2012, 7 November 2012, 27 November 2012, 13 December 2012, 21 January 2013 and 18 February 2013 respectively,
3) Failed to respond to the Society's correspondence in respect of the first complaint regarding a named former client adequately or at all and, in particular, letters dated 28 March 2013, 25 April 2013, 14 May 2013 and 27 May 2013 respectively,
4) Failed to hand over a file belonging to a named former client to the complainant in relation to a road traffic accident on 28 August 2010, despite being furnished with an authority executed by his former client from the complainant under letter dated 11 September 2012 expeditiously, within a reasonable time, or at all,
5) Failed to reply adequately or at all to the complainant's correspondence in respect of a named former client and, in particular, letters dated 11 September 2012, 7 November 2012, 13 December 2012, 17 December 2012, 21 January 2013 and 18 February 2013 respectively,
6) Failed to respond adequately or at all to the Society's correspondence in respect of the second complaint and a named former client and, in particular, letters dated 28 March 2013, 25 April 2013, 13 May 2013 and 27 May 2013 respectively.

The tribunal ordered that the respondent solicitor:

1) Do stand censured,
2) Pay the sum of €10,000 to the compensation fund,
3) Pay the sum of €5,000 towards the costs of the Society.

In the matter of John F Proctor, solicitor, formerly practising as JF Proctor & Company, Solicitors, 230 Swords Road, Santry, Dublin 9, and in the matter of the *Solicitors Acts 1954-2011* [5162/DT25/13 and High Court record 2014 no 93SA]
Law Society of Ireland (applicant)
John F Proctor (respondent solicitor)
On 25 March 2014, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor, in that he:

1) Allowed a shortfall in the client account of €281,568.84 as of 31 December 2011,
2) Allowed 22 credit balances on office (client matter related) ledger accounts totalling €1,114.91 as of 31 December 2011, in breach of regulation 10(5) of the *Solicitors Accounts Regulations*,
3) Used client funds to discharge his own personal and office taxation liabilities, as set out in paragraph 4.8 of the investigation report of 16 January 2012.

The tribunal ordered that the matter go forward to the High Court, and the President of the High Court, on 28 July 2014, made the following order:

1) That the respondent solicitor not be permitted to practise as a sole practitioner or in partnership and that he be permitted only to practise as an assistant solicitor in the employment and under the direct control and supervision of another solicitor of at least ten years' standing, to be approved in advance by the Society,
2) That the respondent solicitor pay the whole of the costs of the Society to be taxed by a taxing master of the High Court in default of agreement.

In the matter of Gerald Kean, solicitor, of Kean Solicitors, 2 Upper Pembroke Street, Dublin 2, and in the matter of an application by a named client [3946/DT67/12 and High Court Record 2014 no 79 SA and 125SA]
Named client (applicant)
Gerald Kean (respondent solicitor)
On 14 May 2014, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor, in that he:

1) Knowingly misled the applicant into believing a notice of intention to defend had been submitted,
2) Failed to lodge an appeal against the decree obtained summarily,
3) Knowingly misled the applicant into believing an appeal had been lodged and accepted with regard to the summary judgment.

The tribunal ordered that the Law Society bring the report of the tribunal before the High Court, which report includes the tribunal's recommendations as to the sanction that should be imposed as follows:

1) That the respondent solicitor be censured,
2) That the respondent solicitor pay a sum of at least €20,000 to the compensation fund,
3) That the respondent solicitor pay a sum of €500 as restitution to his named client,
4) That the respondent solicitor pay a sum of €750 in relation to his client's expenses.

The respondent solicitor appealed the findings of the tribunal and, on 23 September 2014, the President of the High Court dismissed the respondent solicitor's appeal and upheld the tribunal's findings of misconduct and recommendations as to sanction, save and except the recommendation to pay a sum of at least €20,000 to the compensation fund.

In the matter of Fergus Appelbe, solicitor, formerly practising in the firm of PJ O'Driscoll & Sons, Solicitors, 41 South Main Street, Bandon, Co Cork, and now practising as Appelbe & Co, Solicitors, 34 South Main Street, Bandon, Co Cork, and in the matter of the *Solicitors Acts 1954-2011* [2398/DT104/11 and High Court record 2014 no 101 SA]
Law Society of Ireland (applicant)
Fergus Appelbe (respondent solicitor)
On 17 February 2014, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor, in that he:

1) Failed to stamp deeds in respect of named properties at Cork in March 2005 or at an appropriate time,
2) Altered a deed in or about January/February 2010 so as to falsely show the said properties being transferred to the respondent solicitor and his wife for €500,000 instead of €3.285 million, and

3) Updated or caused to be updated the said deed, thereby avoiding interest and penalties for late stamping,
4) Falsely represented to the Revenue Commissioners that the original transfer was to the respondent solicitor and his wife,
5) Falsely represented to the Revenue Commissioners that the warehouse section of the property had been transferred to a named company for a consideration of €300,000 in February 2010 and/or falsely executed such a deed, and/or
6) Falsely represented to the Revenue Commissioners that the balance of the property had been transferred into the sole name of the respondent solicitor's wife with no stamp duty implications in February 2010, and/or
7) Failed to stamp a deed in November 2005 or at the appropriate time in respect of the purchase by the respondent solicitor's daughter of lands and a garage at Bandon, Co Cork, and/or
8) Updated or caused to be updated the said deed in relation to his daughter in the purchase of this property, thereby avoiding interest and penalties for late stamping of the deed, and
9) Gave undertakings to both Bank of Ireland and Allied Irish Banks at the same time in respect of named lands in Bandon, Co Cork.

The tribunal ordered that the matter go forward to the High Court, and the President of the High Court made the following orders on 13 October 2014:
1) That the respondent solicitor not be permitted to practise as a sole practitioner or in partnership and that he only be permitted to practise as an assistant solicitor in the employment and under the direct control and supervision of a solicitor of at least ten years' standing to be approved in advance by the Society,
2) That the respondent solicitor be precluded from acting as a solicitor on his own behalf and/or on behalf of his immediate family and/or any company in which he or they are directors and/or shareholders,
3) That the respondent solicitor pay the Society the whole of its costs, including witness expenses for the Solicitors Disciplinary Tribunal proceedings, to be taxed in default of agreement,
4) That the respondent solicitor pay the Society the costs of the High Court proceedings, to be taxed in default of agreement.

In the matter of Niall O'Kelly, a solicitor previously practising as Niall O'Kelly Solicitors, 52 Fortfield Park, Terenure, Dublin 6W, and in the matter of the *Solicitors Acts 1954-2011* [5202/DT156/12, 5202/DT11/13 and High Court 2014 no 116SA]
Law Society of Ireland (applicant)
Niall O'Kelly (respondent solicitor)

5202/DT156/12
On 13 February 2014, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of professional misconduct in his practice as a solicitor, in that he:
1) Failed to protect his client's interest in relation to her proposed case against a builder relating to repairs to her home by allowing this claim to become statute barred,
2) Failed to act on his client's instructions in relation to the purchase of the freehold of a property in Dublin 8, despite being paid to do so,
3) Failed to comply with the directions given by the Complaints and Client Relations Committee at its meeting on 7 July 2010,
4) Failed to respond to the Society's correspondence of 30 March 2010, 30 April 2010, 12 July 2010, and 5 October 2010 in a timely manner or at all,
5) Failed to comply with the statutory notice served pursuant to section 10 of the *Solicitors (Amendment) Act 1994* on 5 October 2010 in a timely manner or at all,
6) Failed to comply with an order made by the President of the High Court on 20 December 2010 that he deliver to the Society all files and documents in his possession in relation to this complaint and that he respond appropriately to the Society's correspondence within seven days of the making of the order,
7) Failed to attend the meeting of the Complaints and Client Relations Committee on 26 June 2012, despite being required to do so.

5202/DT11/13
On 13 February 2014, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of professional misconduct in his practice as a solicitor, in that he:
1) Failed to comply in a timely manner or at all with an undertaking furnished to the complainants on 1 April 2003 in respect of his named clients and borrowers and a property in Walkinstown,
2) Failed to respond in a timely manner or at all to the Society's correspondence and, in particular, the Society's letters of 19 December 2011, 18 January 2012, 7 March 2012, and 4 April 2012 within the time specified,
3) Failed to attend the meeting of the Complaints and Client Relations Committee on 2 May 2012, despite being required to do so.

The tribunal referred both matters forward to the President of the High Court, and, on 20 October 2014, the President of the High Court ordered that the respondent solicitor's name be struck off the Roll of Solicitors and ordered that the respondent solicitor pay the whole of the costs of the Society, to be taxed by a taxing master of the High Court in default of agreement.

In the matter of Ambrose Steen, solicitor, and in the matter of the *Solicitors Acts 1954-2011* [2851/DT55/13, 2851/DT149/13, 2851/DT164/13, 2851/DT171/13 and 2851/DT07/14 and High Court record 2014 no 129 SA]
Law Society of Ireland (applicant)
Ambrose Steen (respondent solicitor)

2851/DT55/13
On 19 June 2014, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of professional misconduct in his practice as a solicitor, in that he had:
1) Failed to comply with an undertaking furnished to EBS dated 19 March 2002 in respect of his named clients and property at Navan, Co Meath, in a timely manner or at all,
2) Failed to respond to the Society's letters of 8 December 2011 and 5 January 2012 in a timely manner or at all.

2851/DT149/13
On 19 June 2014, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of professional misconduct in his practice as a solicitor, in that he:
1) Failed to comply with an undertaking furnished to ICS Building Society on 9 June 1998 in respect of his named clients and property at Navan, Co Meath, in a timely manner or at all,
2) Failed to respond to the Society's letters of 20 December 2011 in a timely manner or at all.

2851/DT164/13
On 19 June 2014, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of professional misconduct in his practice as a solicitor, in that he:
1) Failed to comply with an undertaking furnished to Bank of Ireland on 17 May 2002 in respect of his named clients and property at Navan, Co Meath, in a timely manner or at all,

2) Failed to respond to the Society's letters of 24 October 2011 and 14 December 2011 in a timely manner or at all.

2851/DT171/13

On 19 June 2014, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of professional misconduct in his practice as a solicitor, in that he:

1) Failed to comply with an undertaking furnished to Bank of Ireland on 10 January 2002 in respect of his named client and property at Kilcloon, Co Meath, in a timely manner or at all,
2) Failed to respond to the Society's letter of 20 December 2011 in a timely manner or at all.

2851/DT07/14

On 19 June 2014, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of professional misconduct in his practice as a solicitor, in that he:

1) Failed to comply with an undertaking furnished to Bank of Ireland on 10 January 2002 in respect of his named client and property at Kilcloon, Co Meath, in a timely manner or at all,
2) Failed to respond to the Society's letters of 24 October 2011 and 24 December 2011 in a timely manner or at all.

The tribunal referred the matters forward to the President of the High Court and, on 3 November 2014, the President of the High Court ordered that the respondent solicitor's name be struck off the Roll of Solicitors and ordered that the respondent solicitor pay the whole of the costs of the Society, to be taxed by a taxing master of the High Court in default of agreement.

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

CALCULATING FINES FOR COMPETITION INFRINGEMENTS

On 12 November 2014, the Court of Justice of the EU delivered its judgment in *Guardian Industries and Guardian Europe v Commission*, in which it examined the question of whether or not the commission should take account of internal sales in assessing the level of fines for infringements of EU competition law.

The commission found that the undertakings Guardian, Asahi Glass, Pilkington and Saint-Gobain had participated in a single and continuous infringement of article 81(1) of the *EC Treaty* (now article 101 of the *Treaty on the Functioning of the European Union*), consisting in price-fixing in the flat-glass sector in the European Economic Area (EEA). As regards the Guardian undertaking, the commission found it guilty of that infringement in respect of the period from 20 April 2004 to 22 February 2005 and on that basis imposed a fine of €148 million jointly and severally on Guardian Industries Corp and Guardian Europe Sàrl. The General Court upheld the decision of the commission. Guardian sought to set aside the judgment of the General Court insofar as the General Court upheld the exclusion by the commission in its decision of the sales made between companies in the same group (the 'internal sales') in the calculation of the fines imposed on the other addressees of that decision (Guardian was not vertically integrated).

The General Court, in its decision that was the subject of the appeal to the CJEU, upheld the approach taken by the commission. The General Court referred to the finding by the commission that the anticompetitive agreements related to sales of flat glass to independent customers, and it therefore used those sales in order to calculate the basic amount of the fines. The commission therefore excluded from the calculation of the fine the sales of flat glass that was to be processed by a division of the undertaking or by a company in the same group. As the existence of anticompetitive conduct was established only in respect of sales to independent customers, according to the General Court, the commission could not be criticised on the ground that it excluded the internal sales of vertically integrated members of the cartel from the calculation of the fine. Nor could the commission be criticised on the ground that it did not state the reasons for the exclusion of those sales from the calculation of the fine.

> The CJEU stated that such a reward for being secretive would also adversely affect the objective of the effective investigation and sanctioning of infringements of article 81 EC

The General Court referred to the fact that it has not been established that the vertically integrated members of the cartel that supplied the products concerned to divisions of the same undertaking, or to companies that are part of the same group of undertakings, drew an indirect advantage from the price increase agreed on, or that the price increase in the upstream market resulted in an anticompetitive advantage in the downstream market for processed flat glass. Lastly, as regards the argument that the commission infringed the principle of non-discrimination by excluding the captive sales from the calculation of the fine, the General Court stated that it must be borne in mind that, according to settled case law, the principle of equal treatment or non-discrimination requires that comparable situations must not be treated differently and that different situations must not be treated in the same way unless such treatment is objectively justified. In the present case, inasmuch as the commission took the view that the anticompetitive arrangements related only to the price of flat glass invoiced to independent customers, the exclusion of internal sales from the calculation of the fine in the case of vertically integrated members of the cartel meant only that it treated objectively different situations differently. The General Court held that, consequently, it cannot be argued that the commission infringed the principle of non-discrimination.

On appeal

The CJEU, on appeal, stated that it had to be recalled that the principle of equal treatment was a general principle of EU law, enshrined in articles 20 and 21 of the *Charter of Fundamental Rights of the European Union*. According to settled case law, that principle required that comparable situations must not be treated differently and that different situations must not be treated in the same way unless such treatment is objectively justified (Case C550/07, *Akzo Nobel Chemicals and Akcros Chemicals v Commission*, paragraphs 54 and 55). The court pointed out that the second subparagraph of article 23(2) of Regulation 1/2003 provides that, for each undertaking and association of undertakings participating in the infringement, the fine may not exceed 10% of its total turnover in the preceding business year. The commission must assess, in each specific case and having regard both to the context and the objectives pursued by the scheme of penalties created by Regulation 1/2003, the intended impact on the undertaking in question, taking into account in particular a turnover that reflects the undertaking's real economic situation during the period in which the infringement was committed (Case C76/06, *Britannia Alloys & Chemicals v Commission*, paragraph 25).

The court highlighted that, according to its settled case law, it is permissible, for the purpose of fixing the fine, to have regard both to the total turnover of the undertaking – which gives an indication, albeit approximate and imperfect, of the size of the undertaking and of its economic power – and to the proportion of that turnover accounted for by the goods in respect of which the infringement was committed, which gives an indication of the scale of the infringement. The CJEU noted that it was apparent from its case law that, although article 23(2) of Regulation 1/2003 leaves the commission a discretion, it nevertheless limits the exercise of that discretion by establishing objective criteria to which the commission must adhere. Thus, first, the amount of the fine that may be imposed on an undertaking is subject to a quantifiable and absolute ceiling, with the result that the maximum amount of the fine that can be imposed on a given undertaking can be determined in advance. Secondly, the exercise of that discretion is also limited by rules of conduct that the commission imposed on itself, in particular in the 2006 guidelines on the method of setting fines imposed pursuant to article 23(2)(a) of Regulation 1/2003 (OJ 2006 C210/2).

The court referred to point 13 of the 2006 guidelines, which states: "In determining the basic

House of glass – vertically integrated in a big way

amount of the fine to be imposed, the commission will take the value of the undertaking's sales of goods or services to which the infringement directly or indirectly … relates in the relevant geographic area within the EEA." Point 6 of the guidelines states: "The combination of the value of sales to which the infringement relates and of the duration of the infringement is regarded as providing an appropriate proxy to reflect the economic importance of the infringement as well as the relative weight of each undertaking in the infringement."

The court held that it follows that point 13 of the 2006 guidelines pursues the objective of adopting, as the starting point for the calculation of the fine imposed on an undertaking, an amount that reflects the economic significance of the infringement and the relative size of the undertaking's contribution to it. Consequently, while the concept of the value of sales referred to in point 13 of those guidelines admittedly cannot extend to encompassing sales made by the undertaking in question that do not fall within the scope of the alleged cartel, it would, however, be contrary to the goal pursued by that provision if that concept were to be understood as applying only to turnover achieved by the sales in respect of which it is established that they were actually affected by that cartel (Case C-444/11, *Team Relocations and Others v Commission*, paragraph 76). Such a limitation would, in addition, have the effect of artificially minimising the economic significance of the infringement committed by a particular undertaking, since the mere fact that a limited amount of direct evidence of sales actually affected by the cartel had been found would lead to the imposition of a fine that bore no actual relation to the scope of application of the cartel in question. The CJEU stated that such a reward for being secretive would also adversely affect the objective of the effective investigation and sanctioning of infringements of article 81 EC (now article 101 TFEU) and, therefore, cannot be permitted.

The court noted that the proportion of the overall turnover deriving from the sale of products in respect of which the infringement was committed was best able to reflect the economic importance of that infringement. A distinction must not therefore be drawn between those sales depending on whether they are to independent third parties or to entities belonging to the same undertaking. To ignore the value of the sales belonging to that latter category would inevitably give an unjustified advantage to vertically integrated companies by allowing them to avoid the imposition of a fine proportionate to their importance on the product market to which the infringement relates. In addition to the anticipated benefit from a horizontal price-fixing agreement when sales are made to independent third parties, vertically integrated undertakings may also benefit from such an agreement on the downstream market in processed goods made up of, among other things, the goods that are the subject of the infringement. This is so for two different reasons: either those undertakings pass on the price increases in the inputs as a result of the infringement in the price of the processed goods, or they do not pass those increases on, which thus effectively grants them a cost advantage in relation to their competitors, which obtain those same inputs on the market for the goods that are the subject of the infringement.

The CJEU underlined that it was for that reason that the courts of the European Union have always rejected pleas in which vertically integrated producers have sought to have their internal sales excluded from the turnover figure used as a basis for calculating their fine.

The CJEU pointed out that, in accordance with its settled case law, when the amount of the fine is determined, there cannot, by the application of different methods of calculation, be any discrimination between the undertakings that have participated in the same infringement of article 81 EC (now article 101 TFEU).

The court held that, for the purposes of assessing the proportion of the overall turnover deriving from the sale of products that are the subject of the infringement, a distinction must not be drawn between internal sales and sales to independent third parties. It follows that, in order to determine that turnover, vertically integrated undertakings are in a comparable situation to that of non-vertically integrated producers. Those two types of undertaking must therefore be treated equally. Excluding internal sales from the relevant turnover would effectively favour the first type of undertaking by reducing its relative weight in the infringement to the detriment of the other undertakings, on the basis of a criterion having no connection with the objective pursued when that turnover is determined, namely that of reflecting the economic importance of the infringement and the relative weight of each of the undertakings that took part in it.

The CJEU held that the General Court failed to have regard to the principles of the case law summarised above in relation to equal treatment and upheld the appeal insofar as Guardian alleged an infringement of the principle of equal treatment, and there was no need to adjudicate on that same ground insofar as it relates to the alleged infringement by the General Court of the obligation to state reasons. Consequently, the appeal was allowed and the judgment under appeal set aside insofar as it rejected the plea alleging infringement of the principle of non-discrimination as regards the calculation of the amount of the fine, and Guardian was ordered to pay the costs.

Marco Hickey is head of EU, Competition and Regulated Markets at LK Shields Solicitors.

professional notices

WILLS

Breen, Joseph (deceased), late of Stonetrough, Knockbridge, Dundalk, Co Louth. Would any person having knowledge of any will made by the above-named deceased, who died on 3 March 2014, please contact Connolly Maguire, Solicitors, Dundalk Club, Roden Place, Dundalk, Co Louth; tel: 042 933 8010, email: info@connollymaguire.ie

Dillon, Moya (deceased), late of 8 New Row, Chapelizod, Dublin 20. Would any person having knowledge of any will made by the above-named deceased, who died on 19 October 2012, please contact Michael J Kennedy & Company, Solicitors, Parochial House, Baldoyle, Dublin 13; tel: 01 832 0230, email: f.cullivan@mjksolicitors.com

Geoghegan, Thomas (deceased), late of Inis Cláir, Kildysart Road, Ennis, Co Clare, and formerly of Ballingate, Carnew, Co Wicklow. Would any person having knowledge of a will executed by the above-named deceased, who died on 26 September 2013, please contact Cooke & Kinsella, Solicitors, Wexford Road, Arklow, Co Wicklow; tel: 0402 32928, fax: 0402 32272, email: fergus@cookekinsella.ie

MacDonald, Ronald (deceased), late of Ashley, 17a Booterstown Avenue, Co Dublin. Would any person having knowledge of any will made by the above-named deceased, who died on 25 August 2014, please contact Brendan Maloney & Company, Solicitors, Kilbride Cottage, Killarney Road, Bray, Co Wicklow; tel: 01 286 5700, email: peadar@brendanmaloney.ie

Murphy, Hunter (deceased), late of Oakfield House, Stocking Lane, Rathfarnham, Dublin 16. Would any person having knowledge of any will made by the above-named deceased, who died on 5 November 2014, please contact Cogan-Daly, Solicitors, Brighton House, 50 Terenure Road East, Rathgar, Dublin 6; tel: 01 490 3394, email: contact@cogandalylaw.ie

O'Doherty, Michael (deceased), formerly of 7 Dollymount Park, Clontarf, Dublin 3, and lately of Warendorpstr 70, D-23554 Lubeck, Germany. Would any solicitor holding or having knowledge of any will made by the above-named deceased, who died in Poland on 7 October 2014, please contact Gerry Kelly, solicitor, O'Callaghan Kelly, 51 Mulgrave Street, Dun Laoghaire, Co Dublin; tel 01 280 3399, fax: 01 280 9221, email: gerryk@ocslegal.ie

RATES

professional notice rates

RATES IN THE PROFESSIONAL NOTICES SECTION ARE AS FOLLOWS:

- **Wills** – €147 (incl VAT at 23%)
- **Title deeds** – €294 per deed (incl VAT at 23%)
- **Employment/miscellaneous** – €147 (incl VAT at 23%)

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ALL NOTICES MUST BE PAID FOR PRIOR TO PUBLICATION. CHEQUES SHOULD BE MADE PAYABLE TO LAW SOCIETY OF IRELAND. Deadline for March 2015 *Gazette*: 19 February 2015. For further information, contact the *Gazette* office on tel: 01 672 4828 (fax: 01 672 4877).

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

professional notices

Ó'Foghlú, Diarmuid (deceased), late of 30 James Connelly Square, Bray, Co Wicklow, who died on 23 October 2014. Would any person who has any knowledge of the whereabouts of any will made by the above-named deceased please contact Frank Walsh & Co, Solicitors, 'Rectory View', Church Hill, Enniskerry, Co Wicklow; tel: 01 286 6400, fax: 01 286 6813, email: frankwalshsol@eircom.net

Scully, Catherine/Katherine/Kathleen (deceased), late of 6 The Crescent, Griffith Downs, Drumcondra, Dublin 9. Would any person having knowledge of any will made by the above-named deceased, who died on 14 November 2014, please contact Michael J Kennedy & Company, Solicitors, Parochial House, Baldoyle, Dublin 13; tel: 01 832 0230, email: f.cullivan@mjksolicitors.com

Stack, Brid (deceased), late of 266 Sundrive Road, Crumlin, Dublin 12, who died on 30 December 2014. Would any person having knowledge of a will made by the above-named deceased or if any firm is holding same, please contact Garrett Fitzpatrick Solicitors, 1A McDermott Street, Gorey, Co Wexford; tel: 053 948 4450, email: enquiries@gfitzpatrick.com

Storey, James Henry (deceased), late of 45 Ratoath Estate, Cabra West, Dublin 7, who died on 6 August 2014 in Connolly Hospital, Dublin. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Fagan Bergin Solicitors, 57 Parnell Square West, Dublin 1; DX 266 003 Parnell Square; tel: 01 872 7655, email: info@faganbergin.com

Walsh, Michael, Peter and James (deceased), late of Letter Fir, Inverin, Spiddal, in the county of Galway, who died on 6 March 2014 (Michael), 24 June 2014 (James) and in or around 2012 (Peter), precise date unknown. Would any person having knowledge of a will made by the above-named deceased, or if any firm is holding said will, please contact Claire Reilly, Crowley Millar, Solicitors, 15 Lower Mount Street, Dublin 2; tel: 01 676 1100, fax: 01 676 1630, email: clairereilly@crowleymillar.com

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TITLE DEEDS

In the matter of an applicant under the *Landlord and Tenant (Ground Rents) Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) No 2) Act 1978* and in the matter of an application by Anthony Gerard Moylan and in the matter of lands situate at Main Street, Loughrea, in the county of Galway

Any person having a freehold interest or any intermediate interest in all that and those part of the lands situate at Main Street, Loughrea, in the county of Galway, containing 0.016 hectares or thereabouts metric measure and more particularly set out in the map annexed to an indenture of assignment dated 5 June 1962 between John Hanafin of the one part and Anthony Gerard Moylan of the other part and thereon coloured pink, being part of the premises the subject matter of a lease dated 9 August 1918 between the honourable Sir John Edward Power Wallis Knight of the one part and John J Hanafin of the other part for a term of 99 years from 1 July 1918 at a rent of £13 per annum. Take notice that the applicant intends submitting an application to the county registrar for the county of Galway for the acquisition of the freehold interest in the aforesaid property, and any party asserting that they hold a superior interest in such property are called upon to furnish evidence of title to the same to the below signed within 21 days from the date of this notice.

In default of any notice as referred to above being received, the applicant intends to proceed with the application before the county registrar at the expiry of the said period of 21 days and will then apply to the county registrar for the county of Galway 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 said premises are unknown or unascertained.

Date: 6 February 2015
Signed: A Gerard Moylan & Co (solicitors for the applicant), Loughrea, Co Galway

In the matter of the *Landlord and Tenant Acts 196-2005* and in the matter of *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of the premises known as St Joseph's Convent, Portland Row, Dublin 1; 1 Duke Row Dublin 1; 67 Summerhill, Dublin 1; 68 Summerhill, Dublin; 69 Summerhill, Dublin 1, and plot of ground to rear of 68 and 69 Summerhill, Dublin 1; 3-6 Buckingham Street Dublin 1, and plot of ground to rear of 5 and 6 Buckingham Street, Dublin 1; and 7 and 8 Bailey's Row, Dublin 1: an application by PJ McGrath, Mary McGrath and Thomas McGrath

Take notice that any person having an interest in the freehold estate or any superior interest in the following properties: **St Joseph's Convent, Portland Row, Dublin 1,** being the lands comprised in an indenture of assignment dated 12 February 1993 and made between St Laurence O'Toole Diocesan Trust, Nora M Daly and

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Certificate in Commercial Awareness (new)	Thursday 5 February	€1,200
Certificate in Employment Law Advocacy and Skills	Friday 6 February	€1,200
Certificate in Legal French	Wednesday 11 February	€990
Certificate in Pension Law and Practice	Wednesday 11 March	€1,200
Certificate in Higher Court Civil Advocacy (iPad)	Saturday 21 March	€1,440
Certificate in Data Protection Practice	Thursday 16 April	€1,200
Certificate in Charity Law, Trusteeship and Governance (new)	Friday 17 April	€1,200
Certificate in Conveyancing and Property Law	Tuesday 5 May	€1,200
Certificate in Banking Law, Practice and Bankruptcy	Friday 15 May	€1,200
Certificate in Company Secretarial Law and Practice (new)	Tuesday 16 June	€1,200
ADVANCE NOTICE		
Diploma in Law	Friday 11 September	€4,400

CONTACT DETAILS

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T: 01 672 4802
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Please note that the Law Society of Ireland's Diploma Centre reserves the right to change the courses that may be offered and course prices may be subject to change.

Margaret M Hurley of the one part, and Patrick J McGrath, Mary McGrath and Thomas McGrath of the other part, and being part of the lands held under an indenture of lease dated 25 April 1793 and made between Valentine Dunne of the one part and Henry Phillips of the other part for a term of 997 years from 1 May 1793, sublease made 24 May 1793 between Henry Phillips of the one part and William Duke Moore of the other part, and lease made 30 March 1796 between William Duke Moore of the one part and Patrick Gannon of the other part; **1 Duke Row, Dublin 1,** held under indenture of assignment dated 26 July 2001 and made between Peter Jenkins of the one part and Patrick J McGrath and Mary McGrath of the other part, and being the lands demised by an indenture of lease dated 30 April 1822 and made between Thomas Wallace of the one part and John Keegan of the other part for the term of 900 years from 1 November 1821; **67 Summerhill, Dublin 1,** being the lands comprised in folio 147814L of the Co Dublin register, demised by lease made 23 August 1792 between William Smith of the one part and William Duke Moore of the other part for the term of 990 years from 29 September 1792; **68 Summerhill, Dublin 1,** held under indenture of assignment dated 26 July 2001 and made between Peter Jenkins of the one part and Patrick J McGrath and Mary McGrath of the other part and being the lands said demised by an indenture of lease dated 26 March 1871 and made between William Duke Moore of the one part and John McCann of the other part for a term of 990 years from 29 September 1791; **69 Summerhill, Dublin 1,** held under indenture of assignment dated 24 March 1998 and made between Thomas Cunningham, Patrick Cunningham and James Farrell of the one part and Thomas McGrath of the other part, being the lands said demised by an indenture of lease dated 3 August 1791 and made between William Duke Moore of the one part and Joseph Carrick of the other part for a term of 990 years from 29 September 1791; **3 and 4 Buckingham Street, Dublin 1,** held under indenture of assignment dated 21 November 1995 and made between Stephen Lambe of the one part and PJ McGrath of the other part, being part of the lands demised by lease dated 28 December 1807 and made between John Walsh of the one part and Christopher Russell and Peter Russell of the other part for a term of 900 years from 28 December 1807; **plot of ground at rear of Buckingham Street, Dublin 1,** held under indenture of assignment made on 21 November 1995 between Stephen Lambe of the one part and PJ McGrath of the other part, being part of the lands comprised in a lease made 28 December 1807 between John Walsh of the one part and Christopher Russell and Peter Russell of the other part; **5 and 6 Buckingham Street, Dublin 1,** held under indenture of assignment dated 21 November 1995 and made between Stephen Lambe of the one part and PJ McGrath of the other part and being the lands demised by lease made 29 September 1928 between Constance Julianna Turpin of the one part and Peter Collins of the other part for a term of 750 years from 1 June 1928 and by sub lease made 22 February 1946 between Peter Collins of the one part and Joseph Maguire of the other part for a term of 500 years from 25 March 1945; **plot of ground to rear of 5 and 6 Buckingham Street, Dublin 1**; **7 Bailey's Row, Dublin 1,** held under deed of assignment made on 6 November 1997 between John McGuirk of the one part and Mary McGrath of the other part, being the lands comprised in an indenture of lease made 16 May 1804 between Hugh Reilly of the one part and James Ledwith of the other part for a term of 985 years from 1 May 1804; and **8 Bailey's Row, Dublin 1,** held under indenture of assignment and made 23 October 1997 between Gerard Cleary of the one part and McGrath Group Developments Ltd of the other part, being part of the lands comprised in a lease made 26 October 1790 between Joshua Paul Meredith of the one part and Barry Colles Meredith of the other part, lease and made 26 October 1791, Honourable Stratford to Barry Colles Meredith, lease made 22 March 1791 Stephen Edward Rice to Barry Colles Meredith, lease made 19 March 1792, Robert Walson Wade to Barry Colles Meredith, and sublease made 25 June 1923, Edwin J Lowry to Nicholas Mulvaney.

Take notice that PJ McGrath, Mary McGrath and Thomas McGrath intend to submit an application to the county registrar for the city 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 applicants intend to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the city of Dublin for her 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 and ascertained.

Date: 6 February 2015

Signed: Gandon Law Firm (solicitors for the applicants), 3 Farmhill Road, Clonskeagh, Dublin 14

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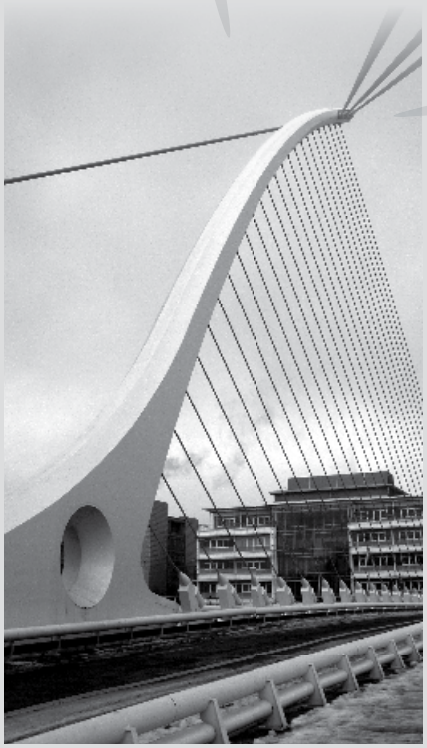

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quis custodiet ipsos custodes?

And that's what an English lit PhD gets you

Britain's Ministry of Justice is to allow prisoners to receive books from their loved ones from 1 February 2015, following a December 2014 High Court ruling that the policy that prevented inmates from being sent books should be changed, *The Guardian* reports.

Months of protests by campaigners against rules that restricted inmates' access to books preceded the ruling in a test case brought on behalf of a prisoner with a doctorate in English literature.

"I see no good reason, in the light of the importance of books for prisoners, to restrict beyond what is required by volumetric control … and reasonable measures relating to frequency of parcels and security considerations," ruled Mr Justice Collins.

A Prison Service spokeswoman commented: "Prisoners have access to the same public library service as the rest of us, and can buy books through the prison shop. We remain clear that we will not do anything that would create a new conduit for smuggling drugs and extremist materials into our prisons."

Proper choc blocked

Consumers in the US are to be denied access to proper chocolate. America's leading importer of British foods, Let's Buy British Imports (LBB), has settled a suit brought by Hershey's and are to stop importing Cadbury's chocolate.

A representative for Hershey's said LBB and others were importing products not intended for sale in the United States, infringing on its trademark and trade dress licencing. Hershey's has a licensing agreement to manufacture Cadbury's chocolate in the United States with similar packaging to that used overseas, though – crucially – with a different recipe.

"It is important for Hershey to protect its trademark rights and to prevent consumers from being confused or misled," he said.

'Feudal relics' of auld dacency face axe

Householders affected by so-called 'lordship rights' in Britain, including hunting on third-party land, are calling for the abolition of pre-Norman-conquest law.

The issue has arisen as a result of changes to the *Land Registration Act 2002*, which required titles to be recorded by October 2013 if they were not to be extinguished. Lordships of the manor can be bought and sold, with some titles being held by charitable and educational institutions. Many had been forgotten until the 2002 act set down the requirement for the recording of titles.

About 90,000 claims were registered in the year preceding the deadline, causing many people to discover for the first time that their homes and land were subject to rights owned by a third party.

Among those campaigning against lordship rights is the group Peasants' Revolt. They describe manorial rights as "a relic of a system designed over 1,000 years ago under William the Conqueror".

Holders of manorial rights, however, have objected to calls for the abolition of the system.

Germans struggle with ze pees and ze queues

A German court has finally answered the question that has led to running battles in Teutonic households, ruling that men can enjoy the privilege of peeing standing up, even though, as the male judge put it: "They must expect occasional rows with housemates," reports *The Independent*.

The Düsseldorf court's decision came after a landlord tried to retain €1,900 from a tenant's €3,000 deposit to pay for repairs to a marble floor that had allegedly 'lost its sheen' by being regularly sprinkled with urine.

Judge Stefan Hank insisted that male tenants could not be held to account for collateral damage in households and threw the case out.

In Germany, toilets in cafés, cinemas and even private homes are often equipped with stickers ordering all male users not to pee *im stehen* – standing up. They often come complete with graphics showing men exactly how to manage the task of urinating while sitting down.

Men have hit back with the term *sitzpinkler*, implying that any man who urinates sitting down is a less of a man.

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Corporate/Commercial Lawyer – Newly Qualified to Associate – J00471
This Dublin based firm is seeking a solicitor to join their Corporate/ Commercial team. This is a role for an ambitious practitioner with experience gained either in private practice or in house. You will ideally have dealt with M&A, Investments Agreements as well as general commercial law matters.

Corporate Finance Solicitor – Assistant to Associate – J00424
Advising financial institutions, government bodies and regulators as well as domestic and international companies, the successful candidate will have exposure to a broad range of financial services including asset finance, insolvency, regulation and secured/unsecured loans.

Energy & Renewables – Associate – J00486
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