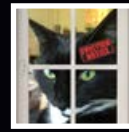




Green, green grass
Doing environmental due diligence can save much expense in property deals



Nota bene
Can judges' personal case notes be released as part of a data protection request?

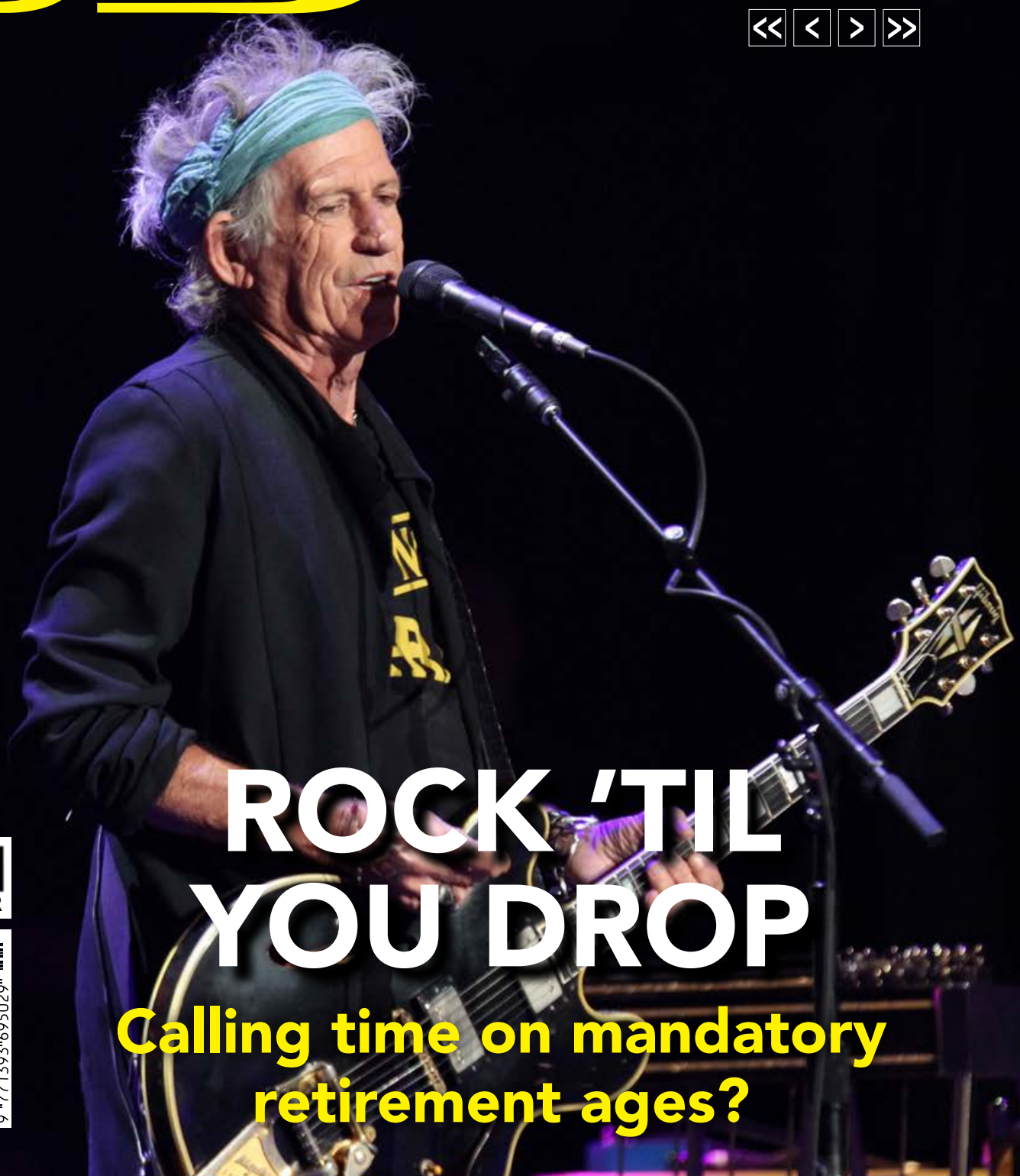


Possession obsession
Do possession orders in family-home loan defaults serve the common interest?

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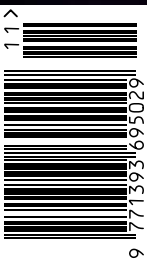
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Calling time on mandatory retirement ages?

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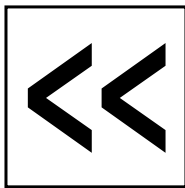




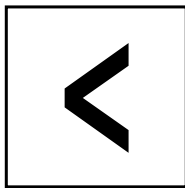
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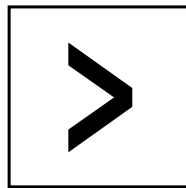
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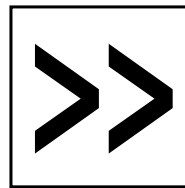
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Does your client have a claim eligible for ASR Hip ADR?

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

How it works

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

- Claimants in the ADR Process do not have to prove liability; only causation and quantum are relevant
- There is no fee to submit a claim to the ADR Process
- If necessary, McCann FitzGerald will collect the claimant's medical records where written authorisation has been provided
- Evaluators are senior counsel or retired Superior Court judges
- A €25,000 payment in respect of the claimant's legal costs, outlay and VAT will be paid within 28 days of settlement of claims within the ADR Process. This is without prejudice to a claimant's right in the circumstances of a case to seek higher costs and outlay through negotiation or taxation

Eligible claims

Claimants may avail of the ADR Process if:

- Proceedings have issued
- The index surgery of the ASR product took place in Ireland
- Revision surgery took place in Ireland not earlier than 180 days and not later than 10 years after the index surgery
- Injuries Board authorisation has been obtained
- The claim is not statute barred
- Revision surgery was not exclusively due to dislocation; trauma; infection; fracture of the femoral head; or any issue related to the femoral stem

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



DON'T LOOK BACK IN ANGER

I am not a great singer. Those who've witnessed my 'performances' will confirm that enthusiasm is an unsatisfactory substitute for a tune. This, however, has not stopped me from belting out the Oasis anthem *Don't Look Back in Anger* occasionally, and the title of my party piece resonates when considering my aims for the year.

You only get one chance and one year to do this job. I was determined at the beginning of the year to set a realistic goal, meet it, and not look back thinking I could have done more.

As you read this, I have already passed the chain to Michael Quinlan, whose altogether more kindly visage will adorn these pages for the next year. Michael will be a superb president.

At the outset, my simple aim was to meet as many colleagues as possible, to tell them what the Society was doing, to listen to their concerns, and to take that experience to improve our service.

Over the last 12 months, I've been to 20 bar associations, seven meetings with the solicitors of Dublin's larger firms, seven parchment ceremonies, and six CPD clusters. In addition, our Spring Gala attracted 400 people, and I was able to meet our in-house colleagues at their excellent seminar.

I conservatively reckon that, over the course of these events, I've met over 3,000 colleagues (taking into account overlaps, and apologies if you had to listen to me more than once!). While this only constitutes 30% of the profession, I hope that it represents a good cross-section and the full panoply of views.

It is clear from the feedback I have received that we all want the Law Society to represent us, albeit in different ways in many cases. The different perspectives and experiences of colleagues in larger firms, in smaller, more traditional firms, and in the in-house sector

provide a challenge to marry the concerns of all sectors, but it is one that we are determined to meet.

The profession is recovering. The dark days of the recession are fading in the rear-view mirror, but we would be naïve to think that all is rosy in the garden. Dublin has, in general, progressed at a faster pace and, although the rest of the country is now catching up, it's undeniable that the challenges of smaller rural practices will continue to be very different to those in larger city firms.

We are very cognisant of this, and we will continue to work with all sectors to provide any assistance we can.

All that remains is for me to express my gratitude for all the help I've been given.

I DEFINITELY WON'T LOOK BACK IN ANGER. IT WAS SUPERSONIC

There are too many people to thank individually, though special thanks are required for Ken Murphy, Mary Keane, and the rest of the Law Society staff, without whom any president would be lost. My secretary Maria Hoey (who has gone on to greater things following the publication of her first novel, *The Last Lost Girl*) and her successor Jessica Fay have been invaluable. Huge thanks to the Council, the committees, my colleagues at HJ Ward, and particularly to my infinitely patient family.

Finally, thank you, my colleagues, for having me as your president, and for your incredible support and friendship. I definitely won't look back in anger. It was supersonic.

STUART GILHOOLY,
PRESIDENT



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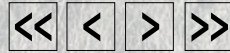
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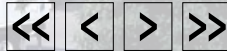
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THE BIG PICTURE





MALTESE CROSSED

Daphne Caruana Galizia was assassinated in a car bomb attack in Bidnija, Malta, on 16 October. Maltese premier Joseph Muscat, who the journalist had accused of wrongdoing earlier this year, condemned the attack and offered a reward of €1 million and full protection for anyone with information leading to the capture of the perpetrators. Recent reports indicate that Galizia was investigating Maltese links to a Libya/Italy diesel-smuggling racket in the weeks leading up to her death. In the past ten years, there have been 15 Mafia-style attacks in Malta, with many of these crimes still unsolved.



COMPILED BY KEITH WALSH, PRINCIPAL OF KEITH WALSH SOLICITORS

CORK

AMAZED BY AMSTERDAM

The Southern Law Association held its annual conference in late September. The venue was Amsterdam, where the delegates enjoyed lectures on topics like the *General Data Protection Regulation* (by John Fuller) and without-prejudice privilege (Jonathan Lynch). They also got to sample the rich cultural heritage. Our photo shows them enjoying lunch in the sunshine, courtesy of the presidents of the bar associations of Leiden and The Hague.



Ecumenical service

The SLA celebrated the start of the new law term with an ecumenical service of prayer on 2 October 2016 at St Francis's Church, beside the courthouse. The service was introduced a number of years ago by Mort Kelleher during his tenure as SLA president and has become an annual event.

AGM

Terence O'Sullivan's year as SLA president is drawing to a close – the AGM will be held in mid November. Terence has enjoyed a very successful year in the role and as a member of the Law Society's Council. The members of the SLA and council thank him most sincerely for his contribution.

CPD

The CPD programme administered by Juli Rea featured a budget briefing (11 October) and employee disciplinary procedures (19 October), while November

events will include a Law Society Skillnet cluster event, a closed forum on future options for solicitors' practices, and a lunchtime regulatory briefing on the *Solicitors Accounts Regulations*.

DUBLIN

DSBA ELECTS NEW PRESIDENT

Robert Ryan was elected president of the Dublin Solicitors' Bar Association for 2017/18 at the DSBA AGM on 24 October. Robert is a well-known commercial law solicitor and is a former chair of the association's Business Law Committee.

He was responsible for the prescient DSBA report a number of years ago that advocated the creation of limited liability partnerships for solicitors. He is a former Law Society Council member.

Robert qualified as a solicitor in 1986 and in England in 1991. He worked for a number of firms in Ireland and Britain before founding commercial law firm Doherty Ryan & Associates, where he is principal. Robert's maternal grandfather PJ Rutledge was Minister for Justice from 1933 to

1939 and practised as a solicitor in both Mayo and Dublin.

Robert paid a warm tribute to outgoing president Áine Hynes for her achievements in advancing the DSBA in the past 12 months and, in particular, for her notable success in relation to the new practice direction on legal costs.

DSBA officers (2017/18): Robert Ryan (president), Greg Ryan (vice-president), Tony O'Sullivan (programmes director), Joe O'Malley (honorary treasurer) and Diego Gallagher (honorary secretary); *DSBA council:* Niall Cawley, Joan Doran, Laura Horan, Matthew Kenny, Susan Martin, Ronan McGlaughlin, Gerard O'Connell, Ciara O'Kennedy, Killian O'Reilly and Paul Ryan.

LEITRIM

FAMILY LAWYERS VISIT LOVELY LEITRIM



Speakers at the recent Family Lawyers' Association of Ireland conference in Lough Rynne, Leitrim, included Inge Clissmann SC, Muriel Walls (solicitor), Jim Connolly (Goodbody Stockbrokers), Nuala Jackson SC, and Clare Feddis (chair, FLA)



FOUR JURISDICTIONS FAMILY LAW CONFERENCE

The Family Lawyers' Association of Ireland will host the annual Four Jurisdictions Family Law Conference in the Conrad Hotel, Dublin, from 26-28 January 2018. Chair Clare Feddis promises a superb line-up of high-profile speakers for the conference's four sessions: parenthood and identity rights for children, the role of forensic accounting in matrimonial litigation, the GDPR and family law, and Brexit, common law and families.

A welcome reception will be held from 6.30 to 8.30pm on Friday 26 January in the RHA Gallery, with the conference taking place in the Conrad from 9.30am to 5pm (Saturday 27 January 2018). A black-tie dinner will follow at 8pm.

An early-bird discount of €250 is available for bookings made before 8 December 2017. Afterwards, the rate is €300. A special rate of €200 is available for solicitors and barristers qualified for less than five years. Booking forms are available at www.familylawyers.ie. Places are limited, so book early to avoid disappointment.



Clare Feddis, FLA chair

cial rate of €200 is available for solicitors and barristers qualified for less than five years. Booking forms are available at www.familylawyers.ie. Places are limited, so book early to avoid disappointment.

MOLONEY ELECTED TO AAJ BOARD

Naas-based solicitor Liam Moloney is the first Irish lawyer to be elected to the board of governors of the American Association for Justice (AAJ).

The board is the ruling body of the organisation, with six governors representing the continents outside of North America. Liam was elected at the organisation's recent annual convention in Boston. He also co-chairs the International Practice Section of AAJ.

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

Says Liam: "With the globalisation of travel and communications, the number of



cross-border legal claims that are now being pursued in Ireland is increasing. With enhanced protection under EU law, many Irish residents can now take their claims for compensation to the Irish courts, which can mean faster resolution of their cases and the delivery of just compensation compared with other EU countries."

FORTY NEW ODPC JOBS COMING

Minister Pat Breen has said that the increased allocation for the Office of the Data Protection Commissioner (ODPC) in Budget 2018 underlines the Government's ambition to establish Ireland's data protection regime as 'best in class'. In Budget 2018, the ODPC has been allocated

€11.67 million, which represents a 55% increase on the previous year. The minister says that a strong, credible and independent regulator is central to fulfilling the demands of the *General Data Protection Regulation*, which comes into effect in May 2018.

Data protection commissioner

Helen Dixon says her office will continue to invest heavily in building capacity and expertise to administer new enforcement powers under the new law.

A further 40 staff are expected to be recruited as a result of the funding, bringing the total cohort to 130.

A WORD IN YOUR EAR, PAT!



Keith Walsh (chair of the Law Society's Family and Child Law Committee) appeared on the 'Ask the expert' slot on Newstalk with Pat Kenny on 2 October, where he discussed the topics of separation and divorce in Ireland

LEGAL COST ACCOUNTANT ON HAND AT CPD EVENT

A full day of CPD training is on offer to members of the Midland Bar Association on 24 November. The Tullamore Court Hotel in Co Offaly is the venue, which

will offer seven CPD points – two for management and professional development, and five general points. A legal cost accountant will attend and cover specialist areas of

particular interest to attendees.

Full detail and a booking form will be available closer to the time from Aisling Penrose (secretary) at: aisling.penrose@kcs.ie.



BREXIT SHOULD TAKE 'AS LONG AS REQUIRED'

Former Taoiseach Enda Kenny has said that the transition period for Britain to leave the EU following the Brexit vote should be "as long as required to find a solution". Mr Kenny was speaking to Bloomberg TV on 18 October ahead of a Brexit-themed conference in New York organised by Irish law firm Matheson.

Mr Kenny described the prospect of a hard Brexit as "catastrophic for business" and noted that "sufficient progress had not been made" to allow negotiations move on to their second phase.

"It's also my view that a transition arrangement will be necessary – if and when the two-year timetable for negotiations is not met – and I think that transition period should take as long as is required to find a solution that



Managing partner Michael Jackson, Enda Kenny, and John Ryan (head of US offices)

works in the interest of all the people affected."

The event was attended by over 200 people from a wide range of sectors, including IDA Ireland.

Matheson's managing partner Michael Jackson said that, almost 16 months on from the Brexit vote, US multinationals with operations in Europe were still seeking certainty: "In the

absence of the necessary clarity around Brexit, businesses are now making decisions to secure their long-term ability to access European markets beyond Brexit. Ireland's proven track record of supporting internationally focused companies means that it is strongly positioned to partner with these companies as they now make decisions around their medium to long-term plans."

John Ryan (head of Matheson's US offices) said that, notwithstanding the uncertainty around global trade policy, as well as US tax reform and the challenges around Brexit, the Irish/US relationship would grow stronger: "Ireland will become an even more important gateway to EU markets for US companies."

HELPING THE HOMELESS FOR A CENTURY

In May 1915, the Society of St Vincent de Paul (SVP) opened a men's hostel at Backlane, near Christ Church, Dublin, writes Tommy O'Reilly (formerly of *Beauchamps*).

Its aim was "to provide a shelter for the crowds of men, decent and honest, but without work and the means to pay for lodgings, who filled the city streets". Back then, the accommodation was very basic, due to financial constraints.

The hostel's 1923 report provides an insight to Dublin of that time: "It is a fact that numbers of decent, respectable men are faced in Dublin with the necessity of spending nights in the open or lying in filthy, draughty hallways of tenement houses. The vicissitudes of trade, the general character of the industrial system affects working men adversely from time to time, to an extraordinary and alarming extent. They must go



for long periods unemployed. For a while they can pay for a bed in a common lodging house. But it often happens that their last penny is gone before they secure work. If the night shelter did not exist, they would have no shelter. Hungry, footsore, heartsick men cannot endure in this climate such a hardship without intense suffering and even great danger to life."

Has anything changed, you might ask? In present times, with

the ongoing effects of the economic crash and the increase in substance abuse among the homeless, the hostel plays a major part in helping to alleviate the suffering of those with addictions.

Over the years, facilities have evolved from dormitory accommodation to single rooms for 62 men. A refurbished wing consists of 18 *en suite* bedrooms for a number of men with long-term conditions, for whom the hostel is their

permanent home. Three square meals are provided each day. A particular focus, then and now, is to assist the men to improve their situation and move into their own accommodation.

The hostel also provides a 'befriending service', supported by SVP and a team of volunteers – chiefly third-level students who strive to make a difference in the lives of former residents. They visit and provide support to those who have left the hostel and are trying to settle into independent living.

The hostel is funded partially by the State, the SVP and various fund-raising initiatives. Indeed, individuals in the legal profession have always been very generous in that regard.

If you'd like to volunteer or donate to the Backlane Hostel, please contact Tommy O'Reilly, tel: 087 681 6045.



WORST FEARS CONFIRMED OVER SETANTA VICTIMS' COMPENSATION

The perennial saga of the Setanta litigation continues. As members will be aware from previous *Gazette* articles and *eBulletins*, payments for completed or settled claims are now being made by the Insurance Compensation Fund. This is administered by the accountant's office of the High Court under the control of the President of the High Court.

All completed claims – whether by way of court order, settlement with Setanta solicitors, or PIAB order to pay – are processed by the liquidator, who makes an application to the President of the High Court twice a year. Damages and costs that have been either agreed or taxed will form part of these applications.

If costs have not been either agreed or taxed, they will then form part of a separate application by the liquidator when the next tranche of claims are presented to the president. Members of the profession should take note of the [practice direction](#) from the accountant's office in this regard.

Payment predicament

The first tranche of payments were approved in July of this year. It is anticipated that the next set of applications will be made in February.

Following this first set of payments, of which the Law Society had not been notified, it came to the Society's attention that the accountant's office had sent compensation cheques directly to claimants.

Upon hearing of this, Law Society President Stuart Gilhooly immediately sought a meeting with the accountant and the liquidators to seek an explanation for this unprecedented move.



PICTURE: SHUTTERSTOCK



Gilhooly – 'Law Society has sought explanation for unprecedented move by accountant's office'

Speaking to the *Gazette*, Mr Gilhooly said he explained at that meeting that the decision to do so was problematic in a number of ways: "The difficulties that solicitors may have in complying with health insurance or hospital undertakings, as well as recovering outlays, in addition to any other payments that often need to be made post-settlement, seem to have been ignored, and no cognisance made of these fundamental issues.

"For instance, the claimant themselves might no longer be at the address in question and,

indeed, may not receive the cheque for any number of reasons. I am aware of at least one cheque that has already been cancelled for this very reason."

The Law Society is awaiting confirmation that this practice will cease, he said, and that all cheques will, in future, be sent to the claimant solicitor – as invariably occurs in other personal-injury matters.

Shortfall in payments

A further issue that has arisen is the decision of the accountant's office to pay only 65% of the

costs of the action in Setanta cases, which they say is pursuant to legal advice they have received. "We disagree with this advice," Gilhooly said, "and will be engaging further with them in this regard in order to try and resolve matters."

Recently, the president wrote to the Minister for Finance to enquire about how he intended to make up the shortfall in payments to Setanta victims, which was deemed inequitable by Mr Justice O'Donnell, in an *obiter dictum*, in the Supreme Court. The minister responded by confirming that he was awaiting an actuarial report, which would outline the potential cost and possible recovery.

"Dáil records indicate that this report has been received," Mr Gilhooly stated, "and that it has estimated the cost of claims at between €105 and €112 million. It is expected that recovery from the liquidation will be no more than 22%. This confirms our worst fears that, if the Government does not take action, then Setanta victims will be left both significantly undercompensated and will have to wait for several more years for any further payment while the liquidation is being completed.

"We have made it clear to the minister that we regard this prospect as completely unsatisfactory, and we remain hopeful that a solution will be found that will see the victims promptly receive full compensation. We await clarification of the Government's next steps."

In the meantime, the president has urged members that, if they have any outstanding claims, they should seek to bring these to a conclusion in the normal manner.



MEDIATION AWARENESS WEEK HIGHLIGHTS BENEFITS OF THE PROCESS

The Law Society hosted a seminar at Blackhall Place on 13 October, along with the Chartered Institute of Arbitrators (Irish branch), to mark Mediation Awareness Week 2017 and the passing into law of the *Mediation Act 2017*. The ADR Committee intends to publish a more detailed analysis of the legislation when it has been commenced, writes *William Aylmer (vice-chair of the committee)*.

The Law Society has been a long-term advocate for the use of mediation as an effective process for dispute resolution. It is working to produce a new generation of solicitor-mediators who will help businesses save time and money and unlog the courts system.

The Society welcomes the *Mediation Bill's* passing into law, with its intention to create a change in process and culture in dispute resolution. Mediation can make substantial improvements to the civil justice system and commercial sector in Ireland, and the act provides that any settlement reached in mediation can be enforced by the courts, offering a greater level of protection and certainty for parties.

Five key benefits

Mediation offers five key benefits – particularly in a commercial setting – many of which contribute directly to a business's bottom line:

- Significantly faster process – taking a dispute through the courts takes time. Mediation offers a way to avoid the courts and to reach an early resolution agreement.
- Substantially lower costs – the costs associated with resolving a case through mediation are generally substantially lower than costs associated with



PICTURE: SHUTTERSTOCK

progressing cases through the courts.

- Confidentiality – mediation is a private, confidential process that can benefit commercial entities that want to protect their business and reputation during disputes.
- Greater control – mediation offers parties in a dispute the opportunity to retain control over the process and settlement. Mediators can also ex-

plore more creative solutions to disputes than are available in court and help parties to find a mutually acceptable outcome. A court setting normally results in a judge imposing a decision, ruling or determination on the parties.

- Mutually agreeable solution – it's critical that business relationships and reputations are maintained. Finding a mutually acceptable resolu-

tion to a dispute – particularly where a business relationship is expected to continue following that resolution – is a must for many, and mediation offers this outcome. Working together in mediation can ameliorate any ill will in the relationship, whereas a court-imposed outcome usually leaves one or all parties aggrieved.

The Law Society offers a Diploma in Mediator Training, leading to accreditation by the Mediators' Institute of Ireland, which started in October at Blackhall Place. Bookings can be made on www.lawsociety.ie.

Find a mediator service

The Society also features a 'find a mediator' search function on its website (www.lawsociety.ie/Find-a-Solicitor/Mediator-Search). Over 200 accredited solicitor-mediators are listed around Ireland.

GETTING TO GRIPS WITH JUVENILE JUSTICE



The Diploma Centre launched its new Certificate in Juvenile Justice on 30 September. Pictured with the course participants were speakers Judge John O'Connor, Prof Ursula Kilkelly (dean of law, UCC), Tom O'Malley (barrister and senior lecturer, NUI Galway), Shane Reynolds (senior associate, Mason Hayes & Curran), Gareth Noble (partner, KOD Lyons) and Rory O'Boyle (Law Society)



'DRIFT EFFECT' EVIDENT IN THE RIGHT TO LEGAL REPRESENTATION IN GARDA STATIONS

Although suspects are allowed to have a solicitor present for garda interviews, this practice is permitted without any clear legislative or regulatory guidelines, *reports Mary Hallissey.*

The conference at Blackhall Place on 21 September, on the right of access to a solicitor, heard from a series of speakers about a 'drift effect' in the right to legal representation. The conference was told that everyone is vulnerable in a garda-interview situation. For certain categories of people, such as the addicted or the mentally ill, that vulnerability is enhanced.

Since May 2014, the DPP has permitted solicitors to attend the interviews of suspects in garda stations. This parallels developments in other European countries, as well as a recent strand of jurisprudence from the European Court of Human Rights recognising the right to such legal assistance.

Earlier this year, however, the Supreme Court in *DPP v Doyle* refused to recognise this as a constitutional right (see *Gazette, April 2017*). The practice continues without the guidance of clear leg-



islation or regulation.

The conference heard that a police station is a hostile environment, irrespective of the nature of the questioning. However, solicitors who had availed of SUPRALAT (strengthening suspects' rights in pre-trial proceedings through practice-oriented training for lawyers) described it as invaluable. "It gives the confidence, technique and knowledge to deal with police-station situations," said solicitor John Finucane.

Jodie Blackstone, of the law reform and human rights organisation, Justice, said that a lawyer in a police station is outside the collegiate environment of the

courtroom and without any judicial arbiter. The conference heard that this was not a role for a timid person, and the ability to deal with different policing styles was essential.

Detective Inspector Enda Mulryan agreed that not every police officer was capable of conducting a good suspect interview. Reforms were being rolled out in the shape of the Garda Síochána interview model, he said. This aimed to build rapport and trust, while retaining garda objectivity and the ability to challenge details of what was being said.

Criminal defence lawyer Shalom Binchy spoke about the long, unpredictable hours involved in

attending at garda station interviews, and the personal and professional toll the work could exact on lawyers. There were more 'hard arrests' than 'soft arrests', she said, and solicitors could be made to feel unwelcome in garda stations.

She pointed out that the video recording of interviews offered protection, and solicitors should make sure that all observations and concerns raised were recorded on tape. However, Binchy added that there was great satisfaction in being involved from the very first stage of the suspect's interview. The insights gained could lead to meaningful interventions at a later trial stage. This early-stage involvement also led to more respect and loyalty from a client, she said.

She argued that defence solicitors should have an input into the drafting of legislation in this area. It was wrong that prosecuting gardaí should have a role in choosing a defence solicitor, she said. Detective Inspector Mulryan clarified that, on 19 July, an instruction had been issued to all gardaí that this practice was to cease.

IHREC TO APPEAR AS AMICUS CURIAE IN MENTAL HEALTH HOSPITAL DETENTION CASE

The Court of Appeal has granted permission for the Irish Human Rights and Equality Commission (IHREC) to appear as *amicus curiae* in an important case that centres on the right of persons to challenge renewal orders authorising their ongoing detention for a period of 12 months in mental health hospitals.

Lawyers representing the applicant have argued before

the High Court that there is no provision under the *Mental Health Acts* to apply to have the Mental Health Tribunal reconvened to conduct a further review of the legality of his detention where his circumstances had changed.

In its judgment on 3 May 2017, the High Court held that a person detained under the *Mental Health Acts* for a lengthy

period was entitled to challenge the lawfulness of their continued detention at reasonable intervals before a court, citing article 5(4) of the *European Convention on Human Rights*.

The court decided that the absence under the *Mental Health Acts* of a mechanism to review the lawfulness of such a detention – other than appealing the Mental Health Tribunal's

decision to the Circuit Court immediately following the renewal order – was incompatible with the State's obligations under the *European Convention on Human Rights Acts 2003-2014*.

As *amicus curiae*, the IHREC will present submissions on the relevant domestic and international human rights standards in order to assist the court.



MEMBER SERVICES

LIBRARY'S RESEARCH GUIDES POINT YOU IN THE RIGHT DIRECTION

Whether you're looking for case law or tracking a piece of legislation, legal research can be daunting. With so many free legal information resources available online, sometimes it's hard to know where to begin.

The Law Society's library team has come to the rescue, however, by preparing a new suite of five online research guides. These will help members navigate some of the main legal information databases and can be found on the homepage of the library's website at lsi.sdp.sirsidynix.net.uk.

Mary Gaynor (head of library and information services) says: "The guide to the **Courts Service** website, for instance, will help members find practice directions and download court forms, as well as assist with searches for High Court cases."

Finding case law can prove challenging, even for the most experienced researchers. The library's new guide to finding Irish cases simplifies the process with a step-by-step approach, helping members to browse, print or download judgments. The online catalogue contains over 12,000 Irish judgments – with new cases being added each week.

The library's guide to the *Irish Statute Book* shows members how to find legislation and check whether it has been commenced or amended – information formerly available in the *Legislation Directory* – and introduces members to other useful website features, including a list of pre-1922 acts still in force.



And if you enjoy keeping a weather eye on forthcoming legislation, you'll want to delve into the guide to the **Oireachtas** website, which shows members how to track legislation, and view bills and explanatory memoranda. "Members can also monitor the weekly sittings' schedule for the Dáil and Seanad, or watch live debates on Oireachtas TV," says Mary.

The guides are designed to assist new users as well as experienced researchers. "Many people are familiar with the legal websites," says Mary, "but unless you use them on a regular basis, you may find yourself less knowledgeable about their content than you think."

Members can also keep up to date with legislation, case law and the latest legal developments by subscribing to the weekly newsletter, *Law-Watch*.

Library services are available to solicitors with current membership. For more information, contact the library – email: libraryenquire@lawsociety.ie, tel: 01 672 4843.

200 AMENDMENTS TO JUDICIAL APPOINTMENTS BILL

Justice Minister Charlie Flanagan welcomed the opening of debate on the *Judicial Appointments Bill* in the Dáil on 18 October, while remaining non-committal on the 200 amendments before the chamber.

He said the amendments showed a huge diversity of thinking and highlighted differences in policy approaches. The bill was a major piece of legislation arising from public consultations in 2014 – and from a widespread belief that it was necessary to reform the system for judicial appointments.

"The Judicial Appointments Advisory Board has served the country well," the minister said.

"We have an excellent judiciary, with a very high level of public confidence in that judiciary.

"The Programme for a Partnership Government commits to the establishment of a new Judicial Appointments Commission with an independent chair and a lay majority. That is exactly what this bill delivers.

"As minister, I will not be agreeing to any amendments that cut across the basic tenets of the Programme for a Partnership Government commitment."

He added that the Government's mind was not closed in relation to "a number of areas" raised in the amendments.

COMPANY SECRETARIAL LAW PROVES MAGNETIC



The Law Society's Diploma Centre and the Institute of Chartered Secretaries and Administrators (ICSA) launched a Certificate in Company Secretarial Law and Practice on 3 October, with all 80 course places filled. At the launch were John Lunney (Law Society), Eleanor Daly (general counsel, FEXCO), Tracy Byrne (solicitor and company secretary, Standard Life,) and Ruairi Cosgrove (vice-president, ICSA)



FOUR OUT OF SEVEN PAROLED PRISONERS BREACHED CONDITIONS



Chair of the Parole Board, John Costello

Four of the seven prisoners released on parole in 2016 were recalled to prison for breach of licence conditions, mainly for abuse of alcohol or drugs. The figures are revealed in the Parole Board's 2016 annual report.

In 2016, Parole Board recommendations sent to the Minister for Justice were accepted in 89 cases in full, and in six cases conditionally or in part. This contrasts with the figures for 2012, when 57 recommendations were accepted out of a total of 91.

Under committee stage amendments to the *Parole Bill*, the first review of a prisoner serving life will be after 12 rather than seven years. John Costello, chairman of the Parole Board, said that this period should be re-examined.

According to the annual report, a prisoner was granted parole after 13½ years in prison, following a number of previous parole hearings. The board's chairman points out that this would not have been possible if the first review had been held after only 12 years in prison.

The report states: "Having the first review after seven

years has been useful in the past, because it encouraged a prisoner to start or continue with serious rehabilitation work."

Paroled prisoner increase

From 2009 to 2013, an average of five life-sentence prisoners were granted parole each year. This increased to six in 2015, and seven in 2016. A total of 13 prisoners have been recommended for parole in the first five months of 2017, each serving an average sentence of about 17 years.

Only those serving more than eight years are reviewed by the board. Those serving between eight and 14 years are reviewed halfway through their sentences.

A total of 64 prisoners were dealt with in 2016. Of these, 43 accepted an invitation to participate in the process, while five declined. There was no response from 16 prisoners.

Of the 64 cases dealt with, 19 were serving time for murder, five for manslaughter, 18 for sex offences, seven for other offences against the person, six for robbery/larceny/burglary offences, two for drugs, two for false imprisonment, and three for other offences.

MARKETING YOUR FIRM ACRES OF DIAMONDS UNDERFOOT

Only a minority of people choose their lawyer based on online searches or advertising, and yet when lawyers engage in marketing, this is where they tend to invest.

So, if you had an hour or a euro to put towards growing your practice today, where should you spend it first?

Your starting point has to be your database of current and past clients.

The contacts on your list are your *Acres of Diamonds*, as in the classic story of that name.

Basically, the story goes that there was a farmer who sold his farm to go in search of riches. He spent years fruitlessly searching and died in despair. It later turned out the river bed running through the farm he sold was littered with uncut diamonds, but he'd never taken care to look.

We are always chasing what we don't have – the big one that will really make us. Most solicitors are obsessed with getting new clients – in feeding the machine – when they really should be nurturing the list of clients and contacts they already have, in other words, their acres of diamonds.

Getting your list into a format that you can use effectively can be a relatively major undertaking, but one that has to be done only once, and then kept up to date.

You need to spend some time on planning and logistics first. If you've been in practice for any period of time, you may have a substantial list, and if you're not careful about how you go about tidying it up, you can end up duplicating or wasting work easily.



It's not such a big deal once you think about it, and then just get stuck in. If you have practice-management software, this could make the task much easier for you, but, if not, you may be looking at an Excel file or similar to begin with. But whatever you need to do, just do it!

There is much talk these days of big data but, for small and medium businesses, your list of current and past clients, and people that you know, can, at its most basic, be a very simple list. You just have to have it in a format that you can use and communicate with effectively.

You will obviously have to comply with data-protection principles in how you do that, but it's the most valuable marketing asset in your business, so if you're ignoring it, you're leaving acres of diamonds lying under your feet.

Before you spend any time or money on marketing in your practice, your first priority should be your list.

Flor McCarthy is the author of the *Solicitor's Guide to Marketing and Growing a Business*.



WHY IN-HOUSE SOLICITORS NEED A PRACTISING CERTIFICATE

Your employer has obviously decided to hire you as a solicitor to provide it with in-house legal support, and hopefully understands the many benefits this brings. However, there may come a time when you will need to explain to your employer why you need to obtain and maintain a practising certificate – and what this represents in terms of real value to the entire organisation.

To support in-house members of the Law Society, the In-House and Public Sector Committee has compiled some brief and persuasive [information](#) that you may consider using during any such discussions with your employer.

The information outlines the statutory and regulatory requirements for holding a practising certificate, as well as the many benefits to the organisation of employing an in-house solicitor and maintaining that solicitor's certificate.



The information also reminds employers that, in addition to the knowledge, skills, and experience that in-house solicitors bring, they will have the additional assurance of knowing that in-house solicitors who hold practising certificates are regulated by the Law Society of Ireland and

under the ultimate supervisory control of the High Court.

As such, they are required (and expected) to uphold the same professional standards as their private-practice colleagues, as set out in the Law Society's *Guide to Good Professional Conduct for Solicitors*. This includes ethical

standards, avoidance of conflicts of interest, and maintenance of their independence, among other matters.

In summary, when an in-house solicitor observes the highest professional standards (as is required and expected of them), it is to the ultimate benefit of their employer.

You can find this information under the FAQs tab at www.lawsociety.ie/inhouse-public-committee.

Law Society President Stuart Gilhooly: "I am delighted to support this initiative by the In-House and Public Sector Committee. Our in-house and public-sector employed members now total around 20% of the profession. The value they provide their employers is increasingly being recognised inside their organisations and, more generally, within the legal profession."

THE POWER OF THE BRAND

Members will remember the March 2017 launch of a brand new logo by the Law Society for specific use by members who are practising solicitors.

The development of the logo was proposed at the Law Society's AGM in 2015. The final design, which was chosen by more than 50% of online voters, was subsequently approved by members at the 2016 AGM.

Solicitor Keith Walsh chaired the working group that developed the logo in consultation with members. He reminds solicitors working in the in-house and public sectors that the logo is also meant for their use – and can prove very beneficial.

"The logo has been designed to be used by all practising solicitors



tor members who wish to use it. Whether you're a solicitor working in private practice, based in-house, or in the public sector, you are encouraged to use the electronic version of the logo in your

email signatures. It can be used, also, on any printed material produced in the course of carrying out your professional duties."

The great advantage of using the logo is that it assists in dis-

tinguishing practising solicitors who choose to use it from other competing professionals and non-professionals.

"Use of the logo is entirely voluntary," Keith points out. "There are several versions, and colleagues may choose whichever best suits their needs. We also believe that it's a valuable asset to colleagues working across all sectors of the profession – and that includes the in-house and public sector."

The logo and important brand guidelines regarding its correct usage can be downloaded at www.lawsociety.ie/memberlogo on the Society's website. Queries about the logo should be addressed to memberlogo@lawsociety.ie.



CALCUTTA RUN RAISES €220K FOR HOMELESS

The Peter McVerry Trust and the Hope Foundation have each been presented with cheques for €110,000 from the proceeds of this year's Calcutta Run – the fundraiser of the legal profession. The event raised a phenomenal €220,000.

The funds raised by the run will support the work of both charities in combating homelessness in Dublin and in Kolkata, India. The charities were presented with their cheques at a lunch kindly hosted by Maples and Calder at their Dublin offices on 18 October.

Last May, over 1,200 members of the profession ran, walked or cycled the event, with around 80 law firms represented from across the country.

Law Society President Stuart Gilhooly presented both cheques to Pat Doyle (Peter McVerry Trust) and Maureen Forrest (Hope Foundation).

Stuart said: "This event is truly unique in Ireland – an entire profession voluntarily coming together to support a common goal: to support some of the most vulnerable in society.

"Irish lawyers volunteer their time, all year round, on justice projects both in Ireland and around the world. This event, however, stands out as truly remarkable in its capacity to motivate and move an entire profession around a singular goal. It is the legal profession's event – one of which we are very proud."

On behalf of the Peter McVerry Trust, Pat Doyle thanked the Calcutta Run for its long-standing commitment to the charity: "The Peter McVerry Trust would like to acknowledge and thank all those who are involved and contribute to the success of the Calcutta Run. The event has been a longstanding partner to



Stuart Gilhooly (Law Society president), Nick Butcher (managing partner, Maples and Calder) and Maureen Forrest (Hope Foundation)



Stuart Gilhooly, Nick Butcher and Pat Doyle (Peter McVerry Trust)

us, and a major source of funding in our efforts to respond to homelessness. At a time of unprecedented levels of homelessness across Ireland, we are extremely grateful for the continued support."

Maureen Forrest (Hope Foundation) commented: "What the legal profession has achieved over the past 19 years is a testament to the power of collaboration, commitment and dedication. Both Hope and the Peter McVerry Trust have made a lifelong commitment to eradicating extreme poverty and homelessness. The funding from the Calcutta Run will continue to help human beings in dire circumstances who would not otherwise dare allow themselves to hope for a brighter future."

Next May will mark the 20th anniversary of the iconic run. Since 1998, it has raised over €3.6 million.



THE DIFFERENCE A MONTH MAKES

Irish Rule of Law International is a charity dedicated to harnessing the experience of Irish and international lawyers to promote the rule of law in developing countries, writes *Tara MacMabon* (senior counsel for Intel Ireland).

IRLI has worked in Malawi since 2011, seconding legal experts to key criminal justice institutions to enhance access to justice for people in conflict with the law. I spent a month working with them. I hadn't expected that, for such a young organisation and small team with limited resources, IRLI would be making such an impact.

You've seen the statistics for Malawi: over 17 million people, with more than 70% below the national poverty line of just \$1.90 per day. Malawi has only 12 legal aid lawyers. Over 90% of accused people will go through the court process without legal representation. The need for additional support on access to justice issues is clear.

IRLI works around the needs of its local stakeholders. It has formal partnerships with the Malawi police, the Legal Aid Bureau, the judiciary, and the DPP's office. It also works closely with other key players in the criminal justice system, local paralegals, civil society organisations, and traditional authority structures of village headmen.

These aren't just partnerships on paper – IRLI views these partnerships as critical. Its priority is to help build capacity within these institutions so they can be self-sustaining. The constant message I heard from every stakeholder I met was how collaborative the team is. These relationships are a testament to IRLI's previous and current teams.

The team members have a wide range of experience and expertise. So why do they work with IRLI?



"We get stuff done" was one team member's response. And they do. Here's just some of the work I saw:

- **Child diversion programme:** instead of keeping children in custody, police can refer them onto a diversion programme. IRLI runs the Mwai Wosinthika diversion programme, meaning 'a chance for change', supporting roughly 50 children each year with sessions on life-skills, vocational training, and social support. It's clear that the programme has not only changed the lives of many children, but also their entire families.
- **Child justice support:** IRLI has trained over 1,000 police members within the past 18 months on child justice issues. Attendance is mandatory, which demonstrates the high regard the senior police have for IRLI's work. IRLI also carries out weekly visits to the main police stations in the Central Region, to help

assess whether any children being detained are eligible for diversion. During my stay, these visits resulted in at least 15 children being either diverted or released without charge. IRLI also holds training for magistrates. I joined a full-day training on child justice issues. Again, it achieved 100% attendance.

- **Camp courts:** a camp court is a court held at the prison rather than in the courthouse (quicker and less costly). Maula prison has capacity for 800 people, but currently holds approximately 2,850. While I was there, IRLI arranged a screening and camp court to hear cases for 25 remandees who were being held on expired remand warrants. Many were either released without charge or granted bail.
- **Community sensitisation programme:** IRLI holds regular meetings with the village headmen, where they discuss access

to justice issues. The impact of this programme was clear from the high level of engagement at the meeting I joined.

What the team achieved in this one month alone would make an organisation ten times their size (and with ten times their budget) proud.

Whatever type of legal department we work in, big or small, we can learn a lot from the IRLI team: their positive and dedicated approach to everything they do, their collaborative style when working with their stakeholders, and their never-ending energy.

To learn more about IRLI's work and to explore getting involved, see www.irisruleoflaw.ie or tel: 01 817 5331. To raise funds for its work, IRLI is organising its annual criminal law CPD event on 2 December. To book your place, contact Louise O'Connor at lconnor@irisruleoflaw.ie.



MAYO'S CHANGING OF THE GUARD



PICTURE: JOHN O'GRADY

At the AGM of the Mayo Solicitors' Bar Association (MSBA) at Breaffy House Hotel, Castlebar, on 24 October 2017 were (front, l to r): Rosemarie Loftus, Alison Keane (secretary, MSBA), Pat O'Connor (past-president, Law Society), Ken Murphy, James Ward (president, MSBA), Stuart Gilhooly (president, Law Society), James Cahill (Council member), Dermot Morahan (vice-president, MSBA); (back, l to r): Marc Loftus (treasurer, MSBA), Nessa Cox, Gary Mulchrone, Katherine Killalea, Cathy McDarby, Samantha Geraghty, Myles Staunton, Eanya Egan, Gareth Bourke, Louise Cresham, John Geary, Fintan Morahan, Brendan Donnelly, Vincent Deane and Peter Loftus

VISIT TO THE MARBLE CITY



PICTURE: VICKY'S PHOTOGRAPHY

The Kilkenny Bar Association invited the Law Society President Stuart Gilhooly, senior vice-president Michael Quinlan, and director general Ken Murphy to Butler House, Kilkenny on 25 September 2017. There was a useful exchange of views about issues of interest to the profession, which was followed by refreshments at the Pembroke Hotel, Kilkenny. (Front, l to r): Tim Kiely, Tony Canny, Michael Quinlan (senior vice-president), Stuart Gilhooly, Yvonne Blanchfield (president, Kilkenny Bar Association), Ken Murphy (director general) and Tristan Lynas (secretary); (back, l to r): Owen O'Mahony, Karl Johnson, Laurie Grace, Kieran Boland, Dermot Reidy, David Dunne, Valerie Cotter, Martin Crotty, Michelle Hurley, Brian Kiely, Mary Mollo, Connor Bass, Matt Malone (CPD officer), Nicky Harte and Emer Foley

PEOPLE
 << < > >>

CLUSTER EVENT HEADS TO THE NORTH-EAST

ALL PICS: GLENN MURPHY



At the recent North-East Skillnet Cluster in Castleblayney, Co Monaghan, on 20 October were (front, l to r): Simon McArdle (McKenna McArdle Solicitors), John Murphy (PRAI), Catherine O’Flaherty (Law Society of Ireland) and Conor MacGuill (Conor MacGuill & Company), (back, l to r): Anne Stephenson (Stephenson Solicitors), Attracta O’Regan (head, Law Society Skillnet), Mary McAveety (Cavan Solicitors’ Bar Association), Rory O’Hagan (Louth Solicitors’ Bar Association), Claire Gormley (Daniel Gormley & Co, Solicitors) and Catherine MacGinley (Louth Solicitors’ Bar Association)



At the Glencarn Hotel were Barbara Hearty (BV Hoey Solicitors), Dan Gormley (Danny Gormley & Co) and Michelle Flanagan (Wilkie & Flanagan Solicitors)



Among the 150 practitioners who attended the North-East Skillnet Cluster were Elaine Connolly, Eimear Hall, Ciara Maguire, Caroline Berrils and Áine Keenan



Tony Donagher, Brian Morgan, Fergal McManus and Paul McCormack



Pauline Barry, Deirdre McMichael, Sinead O’Brien and Bernie Smyth



A CPD SEMINAR WITH A TWIST!



The Midland Bar Association held a recent CPD event at the new Tullamore Dew Distillery. Constance Cassidy SC gave a presentation on the annual licensing court, which was followed by talks on anti-money laundering and suspicious activity reports. The hard work was followed by a tour of the distillery, with some whiskey tasting. The photo, which imitates an iconic picture of Tullamore Dew workers taken in the early part of the last century, features (front, l to r): Emerica Flood, Patrick Fox, Louis Kiernan, Brian O'Sullivan, Matt Johnston and John Shaw; (back, l to r): Kevin McGee, Patrick Martin, Michael Murphy, Kelly McNamara, Tom O'Donovan, Peter Jones, Dermot Mahon and Verona Smyth

CONNAUGHT SYMPOSIUM

SPRING GALA DONATION TO SBA

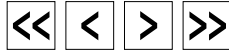


The Connaught Solicitors' Symposium took place on 12 and 13 October at the Breaffy House Hotel, Mayo. Delegates were updated on professionalism, cybercrime, section 150 costs, litigation update, probate update, the Fair Deal Scheme, banks and repossessions, distressed borrowers, and conveyancing. At the event were (front, l to r): Shane MacSweeney, Attracta O'Regan (head, Law Society Skillnet), James Ward (president, Mayo Solicitors' Bar Association) and Anne Stephenson; (back, l to r): Katherine Kane (Law Society Skillnet), Margaret Walsh, Catherine O'Flaherty (Law Society) and Liam Fitzgerald



The success of the Law Society's Spring Gala 2017 event last March translated into a great result for the Solicitors' Benevolent Association. A total of 380 members of the profession enjoyed a great evening, with profits from the event amounting to €22,621.55. At the cheque handover were President Stuart Gilhooly and Tom Menton (chairperson of the SBA). Save the date for the Spring Gala 2018, which will take place on Friday 27 April 2018. Details will be announced soon

PICTURE: LENS MEN




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MAURICE LEAHY 1954 – 2016



Maurice Leahy, founding principal of the office of Maurice Leahy Wade & Company, Swords, Co Dublin, passed away on 15 April 2016 after a long illness, bravely borne.

Maurice was born in Donegal and moved to Dublin when he was quite young, but was ever proud of his Donegal roots. He studied law at UCD and qualified as a solicitor in 1979. He worked in a number of practices, in Drumcondra, Limerick, and Cavan, before going it alone and setting up his own firm in Killester in 1988. He moved to Swords in 2001 when he acquired the offices of his former apprentice Declan Wade, who had joined the Bar.

Maurice was a keen reader and was both emotionally and intellectually intelligent. His quiet and decent nature meant he could always communicate with people, no matter their background.

He relished general practice because of its diverse nature and enjoyed meeting people of all hues. His ease and confidence with people proved reassuring for clients, who knew that he had their best interests at heart.

Maurice epitomised integrity. His great sense of justice meant that he took on more than a few battles, just because it was the right thing to do – even when clients might not be in a position to afford the legal costs. As he was fond of saying: “The courts are no place for anyone, unless they have no money, or lots of it!”

He appreciated the finer things in life, including the arts, smart clothes, designer beers and fine wines. A committed soccer fan, he loved attending international games, even in the latter stages of his

illness. Indeed, he described his ideal role, as follows: “George Hamilton has the job I most want – playing classical music and commentating on international soccer matches!”

Maurice gathered friends effortlessly: through his work, his involvement with ALONE (the support charity for older people), the local parish council, and membership of Malahide Church choir. In the words of his brother Eamonn: “When Maurice entered a room, the level of decency lifted noticeably.”

His three daughters were everything to him. When diagnosed with illness in 2008, their progress during the intervening eight years proved to be the powerful driver in his battle with ill health. He got to see them setting out on their adult lives, starting careers, and enjoying life as independent people.

His illness tested his mental strength daily, and it was a wonder to see his capacity for dealing with ill health and life’s other adversities. Although he eventually succumbed, his resolve carried him years beyond the original life-expectancy estimates spoken of by his doctors.

Maurice Leahy was a true gentleman. The profession, while it is the poorer for his passing, is better for having known him.

He is survived by his daughters Nasrin, Sayeda and Eponine, his brother Eamonn, sisters Mary and Catherine, his colleagues at Maurice Leahy Wade & Co, and his very wide circle of friends and former clients.

Ar dheis Dé go raibh a anam dílis.



2021: A PENSIONS ODYSSEY

The Government intends to publish a five-year plan for pensions reform before the end of 2017. **Stephen Gillick** looks at what can be expected when the auto-enrolment system comes into operation

STEPHEN GILLICK IS A PARTNER IN MASON, HAYES & CURRAN AND IS CHAIRPERSON OF THE LAW SOCIETY'S PENSIONS SUBCOMMITTEE

The taoiseach recently announced that the Government will “publish a five-year road map for pensions reform before the end of the year”. The centrepiece of this road map will be a new auto-enrolment (AE) system of pension provision for private sector workers. Mr Varadkar went on to say: “I anticipate the first payments being made into those new individually held funds by 2021.”

The road map

Those involved in the pensions industry are very familiar with road maps. Over the past decade, various road maps have been produced by the Government, representative bodies, and think tanks such as the OECD and ESRI.

In 2015, the then Minister for Social Protection “confirmed Government’s approval to proceed with work to develop a road map and timeline for the introduction of a new supplementary workplace retirement saving scheme”. It now appears that this road map will

be with us before the end of 2017. However, it seems to be taking a considerable amount of time to solve a problem that, if not addressed, will place a considerable financial burden on future generations.

During the last decade, we have seen a lot of talk but very little action. The current economic upturn provides the ideal environment to put in place a mechanism to solve the problem of low pensions coverage in this country.

A good road map is, of course, an essential prerequisite for a successful journey, but the window of time for defusing the ‘pensions time-bomb’ is closing quickly. Unfortunately, it will slam shut should the economy hit a bump in the road. This raises the question: should the road map be ditched altogether in favour of a GPS?

The future

The significance of four words in Mr Varadkar’s statement will not have escaped the attention of pensions industry participants, namely “new individually held funds”. These

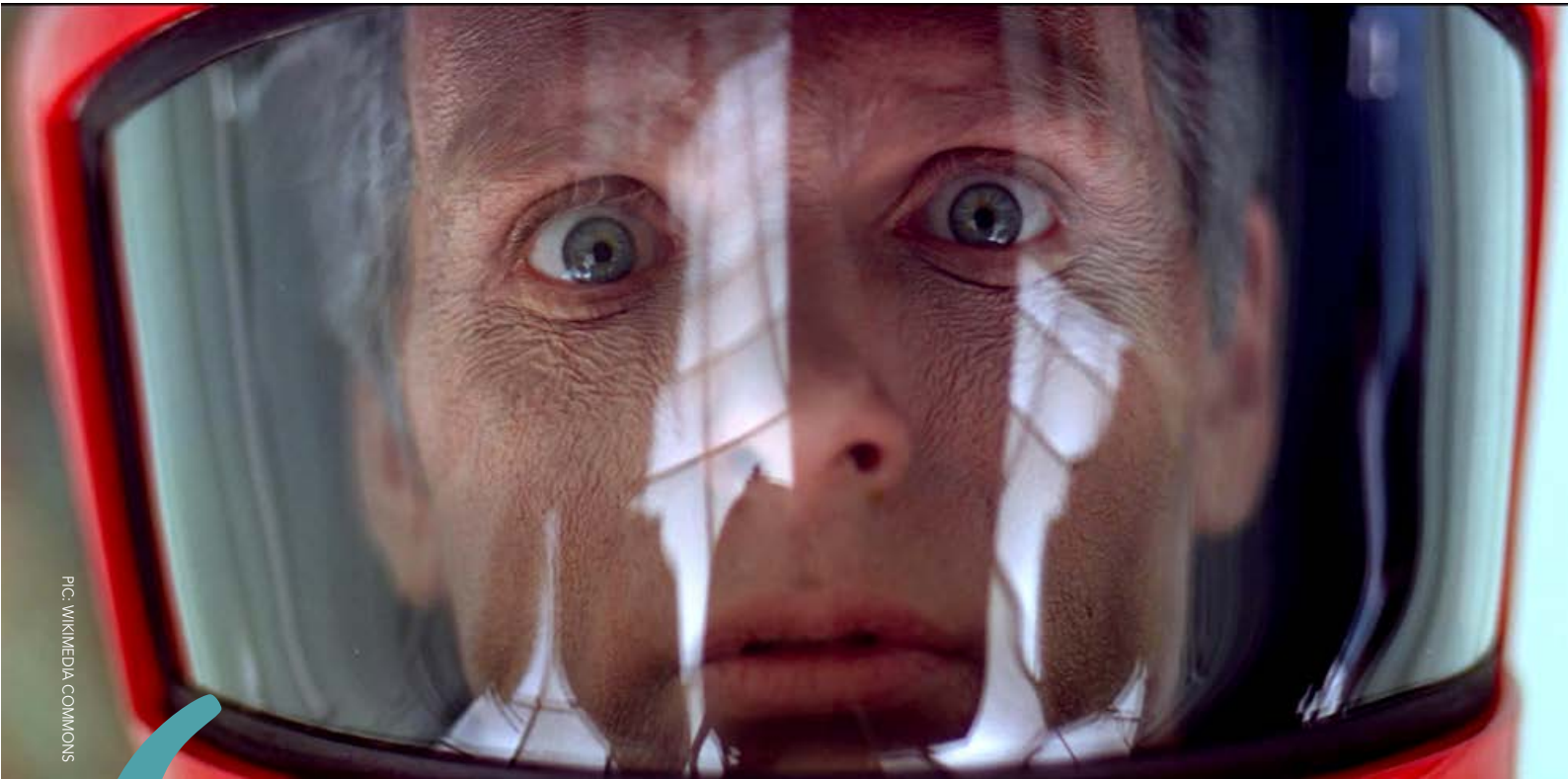
words may help to give a flavour of the AE system that will be introduced in 2021.

The word ‘new’ suggests that the AE apparatus will differ from existing pensions products such as PRSAs or trust-based retirement annuity contracts. It also signals that it may be based on a new retirement product or system. The existing range of retirement products has been considered by many to be capable of modification to meet the needs of an AE system. The wording of the taoiseach’s statement suggests also that this option has not been pursued, and we will be looking at the birth of a new retirement product in 2021.

The words ‘individually held funds’ could be interpreted in a variety of ways. Could the Irish AE system operate like a highly portable PRSA that can follow an employee from job to job? This would certainly make sense based on the high levels of mobility we are seeing in our workforce. The words could also refer to a large defined-contribution type scheme where the members each have a separate pot of money in the fund. This would be similar in many ways to Britain’s National Employment Savings Trust (NEST) system. NEST is a trust-based scheme that was set up mainly for workers whose employer did not have an existing pension scheme in place.

AE initiatives in other countries have proven very effective. NEST, for example, has enrolled six million people into the pensions system. The system has also produced very low opt-out rates of less than 10%, even in the younger,

“PENSIONER POVERTY IS A REAL THREAT. RESEARCH HAS REVEALED THAT THOUSANDS OF PEOPLE ARE FACING OUTSTANDING MORTGAGE REPAYMENTS ONCE THEY RETIRE



PICTURE: WIKIMEDIA COMMONS

THE EXISTING RANGE OF RETIREMENT PRODUCTS HAS BEEN CONSIDERED BY MANY TO BE CAPABLE OF MODIFICATION TO MEET THE NEEDS OF AN AE SYSTEM

more mobile members of the workforce. It is possible that these positive results may inspire a similar system in Ireland. However, it must be noted as a possibility that opt-out rates in NEST will increase as contribution rates rise over time.

The unknown

The announcement made by Mr Varadkar merely whetted the appetite for the impending changes. He did not delve into the details of the proposed AE scheme. We really only know that a portion of workers' wages will be redirected into a pension fund and workers who do not want to be included in the scheme can opt out.

While the language used may be taken as indicative as to the nature of the system to be introduced, uncertainties remain as to how AE will work in Ireland. Many questions remain unanswered, including:

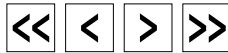
- Will the AE system be trust or contract based?
- What will the contribution structure of the AE system be – how much will employers have to contribute?
- Who will pay for the AE system? In the NEST system, the employer is not required to pay a fee to participate. Fees are levied on the employer and employee contributions.
- How will the new AE system sit with the existing retirement benefit structures that are in place?
- Will AE also apply to public sector workers? If not, how will the growing inequity between public and private sector pensions be addressed?
- Will AE apply to self-employed individuals?
- Will the State make contributions to the individual accounts? If so, how will the State fund these contributions? Will another pensions levy be required to fund the AE scheme?

It is hoped that the road map will address many of these questions, but it may be that we will only find out the finer details as we approach 2021.

The countdown

Mr Varadkar has stated that it is a “priority to ensure more workers make provision for decent pensions when they retire”. He said that the Government would work closely with employers and consult with them on the design of the scheme. While there are no easy shortcuts to designing a carefully considered and workable AE scheme, it is hoped that the Government will not delay and take the long way round.

It is a simple fact that the State pension system cannot sustain Ireland's ageing population. The number of people over 65 will grow by 200,000 over the next ten years, as will their life expectancy. Pensioner poverty

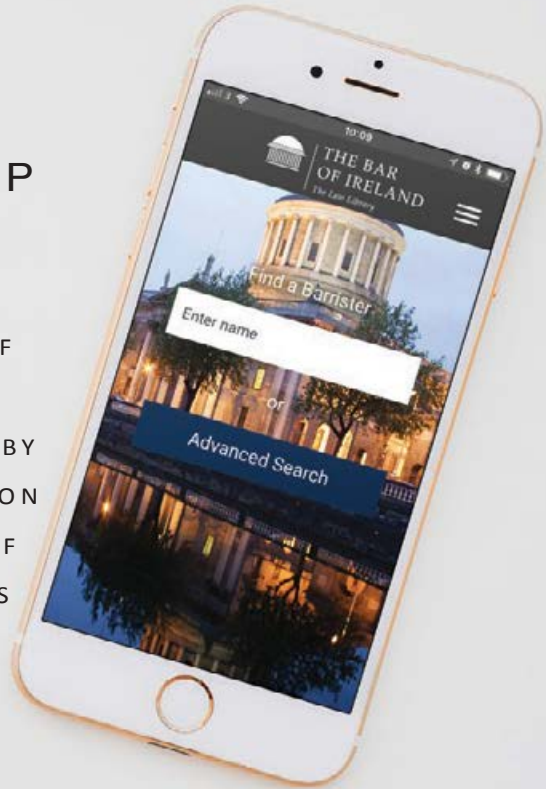


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IT IS A SIMPLE FACT THAT THE STATE PENSION SYSTEM CANNOT SUSTAIN IRELAND'S AGEING POPULATION

is a real threat. Research has revealed that thousands of people are facing outstanding mortgage repayments once they retire.

Ireland has seen ever-increasing numbers of people decide to rent as opposed to buy property in the long term. This creates an additional problem: how will those people afford to pay rent in old age? This was not a problem when people lived rent and mortgage free in their retirement years, but it is a problem that has to be taken into consideration as Irish property ownership trends change. The reality is that the rent or mortgage payments will either have to be paid for by a salary derived from work in old age or a pension provided for by the State, or privately.

The ageing population is most at risk from delay in the take-off of AE proposals, but all passengers are getting impatient. Only one-third of millennials have their own pension. The main reason proffered for having no



PICTURE: WIKIMEDIA COMMONS

The end

Stanley Kubrick's science fiction epic *2001: A Space Odyssey* predicted that by 2001 we would be travelling to Jupiter and playing chess with self-aware supercomputers.

In 2017, 16 years later than projected, the human race has not quite reached the zenith of the powers that Kubrick had predicted. The only celestial event of note will be the financial eclipse that will hit the 54% of private sector workers who do not have a pension and will rely solely on the State pension during retirement.

We have four years to plan and implement a fair system that will work efficiently with the existing retirement benefit structures and enhance retirement provision in the private sector. This is an achievable goal but will require difficult and perhaps unpopular decisions to be taken. Pension provision for all is a possibility as we enter the next decade, but I fear we may have to wait a tad longer for a trip to Jupiter!



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YOUR FLEXIBLE FRIEND

The Law Society's Younger Members Committee has launched its *Guide to Flexible Working*. **Emer O'Connor** gets the balance right

EMER O'CONNOR IS AN ASSOCIATE AT BEAUCHAMPS AND IS CHAIRPERSON OF THE LAW SOCIETY'S YOUNGER MEMBERS COMMITTEE

Flexible working' may seem like a recent buzzword; however, its origins stretch back to the early 1980s.

"The then British Telecom introduced a remote working scheme for their employees as a way to showcase their latest telecommunications technology. Today, BT is a leader in the field, with 70% of their employees enjoying some form of flexible working," says Ciara Garvan, founder of *WorkJuggle*, a digital platform that connects highly skilled tech professionals with companies who need flexibility in hiring talent.

"What is particularly interesting is that men outnumber women four-to-one among its staff, showing that flexible working also appeals to men when it is offered in a way with which they feel comfortable and doesn't appear to threaten their career progress.

"In this digital, networked age, flexible working allows organisations to manage their work around objectives, rather than a physical location or boundary. In this way, flexible

working is transforming the way work is done, boosting productivity and cutting costs from both an organisational and environmental perspective."

The legal environment

In February 2016, Deloitte published *Developing Legal Talent: Stepping into the Future Law Firm*. The report described how, over the next ten years, we could expect to see profound reforms across the legal profession. Law firms would have to transform how they attracted, developed, retained and changed talent in order to succeed. "Flexibility in terms of working arrangements – agile and new types of contracts" will be particularly important, the report stated.

'Flexible working' means any type of working arrangement that differs from the traditional Monday to Friday, nine-to-five model and gives some flexibility on how long, where, and when employees work.

This can include part-time work, changed working hours, job-sharing, working remotely,

career breaks, or other unpaid leave. The concept of 'flexi-time' describes a situation where employees work for a set number of hours each week, but can adapt their hours to suit their needs. The employees have 'core hours', during which employees must attend work.

The option of 'compressed hours' allows employees to work a core number of hours (often full-time work) over fewer days (for example, a four-day week). In the case of remote working, employees spend part of their week working from home, with the immediate positive benefit of fewer hours spent commuting to the office.

Balancing act

In 2005, the Law Society of New South Wales produced *The Case for Flexibility – A Guide to Implementing a Flexible Workplace*. The guide described how a "subtle evolution is transforming the legal profession, and the broader workforce" and identified "the integration of work and life as a key

IF LAW FIRMS INTEGRATE FLEXIBLE WORKING ARRANGEMENTS INTO THEIR BUSINESS STRATEGY, THEY WILL BE BETTER ABLE TO ATTRACT AND RETAIN THE BEST LAWYERS, ATTEND TO CLIENT NEEDS, AND REDUCE ATTRITION



FLEXIBLE WORKING ALLOWS ORGANISATIONS TO MANAGE THEIR WORK AROUND OBJECTIVES, RATHER THAN A PHYSICAL LOCATION OR BOUNDARY

PIG SHUTTERSTOCK

issue for younger workers and an emerging issue for older workers”.

This sentiment is echoed in the results of a survey carried out by the Younger Members Committee in November 2015. The survey results showed that work/life balance was a significant concern for younger members and indicated an appetite among younger solicitors for flexible working arrangements.

Inspired by the survey results, the committee produced a *Guide to Flexible Working for Solicitors*, which can be downloaded from the Law Society website.

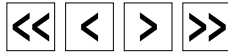
The guide aims to provide information for solicitors and law firms about flexible working practices. It outlines a range of flexible working options, the considerations for both employees and employers, and looks at the experiences of firms and solicitors who have benefited from flexible working.

Competitive market

The market for the recruitment of solicitors is becoming an increasingly competitive one. In order to attract and retain the best and brightest, law firms need to have a

strategy that takes into account employees’ desire for balance in their lives – whether for family reasons or life interests. The Smith & Williamson annual [survey of Irish law firms 2015/16](#) describes how “sourcing, hiring, training, developing and retaining quality individuals is the key to survival, future growth and success”.

The survey noted that staff recruitment and retention are increasingly presenting difficulties for firms and, as a result, firms are looking to apply a range of mechanisms to meet employee needs and aspirations.



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- Liaising with Government agencies and making recommendations on legislative reform governing Insolvency.
- Promoting the study and learning of Insolvency practice.

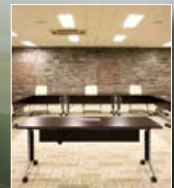
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THE INTEGRATION OF WORK AND LIFE IS A KEY ISSUE FOR YOUNGER WORKERS AND AN EMERGING ISSUE FOR OLDER WORKERS

The results of the survey showed that the number one reward firms will be implementing over the next three years is flexible benefits, with unpaid leave (54%) and sabbaticals (38%) more likely to be a bigger part of reward mechanisms in the top 20 firms.

Tech savvy

The quickening pace of technological developments is transforming how and where solicitors work. The use of data and technology is increasing in the legal sector, and automation opportunities are growing. According to Pat O'Connor (managing partner, P O'Connor & Son, Swinford, Co Mayo), modern technology enables his employees to "job share or adjust their hours at work in an office, despite the ever-increasing demands of clients".

Solicitors' interactions with their clients now take place in a '24/7, always-on' environment. Clients are extremely well informed and expect quality services, alongside better value for money. In order to meet those expectations, law firms need access to an agile, nimble workforce that can adapt to change easily.

Flexible working can empower law firms with access to the right number and type of employees at the right time. Of course, it is vital that firms ensure that, from a client's perspective, it's 'business as usual'.

On the introduction of agile working at William Fry, managing partner Bryan Bourke noted: "We have worked hard to make sure that it

is seamless for clients – because there can be no compromise in ensuring that they receive the best service."

Missing out on talent

The legal profession in Ireland is becoming increasingly diverse, and there are many reasons why a solicitor might request flexibility in terms of their working arrangements. Solicitors may wish to devote time to caring responsibilities, sporting goals, or other voluntary endeavours.

Advances in medicine and technology allow for the practice of law by persons with disabilities who may not be physically able to work within the traditional office hours or environment.

Solicitors approaching the end of their career may wish to reduce their hours in the lead-up to their retirement from the profession. In 2014, the Solicitors Regulation Authority in Britain produced its *Diversity in the Legal Profession 2013/14* report and noted that "firms that do not give due regard to the value of an inclusive culture may be inadvertently missing out on talent".

What works best

The *Guide to Flexible Working* recommends steps to achieving an agreed flexible working arrangement. The consideration process should begin with an informal discussion between the employer and employee.

Before approaching their employer to request a flexible working arrangement, a

solicitor should consider what might work best, both for the employer and employee, in addition to assessing what IT and other supports would be required to ensure that the arrangement is successful.

The employee should present their business case to their employer, setting out how they envisage the flexible working arrangement operating on a day-to-day basis. The employer should evaluate the advantages, possible costs, and potential logistical implications of granting the request.


Reviewing the situation

Both employer and employee should endeavour to reach a mutually beneficial arrangement – a trial period can be very useful in this regard. If the employer and employee agree to proceed with the flexible working arrangement, that arrangement should be formalised, with a time for review agreed.

If the employer and employee cannot agree on a flexible working arrangement, the employee should be able to request an internal appeal, with the outcome of that appeal being final.

As the legal profession strives towards achieving increased diversity and inclusion, it must recognise that solicitors have responsibilities and interests outside of the workplace and may need flexibility in order to integrate their work and family/life commitments.

Susan Martin (Dublin Solicitors' Bar Association council member) has implemented flexible working arrangements in her office. She notes that "productivity was not affected by working fewer hours".

If law firms integrate flexible working arrangements into their business strategy, they will be better able to attract and retain the best lawyers, attend to client needs, and reduce attrition. Through the publication of its *Guide to Flexible Working*, the Law Society's Younger Members Committee aims to promote a more flexible and diverse profession. 

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LOTS DONE – MORE TO DO

In its second periodic report on Ireland, the UN Committee Against Torture identifies advancements made by Ireland – but makes significant recommendations for improvement. **Michelle Lynch** reports

MICHELLE LYNCH IS POLICY DEVELOPMENT EXECUTIVE AT THE LAW SOCIETY

The UN Committee Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) published its findings on Ireland on 11 August 2017.

In compiling its findings, UNCAT heard from 20 Irish NGOs that provided reports regarding Ireland's compliance with the *UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, an international treaty that prohibits torture on an absolute and non-derogable basis.

UNCAT identified a number of improvements made by Ireland since their first examination in 2011. These included, among other things, the establishment, resourcing and safeguarding of the independence of the Irish Human Rights and Equality Commission, and the introduction of alternative community sanctions, such as early temporary release and community supervision. It commended the Irish State for the closure of St Patrick's Institution in March 2017, as well as progress on prison conditions,

including 'slopping out' and modernisation.

UNCAT welcomed the adoption of legislation, including the *International Protection Act 2015* and the *Assisted Decision-Making (Capacity) Act 2015*. It also acknowledged the steps taken by the State to offer redress for survivors of residential institutional abuse, including the establishment of the Residential Institutions Statutory Fund (renamed Caranua). It also commended Ireland on its statement that it would agree to a visit by the special rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence.

UNCAT recommendations

While it commended Ireland for certain developments to date, UNCAT also made significant recommendations.

Deprivation of liberty: UNCAT noted that Ireland had signed the *Optional Protocol to the Convention against Torture* (OPCAT) ten years ago, but had still failed to ratify it. The protocol provides for the establishment of an international inspection system for places of

detention. UNCAT called for the immediate ratification of the protocol, together with the establishment of a "national preventive mechanism, ensuring that this body has access to all places of deprivation of liberty in all settings", noting that, currently in Ireland, there is no systematic monitoring of places of deprivation of liberty.

International protection: while UNCAT welcomed the introduction of the *International Protection Act 2015*, it also recommended that Ireland should enshrine in legislation "the principle that asylum seekers should be detained only as a measure of last resort, for as short a period as possible, and in facilities appropriate for their status". It also called for the establishment of vulnerability screening for torture victims and other vulnerable persons, and to "provide them with care and protection to avoid retraumatisation".

UNCAT recommended that Ireland should also ensure that immigration detainees are not held with remand and convicted prisoners and that all, including those refused leave

UNCAT CALLED FOR THE IMMEDIATE RATIFICATION OF THE OPTIONAL PROTOCOL, TOGETHER WITH THE ESTABLISHMENT OF A 'NATIONAL PREVENTIVE MECHANISM, ENSURING THAT THIS BODY HAS ACCESS TO ALL PLACES OF DEPRIVATION OF LIBERTY IN ALL SETTINGS'



Residential institutional abuse – UNCAT called for a thorough and impartial investigation into the Magdalene laundries

to land, should have access to legal aid and be given information in a language that they can understand.

Conditions of detention: UNCAT noted that the overall prison population had decreased, but that the overall number of women in detention had continued to rise. It also expressed concern that remand and convicted prisoners were still held in the same place in some facilities. It noted that the use of in-cell sanitation, as well as solitary confinement, continued to be problematic, and expressed serious concern over the systematic deficiencies in the healthcare services within the prison system.

UNCAT provided numerous recommendations, including an urgent “independent and fundamental review of the entire prison healthcare system”, as well as ensuring that “solitary confinement remains a measure of last resort” and is never used with juveniles.

It also called for the implementation of the *Irish Prison Service Strategic Plan 2016-2018*, “including for the refurbishment of existing facilities and the construction of new ones” and the complete elimination of slopping out in Portlaoise Prison, as well as improving in-cell sanitation in all facilities where it is needed.

Residential institutional abuse: UNCAT acknowledged some of the steps taken to address the history of residential institutional abuse in Ireland, but it also expressed serious concerns over what remained to be done. Notably, it stated its concern over the State’s intention not to extend funding required to assist victims of institutional abuse beyond 2019, which would mean the redress scheme and Caranua would be dissolved.

UNCAT also found that Ireland should “encourage victims of abuse suffered in resi-

dential institutions to cooperate with the garda and ensure that all participants in the redress scheme are aware that they are not ‘gagged’ from doing so”.

Significantly, UNCAT also called for a “thorough and impartial investigation into allegations of ill-treatment at the Magdalen laundries” and for greater efforts to be made to ensure that all victims obtain redress for the ill-treatment they received.

Further, while it expressed its appreciation for the creation of a Commission of Investigation into Mother and Baby Homes, it also urged that Ireland should make sure that “it carries out an independent, thorough and effective investigation into any allegations of ill-treatment, including cases of forced adoption, amounting to violations of the convention at all of the mother and baby homes and analogous institutions”.




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UNCAT COMMENDED IRELAND ON ITS STATEMENT THAT IT WOULD AGREE TO A VISIT BY THE SPECIAL RAPPORTEUR ON THE PROMOTION OF TRUTH, JUSTICE, REPARATION AND GUARANTEES OF NON-RECURRENCE

SCHRÖDINGER'S UN REPORT



CAT

UNCAT

Violence against women: Despite some steps being taken, UNCAT remains concerned that a significant percentage of Irish women have reported experiencing physical and/or sexual violence. It welcomed the introduction of the *Domestic Violence Bill 2017*, but called for the bill to be amended to include a specific criminal offence of domestic violence encompassing physical and psychological abuse committed within a relationship.

It also recommended that women seeking protection from domestic violence should be exempted from the minimum contribution required for legal aid if unable to afford it. This largely aligns with the recommendations of the Law Society in its submission on the *Domestic Violence Bill* to include a broad definition of domestic violence within the bill and also to remove the minimum contribution for accessing legal aid in such cases.

Residential care: UNCAT expressed concern at reports that older adults and vulnerable persons are being held in residential care settings “in situations of *de facto* detention” and being “subjected to conditions that may amount to inhuman or degrading treatment”.

It called for the prioritisation of the full commencement of the *Assisted Decision-Making (Capacity) Act 2015*, as well as adequate resources to implement it, and to ensure that the *Lunacy Regulations (Ireland) Act 1871* is fully repealed. UNCAT also highlighted the importance of the *Inspection of Places of Detention Bill* to provide for “independent monitoring of residential and congregated care centres for older people and people with disabilities within the national preventive mechanism”.

It also recommended prompt, impartial and effective investigation of any allegations of ill-treatment in residential care settings,

including the prosecution and punishment of perpetrators and the provision of redress for victims.

Follow-up

UNCAT requested that Ireland provide, by 11 August 2018, information on follow-up to its recommendations on the ratification of OPCAT, strengthening the independence of the Garda Síochána Ombudsman Commission, and on investigating allegations of ill-treatment of women in the Magdalen laundries and ensuring that all victims obtain redress. The committee concluded its observations by calling on the Government to ratify the core United Nations’ human rights treaties to which it is not currently party, and invited it to submit its third periodic report by 11 August 2021. [G](#)

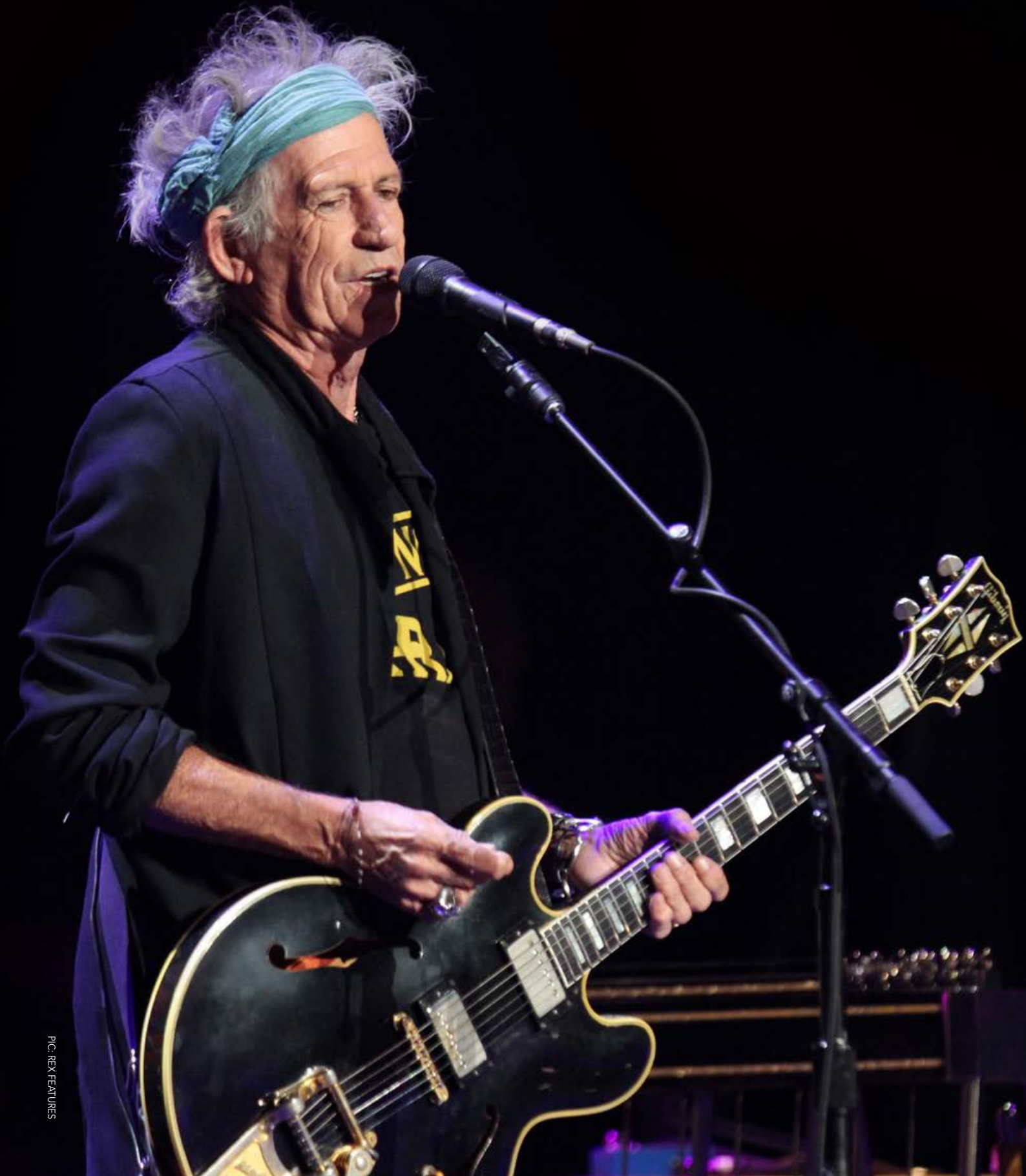
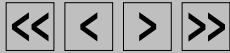
LOOK IT UP

LEGISLATION:

- [Assisted Decision-Making \(Capacity\) Act 2015](#)
- [International Protection Act 2015](#)
- [Lunacy Regulations \(Ireland\) Act 1871](#)
- [Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment](#)
- [UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#)

LITERATURE:

- [Irish Prison Service Strategic Plan 2016-2018](#)
- [Law Society Submission on the Domestic Violence Bill 2017](#)
- The full text of the concluding observations of the UN’s Committee Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment



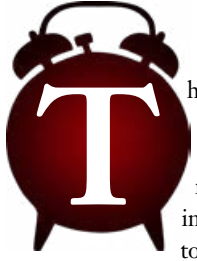


Time is on my side

Are mandatory retirement ages on borrowed time?

Liz Ryan, Stephen Gillick and Sarah Browne say that the needs of the ageing workforce are a matter of significant public concern and that the current law is not fit for purpose

LIZ RYAN AND STEPHEN GILLICK ARE PARTNERS AND SARAH BROWNE IS AN ASSOCIATE IN THE EMPLOYMENT LAW AND BENEFITS TEAM AT [MASON HAYES & CURRAN](#)



The Citizens' Assembly was established to discuss and make recommendations for resolving some of the most important issues facing Ireland today. One of the topics up

for consideration was how best to respond to the challenges and opportunities of an ageing population.

The assembly met in July 2017 to discuss this topic. It made the following recommendations:

- 86% of assembly members believed that mandatory retirement ages should be abolished,
- 87% of members recommended that the Government should introduce some form of mandatory pension scheme to supplement the State pension,
- 96% of the members supported the removal of an anomaly that arises when an individual must retire at 65, but is not entitled to the State pension until 66.

What is clear from the assembly's report is that Government-led action is required to deal with an ageing population and the issues that are faced by affected workers as they approach retirement.

Not fade away

Generally speaking, discrimination on the grounds of age is prohibited by the *Employment Equality Act 1998*. However, the act provides for an exception to this rule in the context of fixing retirement ages.

Section 34(4) of the act provides that "it shall not constitute discrimination on the age ground to fix different ages for retirement (whether voluntarily or

AT A GLANCE

- ECJ decisions make clear that the setting of mandatory retirement ages could be discriminatory on the grounds of age – unless it can be objectively justified
- In Ireland, for the majority of employees, there is no statutory mandatory retirement age
- A changing age demographic, economic necessity, and changes to the State pension have meant that many people will be required or will want to work for longer
- We could be left with the unsatisfactory position where a person retiring at age 65 in the year 2028 will have to apply for a means-tested jobseeker's benefit for a three-year period

compulsorily) of employees or any class or description of employees".

Employers happily relied on the discretion afforded to them by section 34(4) of the 1998 act in the defence of age-discrimination claims on the application of mandatory retirement ages. However, more recently, a series of decisions of the European Court of Justice (ECJ) has sparked reform.

The ECJ decisions make clear that the setting of mandatory retirement ages could, in fact, be discriminatory on the grounds of age – unless it could be objectively justified.

In order to bring Ireland into line with the decisions of the ECJ, [section 10](#) of

the *Equality (Miscellaneous Provisions) Act 2015* expanded the 1998 act's treatment of mandatory retirement ages to provide that "it shall not constitute discrimination on the age ground to fix different ages for retirement (whether voluntarily or compulsorily) of employees or any class or description of employees if:

- It is objectively and reasonably justified by a legitimate aim, and
- The means of achieving that aim are appropriate and necessary."

The 2015 act also amends the position on fixed-term contracts. It provides that an employer can offer a fixed-term contract to an employee who has reached mandatory retirement age without risk of age discrimination if the giving of a fixed-term contract is "(i) objectively and reasonably justified by a legitimate aim, and (ii) the means of achieving that aim are proportionate and necessary".

European and Irish case law have provided practical examples of instances where legitimate aims were cited that led to the existence of mandatory retirement ages being objectively justified. Some examples are:

- The creation of job opportunities in the labour market – *Felix Palacios de la Villa v Cortefiel Servicios SA* (C-411/05),
- Intergenerational fairness and/or succession planning – *Seldon v Clarkson Wright and Jakes (A Partnership)* ([2012] UKSC 16),
- The encouragement, promotion and recruitment of younger people – *Gerhard Fuchs and Peter Köbler v Land Hessen* (C-159/10 and C-160/10), and
- Health and safety concerns – *Saunders v CHC Ireland Limited* (DEC-E/2011/142).

REQUESTS TO STAY ON BEYOND ANY MANDATORY RETIREMENT AGE CAN BE ACCOMMODATED BY PUTTING IN PLACE A FIXED-TERM CONTRACT – PROVIDED IT CAN BE OBJECTIVELY JUSTIFIED BY A LEGITIMATE AIM, WHICH MUST BE REASONABLE AND PROPORTIONATE

COVER STORY



ANY EXCEPTION TO A MANDATORY RETIREMENT AGE UNDERMINES THE EMPLOYER'S ABILITY TO ENFORCE THE RETIREMENT AGE OF ANOTHER EMPLOYEE AT A LATER STAGE

Once the objective justification hurdle has been satisfied, an employer must also show that the means by which it seeks to achieve this legitimate aim (the setting of a mandatory retirement age) is proportionate and necessary.

Beast of burden

The current position in Ireland is that, for the majority of employees, there is no statutory mandatory retirement age. Exceptions to this rule are certain public sector employees and members of An Garda Síochána, the judiciary and the Irish Fire Service.

Accordingly, employers can fix retirement ages if they can objectively justify doing so. These retirement ages can be set out in the contract of employment, the organisation's policies, or can be implied by custom and practice within the organisation.

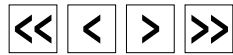
Requests to stay on beyond any mandatory retirement age are on the increase. Such requests can be accommodated by putting in place a fixed-term contract – provided it can be objectively justified by a legitimate aim. The means of achieving this legitimate aim must be reasonable and proportionate.

Employers should approach requests to

stay on beyond the mandatory retirement age with caution. Any exception to a mandatory retirement age undermines the employer's ability to enforce the retirement age of another employee at a later stage. An employee could validly point to one of the previous exceptions and could argue that an expectation or a custom and practice of working beyond the mandatory retirement age was created.

It appears that mandatory retirement ages may be on borrowed time in Ireland.

In 2016, Sinn Féin proposed the *Employment Equality (Abolition of Mandatory*



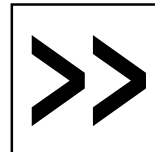
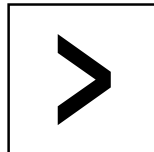
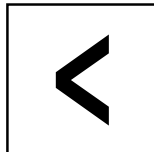
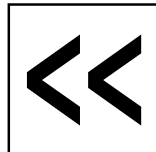
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EMPLOYERS CAN FIX RETIREMENT AGES IF THEY CAN OBJECTIVELY JUSTIFY DOING SO. THESE RETIREMENT AGES CAN BE SET OUT IN THE CONTRACT OF EMPLOYMENT, THE ORGANISATION'S POLICIES, OR CAN BE IMPLIED BY CUSTOM AND PRACTICE WITHIN THE ORGANISATION

Retirement Age) Bill 2016 to Dáil Éireann.

The bill is currently at committee stage in the Oireachtas, so it remains to be seen if it will proceed to legislation.

No expectations

The Revenue Commissioners require that occupational pension schemes set an age at which members will normally retire. Any age between 60 and 70 years of age will generally be acceptable to the Revenue. It is also possible for pension schemes to have different retirement ages set for different categories of member.

Early retirement is typically provided for in the rules of the pension scheme. In cases of ill health or disability, the employer would usually have discretion to approve early retirement at any age. In other situations, the rules may set an age where an employee can apply to retire early – for example, from ages 55 or 60.

If the employer wants an employee to remain working after their normal retirement age, the employer should consider what will happen to the employee's pension benefits. Most pension schemes are flexible and will allow an employee to remain a member after his or her normal retirement age. The rules of the scheme usually allow for two options:

- The employee can draw down their pension benefits at their normal retirement age and continue to work. Essentially, the employee would be drawing income from their pension and also their ongoing salary. Once in payment, no further pension contributions can be paid into the pension scheme by, or on behalf of, the employee.
- The employee can defer drawdown of their pension until the actual date of retirement. In this scenario, the employee and the employer could, subject to the rules of the scheme, continue to pay contributions into the pension scheme.

The employer should also consider whether benefits, such as life assurance or permanent health insurance, will be provided should an employee continue to work beyond their normal retirement age. The insurance policy may not facilitate the provision of these benefits to an individual once they have passed their normal retirement age. The provision of these benefits may be prohibitively expensive.

Like a rolling stone

Changes that have been made to the State pension have received much attention in recent years. The changes will certainly affect decisions made by employees regarding their retirement date. The age of entitlement for the State pension is in the process of being increased. It is currently 66 and will rise to 68 in 2028.

This increase may lead to a lot of people deciding that they will have to work longer, due to the fact that they will be unable to retire without receiving the State pension. The current position is rather unsatisfactory. A person who retires at age 65 will be forced to avail of jobseeker's allowance as a means of bridging their income until such time that they are entitled to receive the State pension. It is important to note that jobseeker's benefit is means tested, so not everyone will receive it. The State pension, however, is not means tested.

The idea of having retirees apply for jobseeker's benefit after a lifetime of work erodes some of the dignity that should be afforded to people as they approach and enter retirement. It was clearly intended to be a short-term measure. However, it appears that it will be a permanent solution for a certain cohort of pensioners who retire at age 65 and will not be eligible to receive the State pension until age 66, 67 in 2021, or age 68 in 2028. We could be left with the unsatisfactory

position where a person retiring at age 65 in the year 2028 will have to apply for a means-tested jobseeker's benefit for a three-year period.

A changing age demographic, economic necessity, and changes to the State pension have meant that many people will be required or will want to work longer. The law as it stands, together with the majority of pension schemes, do not necessarily accommodate the required flexibility.

Although progress has been made in opening up opportunities to an ageing workforce and protecting employees against discrimination on the grounds of age, it is clear from the musings of the Citizens' Assembly that the needs of the ageing workforce are a matter of significant public concern and that the law, in its current form, is not fit for purpose. [E](#)

LOOK IT UP

CASES:

- *Felix Palacios de la Villa v Cortefiel Servicios SA* (C-411/05)
- *Gerhard Fuchs and Peter Köhler v Land Hessen* (C-159/10 and C-160/10)
- *Saunders v CHC Ireland Limited* (DEC-E/2011/142)
- *Seldon v Clarkson Wright and Jakes (A Partnership)* ([2012] UKSC 16)

LEGISLATION:

- *Employment Equality (Abolition of Mandatory Retirement Age) Bill 2016*
- *Employment Equality Act 1998*
- *Equality (Miscellaneous Provisions) Act 2015*

The possessive case

Are possession orders outdated penalties for family-home loan defaults?
Julie Sadlier changes the locks

JULIE SADLIER IS A SOLICITOR WITH [KIERAN MULCAHY SOLICITORS](#), LIMERICK



In April 2013, I wrote an article for the *Gazette* where I concluded that home-owner victims of the financial crash should stay in their homes until resolutions to their mortgage arrears were found. At that time, there were few possession proceedings before the courts because the *Land and Conveyancing Law Reform Act 2009* was awaiting amendment after *Start Mortgages v Gunn*, and we still hoped that banks and the Government would, with the assistance of the promised *Personal Insolvency Act*, find an agreed formula for such resolutions.

Also at that time, the High Court had given hope in *ILP v Duff* that banks could not expect possession orders without complying fully with the *Code of Conduct on Mortgage Arrears* (CCMA), which was introduced in response to the bailout of lending institutions. The code included many types of resolution arrangements for banks and customers, depending on their circumstances.

Where are we now?

As the housing crisis deepens, banks are closing down their arrears support units and transferring unresolved home-loan debts to vulture funds. Over the years, lenders never had anything like the appetite

they should have had to return their ‘crash victims’ to solvency. Despite this, many of the 130,000 borrowers in arrears have found resolutions – some long-term, some short-term, some with write-downs – but the common thread to all of these is a lack of transparency or evidence of a system. I have many clients without resolutions before the possession courts whose payment capacity and history is better than many who have found resolution, often with the same lenders.

There has been a worrying randomness about this whole process that has still not been addressed. This is of even greater concern now, as long-term arrangements are contrary to many vulture-fund business models. The private contract nature of mortgages and the private property rights of the mortgagees, as legal owners, are the legal arguments for supporting discounted sales of home loans to vulture funds in preference to ensuring that homeowners get first option to buy their own loans at these lower prices – but is this serving the common good?

Current statistics

Before the reckless lending and bailout of the noughties becomes not much more than a faded memory to all but the silent and ageing generation still caught in ongoing

AT A GLANCE

- Mortgagees’ rights to possession rank far ahead of family needs and rights in our law, and we need to rethink this as we plunge deeper into the homelessness crisis
- Retaining possession of homes is still the best chance most families have to keep a roof over their heads
- Unverified suggestions by banks that strategic defaulters make up a significant number of those in mortgage arrears is contrary to the experience on the ground

REPOSSESSION



PICTURE: SHUTTERSTOCK/NUALA REDMOND



AS THE HOUSING CRISIS DEEPENS, BANKS ARE CLOSING DOWN THEIR ARREARS SUPPORT UNITS AND TRANSFERRING UNRESOLVED HOME-LOAN DEBTS TO VULTURE FUNDS

mortgage arrears, we should look at some statistics:

- We have more than 20,000 home possession cases before the courts at this point, and approximately 5,000 homes are already surrendered or under orders for possession,
- According to the latest Central Bank figures, there are still more than 70,000 home loans in arrears of fewer than 90 days, and half that number approximately in long-term arrears,
- Over 40,000 loans have been sold off to so-called non-bank entities (vultures) – almost half of these to unregulated vultures, not even bound by CCMA – and at least 20,000 of these are in arrears,
- We also have 8,000 people homeless according to official statistics, and Fr Peter McVerry has said we can double that number,

- At the end of 2017’s first quarter, the [Insolvency Service of Ireland](#) shows that a total of only 1,617 personal insolvency arrangements and approximately 1,500 bankruptcies were approved.

Developments in the law

In late 2013, the [Land and Conveyancing Law Reform Act 2013](#) was introduced, opening the floodgate for possessions. The [Personal Insolvency Act 2012](#) also came into force in 2013 but, as is evident from the statistics above, the number of home loans restructured under this act is very low, because banks are not engaging with this process either.

By the end of 2014, only 106 personal insolvency arrangements were approved, so the [Personal Insolvency \(Amendment\) Act](#) in late 2015 introduced section 115A, which

gives courts some discretion to override the very obstructive bank vetoes that have greatly hampered any effectiveness envisaged by the introduction of the [Personal Insolvency Act](#). Unfortunately, recent decisions of Lambe J and Ryan J in Tullamore and Dublin Circuit Courts respectively regarding *locus standi* in section 115A applications could lead to costs orders against failed appeals (which are already the norm in debtor s115A cases) being given against personal insolvency practitioners (PIPs) into the future. This development, unless clarified or rectified, could seriously hamper personal insolvency. After all, what PIP or other practitioner will willingly expose themselves to the risk of cost orders in carrying out normal professional functions?

The Supreme Court disagreed with the High Court in [ILP v Dunphy and Dumne](#),



CLARKE J MADE IT CLEAR THAT, IF THE LAW GOVERNING THE CIRCUMSTANCES IN WHICH FINANCIAL INSTITUTIONS MAY BE ENTITLED TO POSSESSION WAS CONSIDERED TO BE ‘TOO HEAVILY WEIGHTED’ IN FAVOUR OF THE LENDERS, IT WAS FOR THE OIREACHTAS TO ‘RECALIBRATE THOSE LAWS’

ending hopes for CCMA enforceability. Clarke J made it clear that, if the law governing the circumstances in which financial institutions may be entitled to possession was considered to be “too heavily weighted” in favour of the lenders, it was for the Oireachtas to “recalibrate those laws”, and he concluded that “no such formal recalibration has yet taken place”. Barrister Eoin Martin’s claim – in his article ‘Unfair terms in consumer law contracts’ (*Commercial Law Practitioner 2017*) – that the requirement that lenders must adduce evidence of compliance with the CCMA in possession proceedings, pursuant to [Court Practice Direction CC17](#), makes up for this is erroneous, as the practical application of that directive is that courts seek evidence only of compliance with the moratorium under the CCMA (to which the Supreme Court did, in *ILP v Dume*, attribute force of law) and not the resolutions set out in those codes

In 2016, the ‘Abhaile’ scheme was finally introduced, providing free legal aid for those seeking personal insolvency and a limited number of solicitor consultations for those facing possession. A glaring anomaly of the scheme is that those who want to challenge unfair mortgages or lending practices cannot get legal aid, but those who want to return to solvency through personal insolvency can. It is no surprise that the reason that no body of defences to possession proceedings has been built in our system is because distressed borrowers have no funds to pay for legal support and no access to free legal aid.

This year, new housing agencies have been formed. It is hoped that they will provide more mortgage-to-rent remedies, and they have entered into various agreements with lenders, but this too lacks transparency. To date, the numbers qualifying for or benefiting from mortgage-to-rent are still negligible and, as a practitioner, there is very little information available on such issues as:

- What are the numbers of homes owned by each agency?
- What is the nature of their letting agreements and the rent charged?
- Are there buy-back options for tenants?
- How many lenders are engaging with these schemes?
- What are the qualifications over and above house valuations for these schemes?

EU law

Courts are obliged by EU law, of their own motion, to review mortgage terms for fairness for very good reason.

When mortgage loans were developed, the world of finance was relatively simple. Banks took your money, paid you an interest rate, and then lent it out to others at a higher interest rate, and most of their profit was in the differential in the interest rates. Since deregulation of banking occurred, mortgages became valuable instruments in themselves. Banks’ primary role has shifted over time from being the fiduciary link between depositor and borrower to being the commodity broker of its loan agreements with other financial institutions and investors. Loans are no longer funded by depositors only, but by the sale of loans as commodities.

Unfortunately, while the mortgage consumer has shifted from being primarily a party owing a fiduciary duty to the bank’s depositors to being the essential component of a very valuable financial instrument from which banks and their agents make large profits, the banks’ protections throughout this period have remained very strong, in line with its old role as keeper of fiduciary relationships between its customers. Unfortunately, the protection of the consumer, who is also now a commodity, has not been developed by statute or case law in this jurisdiction.

The European Union, however, has introduced the *Unfair Contract Terms Directive*,

which we have enacted in law. This directive not only applies to mortgages, but to all other documents with standard terms and inequality of bargaining power. It provides that courts (in order to be the custodian of equality of arms before enforcement) must check every standard contract such as a mortgage to look for unfairness. This requirement on courts has been on our statute books since 1993 for the very reason that consumers, even when armed with the best advice and representation, cannot change these standard terms. The directive was designed to provide the only real sanction to such terms – which amounts to courts, of their own motion, being obliged to check the terms for fairness whenever the creator of the terms seeks a court’s assistance in enforcing them, and deeming them unenforceable if found unfair.

It is important for all borrowers (and indeed consumers) that our courts, in accordance with the judgment of Barrett J in *Allied Irish Bank PLC v Coubinan and Anor*, fully embrace this obligation, as it has led to a lot of improvements in mortgage terms and conditions in other EU countries. Many terms in standard mortgage agreements here need review, not least interest-rate clauses, as can be seen from the recent tracker mortgage refund cases. Own motion assessments are not new to our courts, as they arise in other areas of our law, including bankruptcy.

In the article referred to above, Eoin Martin BL stated that “the elephant in the room is that nobody as yet has identified a contractual term being relied upon by creditors in debt actions that is actually unfair”. He went on to conclude that “in the absence of reliance on unusual and unconventional terms, the potential reliance on the *Unfair Contract Terms Directive* is academic”. This generalised statement misses the very real link between the need for courts to carry out thorough own motion assessments and the lack of

REPOSSESSION



identification of unfair terms to date.

ECJ case C 34/13, *Kušionová v SMART Capital*, set out that the right to accommodation is a fundamental right under article 7 of the *Charter of Fundamental Rights*, and the national court must take this into account, together with the rights guaranteed by article 8 of the *European Convention on Human Rights*, when implementing the directive and/or when any order is being made that affects the family home. The court acknowledged that the loss of a family home is one of the most serious breaches of the right to respect for the home, and any victim of such a breach must have the possibility of reviewing the proportionality of this breach.

The most pressing proportionality issue that should be before our courts is where will families live if banks enforce possession orders against them and how will eviction affect their family lives?

Adjournments

Both section 101 of the *Land and Conveyancing Act 2009* and section 2 of the *Personal Insolvency Act 2012* allow courts adjourn proceedings in certain circumstances, but these powers are too narrow both in their drafting and interpretation to overcome or even allow for the ongoing impasse in banks' interest or willingness for meaningful resolution.

County registrars' courts do adjourn – there is the mandatory two-month practice direction adjournment and then further adjournments to allow 'engagement' with lenders through MABS, who have become a major presence in county registrar courts since the introduction of Abhaile in 2016. As time marches on, however, it seems that most county registrars are now taking the view that, if so-called 'engagement' has not worked after a few adjournments, they have no choice under law but to grant possession orders.

The reality being missed is that, despite the CCMA's and personal insolvency law, lenders are not moving fast enough, nor do they have much interest (as they sell off their distressed loans to restart the lending cycle to the next generation) to provide fair resolution across the board. Smooth and balanced operation of personal insolvency laws must still be aspired to, and adjournments continue to be vital to avoid even larger-scale housing problems.

In *ILP v Dunphy and Dunne*, Clarke J



FIG: SHUTTERSTOCK/NUALA REDMOND

invited the legislature to 'recalibrate' the law. A ray of hope for a more comprehensive court approach is contained in the *Keeping People in their Homes Bill* introduced by Kevin 'Boxer' Moran TD, which is included in this government's Autumn 2017 legislative programme. I assisted with the drafting of this bill and, if enacted, it will increase courts' powers to adjourn cases to look at proportionality issues before granting possession orders.

Courts' own motion consideration of

unfair contract terms, proportionality for unrepresented borrowers, and legal aid for those facing possession orders against banks with full legal support are moves that would help to restore balance at this moment in time.

Mortgagees' rights to possession rank far ahead of family needs and rights in our law, and we need to rethink this as we plunge deeper into the homelessness crisis. Ongoing, unverified suggestions by banks that strategic defaulters make up a significant number of those in mortgage arrears is totally contrary to my experience on the ground. This unrelenting message from lenders, along with the paralysing effects of the enormity of the financial crisis on so many influential as well as ordinary members of our society, may well continue to feed this thinking.

We should recalibrate these rights before lenders and vulture funds, in the name of banking stability and the 'common good', threaten or cause many more families to be homeless.

Retaining possession of homes is still the best chance most families have to keep a roof over their heads, and surrendering is folly for anyone without suitable alternative accommodation. That includes those already before the possession courts, those with possession orders, and all those in arrears still possibly facing repossession courts. [E](#)

LOOK IT UP

CASES:

- *Allied Irish Bank PLC v Coughlan and Anor* [2016] IEHC 752
- *ILP v Duff* [2013] IEHC 43
- *ILP v Dunphy and Dunne* [2015] IESC 46
- *Kušionová v SMART Capital* (ECJ case C-34/13)
- *Start Mortgages v Gunn* [2011] IEHC 275

LEGISLATION:

- *Charter of Fundamental Rights of the EU*
- *Court Practice Direction CC17*
- *European Convention on Human Rights*

- *Keeping People in their Homes Bill 2017*
- *Land and Conveyancing Law Reform Act 2009*
- *Land and Conveyancing Law Reform Act 2013*
- *Personal Insolvency (Amendment) Act 2015*
- *Personal Insolvency Act 2012*
- *Unfair Contract Terms Directive* (Council Directive 93/13/EEC)

LITERATURE:

- Central Bank of Ireland (2013), *Code of Conduct on Mortgage Arrears*
- Eoin Martin (2017), 'Unfair terms in consumer law contracts', *Commercial Law Practitioner 2017*



LLP service

If the worst happens, the personal assets of partners in traditional partnerships can be at risk. Limited liability partnerships would change that.
Paul Keane explains

PAUL KEANE IS MANAGING PARTNER AT [REDDY CHARLTON](#), SOLICITORS, DUBLIN 2,
AND CHAIR OF THE SOCIETY'S LSRA TASK FORCE



Mr Bishop thought he was going into the meeting for a chat. He had no idea that it would have catastrophic results for him and his partners. He certainly was not concerned that it would result in the change of our law 25 years later.

The meeting was on 5 January 1990. Mr Bishop was a partner in a large firm of accountants. They were auditors to BSG. Another company, ADT, was in the final stages of deciding to buy BSG. The audited accounts had been furnished to ADT, but the chairman of ADT was not prepared to proceed until he spoke directly to the auditors. Mr Bishop was the audit partner and the meeting was with ADT's chairman.

None of his partners knew that Bishop was going to the meeting, nor what he said at the meeting. They did not find out about it until years later. Unfortunately, there were serious problems with the accounts and with BSG.

ADT sued. The judge found that Mr Bishop had given representations that the audited accounts were sound and that he had intended them to be relied upon by ADT.

In 1995, ADT recovered judgment against the accountants for £115 million. Unfortunately, the accountants at the time only had insurance cover for £81 million. That left a shortfall of £34 million.

Because they were a partnership, the partners were personally liable without any limit. The result was a bombshell for large accountancy and legal practices in London. They wanted action in Britain to limit their liability.

International response

In various states of the USA, protection for partners in professional firms had been introduced since 1991. These are based on the general law of partnership, with various degrees of protection and some restrictions on the types of business to which the protection will apply.

AT A GLANCE

- LLPs involve qualified limitation on liability, with the limitation conditional on PI insurance and client recourse to LLP assets and insurance
- The structure substantially avoids the risk of loss of personal assets
- There will be no change in tax treatment of partnerships, and no disclosure of accounts
- The protections are not available to sole practitioners, and limitation of liability by contract remains important



P.C. SHUTTERSTOCK

In 1997, in response to the ADT decision, Jersey introduced a limited liability partnership law. This was based on the US model of general partnership, but with a limitation on the personal liability of the individual partners.

Britain introduced its own form of limited liability partnership (LLP) in 2000. Although the entities concerned were called limited liability partnerships, in fact, they were bodies corporate with separate legal personality and unlimited capacity. Modified company law

requirements, such as the filing of accounts and of annual returns, were imposed on these LLPs. However, they were taxed as a partnership. Britain is the only major jurisdiction that has adopted this hybrid form of LLP.

Limited partnerships and LLPs

An LLP is to be distinguished from a limited partnership established in Ireland under the *Limited Partnerships Act 1907*. In a limited

partnership, there are one or more general partners who are responsible for managing the firm. The general partners have unlimited liability. There are also one or more limited partners, whose liability is limited in amount, but these are excluded from management. A limited partnership is unsuitable for use as a vehicle for most professional services firms.

As the law currently stands, solicitors can organise themselves as sole traders or as a partnership. Section 70 of the *Solicitors*

THE GENERAL PRINCIPLE OF THE LEGISLATION IS THAT CLAIMS AGAINST AN LLP WILL BE MET BY THE ASSETS OF THE LLP AND ITS PROFESSIONAL INDEMNITY INSURANCE, BUT WILL NOT EXTEND TO THE PERSONAL ASSETS OF THE PARTNERS. HOWEVER, INHERENT IN THAT BARGAIN IS THAT THE RELEVANT PI INSURANCE IS OBTAINED AND MAINTAINED



BECAUSE THEY WERE A PARTNERSHIP, THE PARTNERS WERE PERSONALLY LIABLE WITHOUT ANY LIMIT. THE RESULT WAS A BOMBSHELL FOR LARGE ACCOUNTANCY AND LEGAL PRACTICES IN LONDON

(Amendment) Act 1994 provides for solicitors carrying on business as bodies corporate, but the section has never been commenced.

The *Legal Services Regulation Act 2015* (LSRA) contemplates a range of new structures for carrying on legal business. It will continue to be possible to carry on business as a sole trader or as a traditional partnership.

However, there are three new structures contemplated:

- *Legal partnership*: a partnership formed under Irish law by written agreement comprising two or more legal practitioners, at least one of whom is a practising barrister, for the purposes of providing legal services. So this would be a solicitor/barrister partnership or a barristers-only partnership.
- *Multi-disciplinary practice (MDP)*: a partnership formed under Irish law by written agreement by two or more individuals. In this case, all that is required is that at least one of them is a legal practitioner. The purpose of the MDP must be the provision of legal and other services.
- *LLP*: a partnership of solicitors or a legal partnership in respect of which an authorisation under the act has been granted.

Thus far, the enabling legislation for these new creatures has not as yet been commenced. In relation to legal partnerships and MDPs, a process of consultation and reports by the authority established under the LSRA is required, and that process has commenced. No such process is required in relation to LLPs.

LLPs under the LSRA

The form of LLP adopted under the LSRA is based on the US model. General partnership law will apply subject to the provisions of chapter 3 of part 8 of the act. That chapter sets out the limitation on the liability of a partner and the exceptions to that limitation, and the regulation and obligations of LLPs.

Accordingly, the law and precedents that have developed in relation to LLPs in Britain are not relevant to Irish LLPs. In this case, we definitely must look to Boston rather than Bolton.

The result is that existing law firms will not need to convert or change their legal form. An existing partnership becomes an LLP by virtue of successfully obtaining authorisation under the act.

The general principle of the legislation is that claims against an LLP will be met by the assets of the LLP and its professional indemnity insurance, but will not extend to the personal assets of the partners. However, inherent in that bargain is that the relevant PI insurance is obtained and maintained for the protection of those dealing with LLPs.

Who is protected?

Section 123(1) provides that a partner in an LLP shall not, by reason only of his/her being a partner, or being held out as being a partner, be personally liable by way of contribution or otherwise for the types of liability mentioned below.

The act is, accordingly, careful to ensure that the scope of protection does not go beyond the role of partner in the partnership.

What types of liability?

The protection extends to any debts, obligations, or liabilities arising in contract, tort or otherwise.

This is consistent with the more recent legislation in the US. However, there is an issue as to whether a *sui generis* rule of interpretation would confine the catch-all 'otherwise' to claims analogous to contract or tort, and thus not capture claims that are formulated under other heads.

A partner has liability for his own acts, but also has exposure vicariously to the liabilities incurred by his or her partners, the partnership itself, or of any employee, agent or representative of the LLP.

Both personal and vicarious responsibilities are covered by the limitation on liability.

When does the limitation apply?

A partnership only operates as an LLP when so authorised by the authority. The authorisation is effective from the date specified in the notice from the authority. However, the authorisation will be subject to the condition that the LLP has professional indemnity insurance in place that complies with the law at all times.

It follows that if the insurance lapses or is revoked, the liability protection is lost.

Exceptions

As you would expect, there are a number of exceptions to the protection afforded by the LSRA:

- Fraud or dishonesty – a debt obligation or liability incurred as a result of an act or omission of the partner involving fraud or dishonesty,
- Not connected with the business of LLP – (s123(3)) – liability incurred by a partner for a purpose not connected with the carrying on of the business of the LLP,
- Tax – (s123(4)) – liabilities for tax are excluded,
- Pre-authorisation acts or omissions – (s123(5)),
- Certain pre-insolvency transfers of partnership property out of co-ownership may be invalidated – (s124(2)).

Regulation of LLPs

The authority will be responsible for applications for authorisation and to specify the information and fees to be furnished. It will also be responsible for maintaining a register of LLPs with the name and address of the partners and effective date of authorisation. The register will be available for inspection by the public.

The authority will have the power to give directions for failure to comply with statutory

PARTNERSHIPS

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requirements and seek the aid of the High Court.

The authority is required to make regulations in relation to the operation and management of LLPs. A number of specific topics are prescribed. These include regulations dealing with the information (and the standard of such information) to be provided by an LLP to its clients and creditors as to the nature and effect of LLPs, and the information to be provided by an LLP to the authority for the purposes of enabling the authority to ensure compliance by the LLP with statutory requirements.

Responsibilities

Apart from general compliance with its obligations under the LSRA, an LLP must, as soon as practicable after receiving authorisation, notify its clients and creditors of that fact. That notification will set out the information prescribed by the authority as to the nature and effect of LLPs (s125(7)).

And it must use a name that ends with ‘limited liability partnership’ or ‘LLP’



and use this name on all documents and communications (s125(8)).

The cases of solicitors losing their personal assets to claims of clients are mercifully rare. However, the risk is real and serves as a disincentive to the formation and expansion of partnerships.

The new law will extend a qualified level of protection to partners and is to be welcomed.

However, clients and others dealing with LLPs will continue to have the assurance of recourse against the assets of the partnership, and clients will have the additional protection of PI insurance.

As there is no change in the legal form of the partnership, no change in the tax treatment of

partnerships or the disclosure of accounts is expected.

The only major drawback is that the structure will only be available to partnerships, and thus is of no assistance to sole practitioners. Agitation to permit the incorporation of practices will need to continue.

Section 48 permits the limitation of liability by contract (as has been the case for a number of years). This will continue to apply to all permitted structures. It is important that we all include appropriate limitations of liability in our letters of engagement.

The authority has only recently appointed its chief executive and is in the early days of establishing itself. Before LLPs can be authorised, the authority must prescribe regulations setting out the process to be followed and set up its internal processes. The Society’s LSRA Task Force will be urging the new chief executive to move ahead on LLPs, and has carried out extensive preparatory work to assist the authority in that task.



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Holding a note

A recent decision in England could have considerable implications for judges' notes taken in the course of a hearing in Ireland.

Eoin Cannon hits the high notes

EOIN CANNON IS A DUBLIN-BASED BARRISTER



A recent decision of the [Information Commissioner's Office \(ICO\)](#) in London has found that all notes on court file are considered personal data under Britain's *Data Protection Act*,

including notes written by the judge. The implication is that they may be sought as part of a data protection request.

While the decision is not binding on the Irish Data Protection Commissioner, it is certainly instructive as to the attitude that she may take should the issue arise in the course of a data protection request within her jurisdiction – and it is, on the face of it, consistent with data protection principles of this jurisdiction.

The decision in question was originally reported on in an article in *The Guardian* newspaper and involved a certain Mr Percival, who sought the notes of the

presiding judge in a tribunal to which he was subject, via a data protection request issued under the 1998 *Data Protection Act*. Percival had taken a constructive dismissal claim against a former employer, which was dismissed by Judge Ian Pritchard-Witts in 2013. Percival disagreed with the verdict,

which he felt did not fairly reflect the evidence before the tribunal, and to this end sought the notes of the judge in order to compare them to the decision.

In the [letter of the ICO](#) to Mr and Mrs Percival, which has been released publicly, a distinction was made between those notes that form part of the court file, and those that are personal handwritten notes retained by the judge.

In this instance, the court file is held by the Ministry for Justice (MoJ), which argued it should not have to forward on any handwritten notes of evidence taken by the judge that it held and, in doing so, sought to rely on three points:

AT A GLANCE

- The ICO determined that notes taken by a judge, once put in the court file, formed part of a structured filing system
- The ICO further found that the Ministry of Justice was a data controller once the notes were moved from the judge's control and put on the court file
- Therefore, as a data controller, the ministry had obligations in relation to the personal data it held, including disclosing the data held on the court file, should a request be made



IN ACCORDANCE WITH MCINTYRE, A JUDGE MAY BE SECURE IN THE KNOWLEDGE THAT THEIR PERSONAL NOTES TO BE HELD FOR USE IN WRITING JUDGMENTS ARE NOT TO BE MADE AVAILABLE BY WAY OF DATA PROTECTION REQUEST

- The notes of a judge did not form ‘a relevant filing system’,
- The MoJ was not a data controller as defined under the act, as the notes had originally been created by the judge, and therefore he was the controller, and
- In any event, the notes should not be filed.

The ICO determined that notes taken by the judge, once put in the court file, formed part of a structured filing system. The ICO found further that the MoJ was a data controller once the notes were moved from the judge’s control and put on the court file and, therefore, as a data controller, the MoJ had obligations in the normal course in relation to the personal data it held, including disclosing the data held on the court file, should a request be made.

Relevant filing system

The decision made by the ICO may be considered unfortunate in two respects.

The first is that it has yet to be published,

meaning that any academic argument relating to the decision is based on the letter that was sent to the Percivals by the ICO in explaining its decision.

The second is that, based on this letter, the explanation given as to the status of notes informally taken and retained by a judge is somewhat confusing. It would appear that the reason that the latter are regarded as not being data as per the act is that these ‘informal’ notes are presumed to not form part of a relevant filing system. The letter reads: “The ICO accepts that, in the majority of cases, handwritten judicial notes, recorded in a judge’s notebook and retained by the judge, are unlikely to form part of a structured filing system and therefore will not fall within the definition of ‘data’.”

This presumption is confusing, as the definition of a relevant filing system is open to an interpretation that could include many forms of judges’ notes, including those held on a personal computer. In this case, a relevant filing system was defined

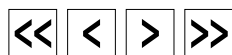
as “structured, either by reference to individuals or by reference to criteria relating to individuals, in such a way that specific information relating to a particular individual is readily accessible”.

What is of note here is that considerable weight was given to the case of *R (McIntyre) v Parole Board* in the letter to the Percivals, outlining the distinction made between notes that worked as a record of the proceedings and those that were taken for the purposes of making a judicial determination – the latter not being ‘data’ as described under the act: “They are notes made to enable the decision-making process. The notes were not considered to be personal data.”

Record of proceedings

The reasoning in *McIntyre* was that, due to there being an obligation on a chair of a parole board to make note of a parole-board hearing, as this was the one register of facts in a hearing, such notes constituted personal data under the *Data Protection Act*. Further reference was made

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9 Nov	ANNUAL INHOUSE & PUBLIC SECTOR CONFERENCE in collaboration with the In-house and Public Sector Committee	€150	€176	1.5 Regulatory, 2 M & PD Skills (by Group Study) and 2 General (by Group Study) 5.5 Total
9 Nov	LAW SOCIETY FINUAS NETWORK PRACTICE & REGULATION SYMPOSIUM – MANSION HOUSE, DUBLIN in collaboration with DSBA and Small Practice Network	€115 <i>(includes hot lunch and networking drinks reception)</i>		3.5 M & PD Skills and 3.5 Regulatory Matters –(Accounting and AML compliance) (by Group Study)
8/9 Dec & 19/20 Jan 2018 & 9/10 Feb 2018	PROPERTY TRANSACTIONS MASTERCLASS Attend 1, 2 or all 3 Modules There is a reduced fee of €1,600/€1300 for attending all three modules	€500 per module	€600 per module	CPD Hours per module: 10 Hours including 2 M & PD Skills
17 Nov	PRACTITIONER UPDATE CORK 2017 – Kingsley Hotel, Cork	€115 <i>(includes hot lunch and networking drinks reception)</i>		3 General, 1.5 M & PD Skills and 1.5 Regulatory Matters (Accounting and AML compliance) (by Group Study)
24 Nov	GENERAL PRACTICE UPDATE 2017, Hotel Kilkenny, Kilkenny	€115 <i>(includes hot lunch and networking drinks reception)</i>		4 General and 2 M & PD Skills (by Group Study)
24 Nov	ANNUAL FAMILY & CHILD LAW CONFERENCE in collaboration with the Family and Child Law Committee	€150	€176	4.5 General (by Group Study)
Starts 1 Dec	LAW SOCIETY SKILLNET CPD CERTIFICATE IN PROFESSIONAL EDUCATION Friday 1, Saturday 2, Friday 15 December 2017 Friday 12, Friday 26, Saturday 27 January 2018	€1,250	€1,450	This course will include general, M & PD Skills and eLearning CPD hours in both 2017 and 2018. For a full breakdown of the hours please review the timetable.
1/2 March 2018	ENGLISH & WELSH PROPERTY LAW AND PRACTICE	€441	€588	9 General (by Group Study)



THIS PRESUMPTION IS CONFUSING, AS THE DEFINITION OF A RELEVANT FILING SYSTEM IS OPEN TO AN INTERPRETATION THAT COULD INCLUDE MANY JUDGES' NOTES, INCLUDING THOSE HELD ON A PERSONAL COMPUTER

in *McIntyre* to the 1994 case *Regina v Parole Board ex parte Gittens*, where it was found that it was necessary to have a factual note of proceedings of a parole-board hearing, to be produced and relied upon in the course of a judicial review of the decision of the parole board, should it be necessary.

It was found by Mr Justice Cranston in *McIntyre* that: "As there is no audio or visual recording of the proceedings (and there is no reason for them to be recorded), then the full note which the chair makes of the evidence and the proceedings is the record of the proceedings ... a record of the proceedings and evidence before the panel may be essential if proceedings for judicial review are brought. But it can also be essential if the evidence given is relied on at a further hearing" (paragraph 20).

Further, at paragraph 23, an important distinction was made: "The notes constituting the record are quite distinct from notes taken by the chair for his or her own use or notes made by a judge or chair where there is an audio or visual recording of the proceedings. Such notes do not constitute the record. Nor do they constitute personal data. They are made by the judge or chair or panel member solely for the purpose of assisting in and in preparation for the reaching of the reasoned decision; they are not a record of the proceedings ... They are, in effect, notes made for the preparation of the judgment.

They are no different to a preliminary draft of a judgment."

There is certainly no doubt that there is a distinction being made here between notes of record and those personal notes made by a judge for their use in decision-making.

Unfortunate confusion


A side argument is also developed that, in the absence of another record, not to take a written record of facts would be a clear bar to the right to appeal or, in this case, judicial review – a point that may arise where there was no digital audio recording, in a temporary court, or at an emergency hearing. Indeed, this argument may apply in any hearing where a record is not made.

Therefore, in accordance with *McIntyre*, a judge may be secure in the knowledge that their personal notes to be held for the use in writing judgments are not to be made available by way of data protection request. What is clear from the Percival decision is that any notes put on the court file are a matter of record and will be subject to the same rules as any in relation to a data-protection request.

The question is muddled by the reference in the letter sent to the Percivals, which indicates that, should the notes held be deemed to be stored in a 'relevant filing system', they could be subject to a data protection request. However, those

handwritten notes held by a judge are unlikely to be held in such a system.

This adds an unfortunate confusion, and it is suggested that it is a misapplication of the law as is outlined in *McIntyre*. It would be a very unfair encroachment on the judicial role, constricting the room for drafting judgments and opening a gap for complainants to look behind a judgment – something that is not being argued for here.

With that in mind, it is apt to quote Mr Justice Cranston in *McIntyre*, who left the reader in no doubt as the importance of personal notes for judges in the course of their drafting a judgment: "Their absolute confidentiality is integral to the independent and impartial decision-making function of a judge or tribunal or panel member, and the proper administration of justice." 

LOOK IT UP

CASES:

- *R (McIntyre) v Parole Board* [2013] EWHC 1969 (Admin)
- *Regina v Parole Board ex parte Gittens* (3 February 1994, *Times Law Reports QB*D)

LEGISLATION:

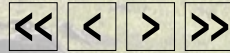
- *Data Protection Act 1998* (Britain)

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The long and winding road

A recent Supreme Court judgment means that it is not necessary to establish *mens rea* in a prosecution for careless driving resulting in death or serious bodily harm.

Ciara Hallinan explores the implications

CIARA HALLINAN IS A SOLICITOR WITH [MICHAEL J STAINES & CO.](#)
SHE WISHES TO THANK DAVID STAUNTON BL FOR REVIEWING THE ARTICLE



In *People (DPP) v O'Shea* (15 June 2017; IESC 41), the Supreme Court delivered an important judgment that seeks to clarify what the

prosecution is required to prove in an action for careless driving causing death or serious bodily harm.

Arising from the decision of the Court of Appeal in the matter, questions arose as to whether the prosecution was required to prove *mens rea* on the part of an accused, thereby demonstrating intent or recklessness on their part.

As the offence of careless driving *simpliciter* (that is, without having caused death or serious bodily harm) is triable summarily, clarity as to the constituent elements of the offence is highly important, given the fact that there are many thousands of these prosecutions each year.

The case arose from a tragic incident on 9 March 2013. The deceased, while standing behind a JCB, was struck and killed by a car driven by the accused, who was 71 years old at the time. The deceased was involved in directing construction

traffic at the site of roadworks. There was nothing noteworthy about the driving of the accused – there was no evidence of speed, nor was he under the influence of any intoxicants. Furthermore, his car was completely roadworthy.

The only contributory factors were that there had been an absence of any warning signage, that the accused's vision had been very limited because of the strong morning sunlight in his eyes, and that he had slowed down for this reason. The accused asserted that he simply did not see either the JCB or the deceased, because the sun was behind them, limiting his vision.

The accused was convicted

AT A GLANCE

- The Supreme Court has ruled that, just because death or serious bodily harm results in a careless driving case, this does not mean that a conviction for careless driving is the same as that of dangerous driving resulting in serious bodily harm or death
- A careless driver is obviously less culpable than a dangerous driver and, therefore, the appropriate sentence to be imposed remains a matter for the court, having regard to all the circumstances



PIC SHUTTERSTOCK

following a trial before the Naas Circuit Court. He was fined €5,000 and disqualified from driving for four years. The court additionally ordered that he re-sit his driving test before applying for a new licence.

The accused appealed the conviction to the Court of Appeal. The accused, among other things, sought an order quashing his conviction on the basis that the jury had been misdirected by the trial judge when they were informed that the offence was one of strict

liability and that the prosecution did not need to prove any intention or recklessness on the part of the accused.

Grounds of appeal

The appellant sought to appeal on six grounds:

- The trial judge erred in law in directing that the offence of careless driving causing death was an offence of strict liability,
- In directing that it was classified as a

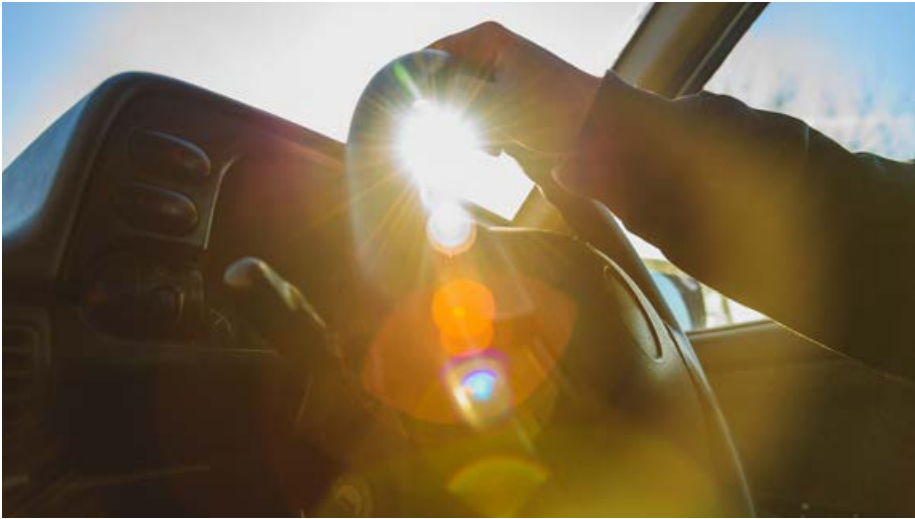
strict liability offence, the judge erred in not directing the jury as to the essential ingredients to any offence – that is, that of *mens rea*,

- The judge erred in law by indicating to the jury that the State was not required to prove that the actions of the accused on the date were either intentional or reckless,
- The judge erred in law in not directing the jury as to the concept of intention or the concept of recklessness,

“THE MAIN COMPONENT OF THE OFFENCE IS A ‘LACK OF THE CARE AND ATTENTION THAT A REASONABLY PRUDENT DRIVER WOULD GIVE WHEN DRIVING IN A PUBLIC PLACE, HAVING REGARD TO THE CIRCUMSTANCES AS THEY ACTUALLY EXIST’



PIC: SHUTTERSTOCK



- By not so directing the jury, the appellant submitted that the onus of proof, which at all times rests with the prosecution, was cast back onto the defence, and
- The judge erred in law at two junctures by informing the jury that they must not be concerned as to the consequences of a guilty verdict. The appellant submitted that the judge should have achieved a balance between any mention of a possible verdict, or the consequences thereof, by directing that they should not be concerned if they were to adjudicate the accused person not guilty.

The offence of careless driving resulting in serious harm or death is a relatively new offence and was created by section 4 of the *Road Traffic (No 2) Act 2011*. This provides, at section 52, that:

- “52(1) A person shall not drive a vehicle in a public place without due care and attention,
- A person who contravenes subsection (1) commits an offence and
- (a) in case the contravention causes death or serious bodily harm to another person, he or she is liable on conviction on indictment

to imprisonment for a term not exceeding two years or to a fine not exceeding €10,000 or to both.”

All save one of the six grounds of appeal submitted by the appellant essentially involved criticism of the trial judge’s charge to the jury, and in particular his categorisation of the offence in question as one of ‘strict liability’ and the absence in his charge of any reference to the essential components of *mens rea* – namely, the offence being committed intentionally or recklessly as being necessary for there to be blameworthiness attaching to an accused person.

The Court of Appeal found that the offence of careless driving resulting in death was not one of strict liability and ordered a retrial. In doing so, Mahon J, who delivered an *ex tempore* judgment, relied on an excerpt from Piers’s *Road Traffic Annotated Legislation 1961-2011* that suggested that careless driving required proof of a higher degree of culpability. Given that the offence is indictable, the Court of Appeal determined that proof of *mens rea* of an accused is a necessary ingredient of the offence in the same way that it is a necessary ingredient for any indictable offence.

The court made reference to the fact that, in this specific case, the jury would need to be satisfied that the accused acted intentionally or the recklessly in his driving.

Appeal to the Supreme Court

The DPP sought and was granted leave by the Supreme Court to appeal the decision of the Court of Appeal.

In seeking leave, the DPP, among other things, argued that the test for careless driving had always been whether the driver, objectively speaking, deviated from or failed to meet the standard of care required in driving. While the prosecution must prove those matters beyond a reasonable doubt, there had never been a requirement to prove deliberate or reckless conduct, nor intentional disregard for proper standards of driving.

The DPP argued that clarity about the constituent elements of the offence was one of general public importance, and would have a significant effect on the prosecution of the offence in general.

Further, it was argued that the test for reckless driving was an objective one – that culpability was a failure to satisfy an objective standard of driving – and, lastly, that culpability did not necessarily require intent, or recklessness, or intentional disregard for the accepted and appropriate standard of driving.

The Supreme Court granted leave to the DPP to appeal and, in doing so, identified the questions to be dealt with as being the components of the offence and the proofs required to sustain a conviction under section 52.

In determining the matter, O’Malley J, delivering one of the judgments of the Supreme Court (Clarke J also delivered a [concurring judgment](#)), held that careless driving clearly comes below dangerous driving on the spectrum, even where the consequences may be the same – namely,

QUESTIONS AROSE AS TO WHETHER THE PROSECUTION WAS REQUIRED TO PROVE *MENS REA* ON THE PART OF AN ACCUSED, THEREBY DEMONSTRATING INTENT OR RECKLESSNESS ON THEIR PART



death or serious bodily harm – noting that section 52 makes it an offence to drive “without due care and attention”. O’Malley J noted that this wording did not make it possible to read in a requirement to prove intention or recklessness. The main component of the offence is a “lack of the care and attention that a reasonably prudent driver would give when driving in a public place, having regard to the circumstances as they actually exist”.

For completeness, the DPP did, however, agree that the trial judge had erred in charging the jury that the offence was one of strict liability – and the Supreme Court upheld the appeal of the accused that the conviction should be quashed on the basis of the jury being misdirected on that issue.

Current position

Given that the Supreme Court has now ruled that it is not necessary to establish *mens rea* in a prosecution for careless driving resulting




THE COURT OF APPEAL FOUND THAT THE OFFENCE OF CARELESS DRIVING RESULTING IN DEATH WAS NOT ONE OF STRICT LIABILITY AND ORDERED A RETRIAL

in death or serious bodily harm, does this mean that a ‘blameless’ driver may be liable to prosecution?

O’Malley J specifically addressed this proposition, and noted that logic dictates that a driver who drives “without due care and attention” cannot be regarded as “blameless” if serious bodily harm or death results.

O’Malley J further held that no culpability may attach to a driver who caused an accident “if that driver satisfied the standard that a reasonably competent driver would adhere

to in those circumstances”.

The court highlighted that, just because death or serious bodily harm results in a careless driving case, this does not mean that a conviction for careless driving is the same as that of dangerous driving resulting in serious bodily harm or death. A careless driver is obviously less culpable than a dangerous driver and, therefore, the appropriate sentence to be imposed remains a matter for the court, having regard to all the circumstances. 

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Cleaning up

When it comes to investing in property developments or acquisitions, environmental due diligence can save your client an unpleasant shock and much expense. **Kevin Cleary** gets down and dirty

KEVIN CLEARY IS OPERATIONS DIRECTOR WITH [VERDE ENVIRONMENTAL CONSULTANTS LIMITED](#)



nobody likes unpleasant surprises when buying commercial property. Neither you nor your client wants to lose profit on the deal. Yet a nasty shock – and the risk of having the profit on a purchase eaten up by environmental liabilities such as unforeseen clean-up costs – is exactly the kind of gamble property buyers make when they neglect or leave it too late to

do an environmental due diligence (EDD).

The practice of EDD originated in the United States in the 1970s. It's based on the principle that, if land is contaminated, the owner must clean it up. Critically, though, US courts have decreed that buyers or leasers of property can sometimes be on the hook for land remediation – even if it was a prior owner who caused the contamination. The news has been a cold shower for companies acquiring property, and has fuelled the growth of EDD as part of property transactions.

The story is slightly different in Ireland, where the EDD industry

has grown out of development. Environmental regulations here are more 'polluter pays' in principle, but there are legal pathways for a lender and a non-polluting owner/operator to become liable for contamination.

In Ireland, EDD has tended to focus entirely on determining whether contamination has occurred. Although contaminated land evaluation is typically the main purpose, it ought not to be the sole objective of EDD. A comprehensive approach to EDD should also include

a more thorough assessment of many environmental aspects, with associated liability concerns, for example:

- The operational practices of the current and historical site occupier,
- The presence of asbestos in buildings,
- The condition of the buildings,
- Regulatory compliance with various licence or permit conditions,
- Radon gas, and
- Impact from neighbouring sites.

≡ AT A GLANCE

- Environmental due diligence is based on the principle that, if land is contaminated, the owner must clean it up
- In Ireland, there are legal pathways for a lender and a non-polluting owner/operator to become liable for contamination
- Buyers need to know the condition of a site they're purchasing and must price the risk of clean-up costs into their purchase price



LIABILITIES CAN RESULT IN REMEDIATION COSTS RANGING FROM €10,000 TO OVER €1 MILLION, TRANSACTION DELAYS AND, IN SOME CASES, THE COLLAPSE OF THE DEAL

PICTURE: SHUTTERSTOCK

Why is it important?

During the industrial revolution, industry was heavily furnace-based. The waste residue from burning activities was essentially dumped and used as landfill along, for example, the Liffey, Lee and Lagan rivers, and the inner parts of Dublin, Cork and Belfast, respectively.

Additionally, and prior to the 1990s in Ireland, it was common practice for commercial and industrial operations to bury or burn waste on-site, which included hazardous waste. With this in mind, buyers need to know the conditions of a site they're buying. They must price the risk of clean-up costs into their purchase price. Otherwise they're taking a shot in the dark.

We have come across many examples of potential money-pits in the course of completing EDD for clients on properties across Ireland. EDD has identified issues such as illegal waste-disposal sites in Dublin, Meath and Cork; buried asbestos in Limerick, Clare and Cork; burning grounds in Mayo and Kerry; leaking underground chemical

storage tanks at numerous sites across Ireland; and a variety of other environmental liabilities. These liabilities can result in remediation costs ranging from €10,000 to over €1 million, transaction delays, and, in some cases, the collapse of the deal.

So, before your client buys a site, they need to know what's on the site. Has the site operated in compliance with environmental regulations? What's buried underneath? What must be done with any waste material uncovered, and how much might it cost to address a problem with contaminants?

A classic example as to when EDD is an essential part of the land or property acquisition process is where a client looks to redevelop in Dublin or on another city-centre site around the country. Say it wants to put in a car park as part of its development, and space is at a premium – better, then, that the development includes underground basements for parking, because the client is trying to squeeze in the optimum number of offices or apartments on the site.

By digging into the ground for basements,

your client will likely unearth all kinds of historical waste and debris. It is legally required to dispose of that material off-site at an appropriately licenced/permitted waste facility. Some of the material may be classified as hazardous and, as there are no facilities that accept hazardous industrial waste in Ireland, it will need to be ferried to facilities in northern Europe. A multi-million euro bill can accrue, as has been the case on numerous redevelopment sites along the Liffey. The final cost depends on the volume and composition of the soil and the site where it can be sent.

EDD surveys

Here's how the EDD survey process works. It's typically conducted in phases, which are based on international guidelines. The EDD will include desk-based research, including analysis of geology, ground conditions under the site (trying to identify sensitive environmental receptors, such as rivers or wetlands), and looking at past activities to build up a picture of historical operations



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on the site. Are there residential homes near the site's boundary? Who could be affected if there were an environmental problem from this site?

Then you do a site visit. If possible, interviews are undertaken with the facility manager or long-standing operations staff. Typically, there is also consultation with regulatory staff or the relevant local authority. What were the site's waste disposal practices? What chemicals are, or were, used and how are/were they stored on-site? Was asbestos used as a building material or for insulation purposes? Did they comply with their environmental permits or licences?

You need to identify if there are any fuel storage areas. Are the fuel storage tanks bundled – in other words is there protection that, if a leak happened, it was contained? Is there evidence of staining on the ground? A small drip of fuel oil over 20 years can create a significant volume of contaminated soil.

It is essential that a client requiring EDD is aware of the scope of work to ensure that all relevant risks are assessed. Rather than falling back on the same old plan used for previous projects, the plan should be tailored to the particular transaction and facility or company being purchased. For example, asbestos should be considered in relation to a site that will ultimately be renovated or demolished.

The risk to maintenance workers must also be considered. While an assessment of these aspects would not serve as a substitute for a comprehensive asbestos survey, it would provide a general indication of potential issues. Ignoring these aspects could result in



AS THE POET AND ORATOR GEORGE HERBERT NOTED AS FAR BACK AS THE 17TH CENTURY: 'THE BUYER NEEDS A HUNDRED EYES; THE SELLER NOT ONE'



PICTURE: SHUTTERSTOCK

unexpected cost and liability implications in the future.


The fallout from not doing an EDD can be significant, not to mention the cost to a client's reputation if it becomes embroiled in cleaning up a site. In 2005, for example, the Environmental Protection Agency refused to grant Roadstone approval for a legal landfill on a site the company owned in Blessington, Co Wicklow. The ruling left Roadstone with a sizeable clean-up bill, including a €25,000 annual licence charge, and a fee of €100 for disposal of each tonne of illegal waste. Over 200,000 tonnes of illegal waste were excavated. You can do the maths.

Frequently, your clients' sites will be in

residential settings and, so, knowledge is everything. You can bury your head in the sand, ignoring issues, gambling that you'll deal with them as they arise, or you can plan for challenges and understand what you're going to encounter. As the poet and orator George Herbert noted as far back as the 17th century: "The buyer needs a hundred eyes; the seller not one."

Timing is also critical. It's no use doing an EDD as an afterthought, as a box-ticking exercise. It is best to do an EDD concurrently with other investigations or due diligence enquiries like, for example, a building survey or a title-deeds search. If you leave it to the last minute, you lose the opportunity to use it as a key negotiating tool.

There is, after all, a silver lining: if you're armed with an EDD that catalogues contamination on a site, it presents an opportunity for negotiation. It can be a powerful bargaining chip. It can help to get a reduction on the price of the property deal. It also presents the opportunity to walk away from the deal, knowing that you don't want this liability – that you're not willing to carry the can for historical contamination to the site.

There is a compelling case for EDD. Without it, and failing to do it early in the purchase of a site, you're missing a trick. And you could end up costing your client a lot of undue expense. 

Q FOCAL POINT

MISCONCEPTIONS

'You don't need to do it'

Without an EDD, your client can be exposing themselves to a costly clean-up job.

'It's an expensive process'

Depending on the complexity, an EDD will cost from €2,500 to €20,000. The range in cost is subject to the complexity of the site and the deal, sensitivity of location, and the volume of material to be reviewed.

'It will delay the project'

It won't, if it's started with enough lead-time. It typically takes two weeks to a month to conduct an EDD, and it can be done alongside other property due-diligence work. EDD can, in fact, speed up the process by identifying issues early so that they can be resolved.

'We can do it at the end'

It takes time to do an EDD properly.



SUCCESSION ACT 1965 AND RELATED LEGISLATION: A COMMENTARY

Brian E Spierin. Bloomsbury Professional (2017), www.bloomsburyprofessional.com. ISBN: 978-1-7845-180-73. Price: €225.

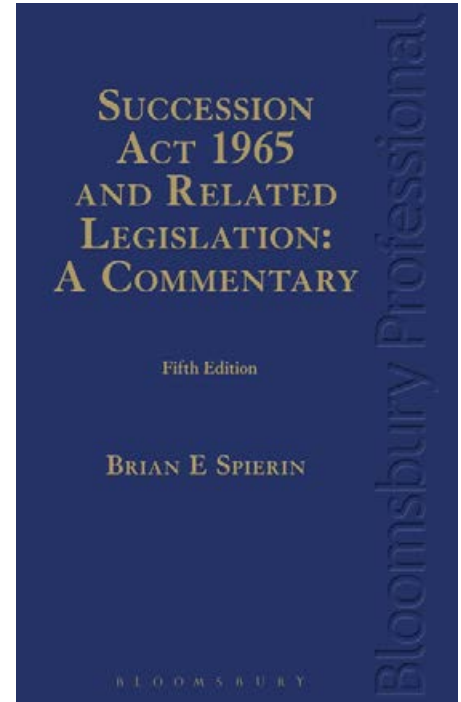
The *Succession Act 1965* has been amended to such an extent over the past five decades that a practitioner is simply not safe to open the original statute when seeking to answer a question. Usefully, the Law Reform Commission has included the act in its revised acts consolidation work. More useful again is seeking the answer to your question in Brian Spierin SC's book.

The newly published fifth edition of this tome follows the rubric of the others in charting the *Succession Act*, as amended, on a section-by-section basis. Unlike looking at bare statute, even in consolidated form, the book is an invaluable resource, with detailed analysis and commentary. A practitioner using the book need never ask what something 'really' means, because of the depth of the author's analysis.

When the fourth edition was published in 2011, the more recent amending statutes, particularly the *Land and Conveyancing Law Reform Act 2009*, together with the *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010*, were in their infancy.

Now well-established features of the legislative landscape, the book incorporates assessment of these amendments in a thorough and considered manner. Though not part of the *Succession Act*, helpful guidance is provided in relation to the rights of qualified cohabitants on the death of their cohabitee deriving from the 2010 act.

Naturally, since the last edition, there have been a number of important decisions from the courts. This is reflected in the new edition, where observations and analysis are provided in respect of significant cases such as *Re: F Deceased (S1 v PR1 & PR2)* (whether time limits are triggered by a limited grant), *Brennan v O'Donnell* (revival of will by republication), *Cavey v Cavey* (time limits in promissory estoppel actions), *Laaser v Earls* (execution by mark), *McCormack v Duff* (non-revocation of Irish



will by foreign will), *Thornton v Timlin* and (*Mullen Jr v Mullen* (extrinsic evidence), *Nevin v Nevin* (unworthiness to succeed), and *H v H* (foreign divorces and spousal status).

While the book is updated in significant respects, practitioners who have the fourth edition may consider that they would prefer to wait for a subsequent edition before reinvesting. However, even those practitioners, if they have anything remaining in their book budget, should consider adding the fifth edition to their library.

Any practitioner in the field of succession law who has never possessed an edition of this book, or who possesses any of the older editions, really should consider the fifth edition to be an essential purchase for their Christmas stocking.

Richard Hammond is partner in Mallow law firm Hammond Good.



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PROCURING SUCCESSFUL MEGA-PROJECTS

Louise Hart. Gower Publishing (2015), www.routledge.com. ISBN: 978-1-4724-550-86. Price: Stg£85.

Louise Hart's book, *Procuring Successful Mega-Projects*, is both comprehensive and eminently readable. Hart is a former project director and an independent consultant advising on procurement and major projects. Subtitled as a guide to establishing major government contracts "without ending up in court", the title itself will be enough to spark the interest of many lawyers.

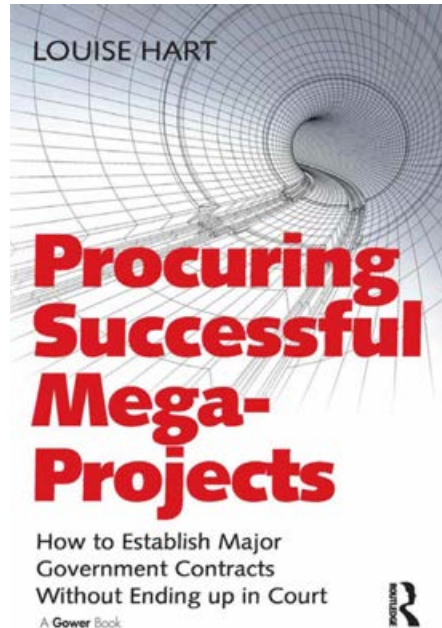
While the serious legal, commercial, and social consequences that can stem from shoddy procurement practices will be known by many, Hart gives real-life examples that demand the reader's attention. She describes how the British Department for Transport spent £1.9 million on the procurement process for the InterCity West Coast franchise. This was followed by a bill for £2.7 million on professional fees arising from defending a judicial review action and a further £4.3 million on various public inquiries.

The book, however, is much more than just a tool for avoiding litigation and is likely to have more relevance for project managers and other decision-makers involved in establishing mega-contracts, rather than lawyers.

The book is divided into five parts. The first substantive section documents the various stages in contract development in a logical and accessible way. Lawyers will likely find the chapter on 'boilerplate clauses' particularly useful, as Hart demonstrates that, for mega-projects, the 'standard form' is never entirely appropriate.

The second part covers the various stakeholders involved, with separate chapters on the 'agency' and the 'minister', and an entire chapter on dealing with 'the lawyers'.

Part three is dedicated to the procurement process itself and covers the tricky issues of pre-tender engagement, pre-qualification, and the selection of bidders, with plenty of practical tips drawn from the author's wealth of experience. She reminds readers that, while having a fair process and following it are two-thirds of avoiding legal action, the remainder is being able to show evidence that you followed that process. Chapters are dedicated to the difficult issue of tender



evaluation and on negotiating the final contract. The final section, 'Finishing in style', covers the key tasks involved in handing over a contract.

Hart shares her 'top-ten lessons learned', which include being clear on the objectives, ensuring a proper consultation, and the importance of designing the right procurement process. The appendix sets out brief highlights of the principal case studies used in the book.

The author's 30 years of experience in dealing with large contracts in both the public and private sectors permeate the book. The examples peppered throughout are drawn from Hart's own experience, as well as from other real-life case studies on high-profile projects that did not go entirely to plan. These examples add context and make for an interesting read.

While this is not a textbook on public procurement law, it is a fascinating insight into the mechanics of public procurement and provides a fresh perspective on the process.

Jessica Egan is an EU, competition and procurement solicitor at A&L Goodbody.

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PROFESSIONAL INDEMNITY INSURANCE RENEWAL

The mandatory professional indemnity insurance (PII) renewal date for all firms is 1 December 2017. This date is not negotiable. All cover under the current indemnity period will expire on 30 November 2017.

All firms must ensure that confirmation of their PII cover is provided to the Society within three working days of 1 December 2017, including those firms with variable renewal dates. Therefore, confirmation of cover in the designated form must be provided to the Society on or before close of business on Wednesday 6 December 2017.

Confirmation of cover should be provided by your broker through the Society's online PII confirmation system. Such confirmation must include your policy number, and confirmation of cover cannot be provided until the policy is actually in place. As your firm has a statutory obligation to ensure such confirmation of cover is provided to the Society on or before Wednesday 6 December 2017, you are responsible for ensuring that your broker provides the Society with confirmation of cover by that date. You should also ensure that your broker has familiarised themselves with the online confirmation system and has the necessary information to confirm cover online (such as their login and password) in advance of 6 December 2017.

It is noted that some firms who have confirmed PII cover to the Society during 2017 have a coverage period that extends past 30 November 2017. Such firms are still required to reconfirm cover for 2017/2018 with the Society by 6 December 2017. Your firm will not be reflected as having PII in place on the Society's 'Find a firm' online search facility until the Society has received the required online confirmation of cover.

Renewal resources

The guide to renewal for the 2017/2018 indemnity period was published on the Society's website

on 1 November 2017 to assist the profession with renewal. The guide includes information such as tips for renewal, important points to note, and a guide to insurers and brokers. This guide will be updated frequently with new information received by the Society, in particular with regard to what insurers will be in the market in the next indemnity period.

Renewal resources for the 2017/18 indemnity period are available to download from the Society's website at www.lawsociety.ie/PII and include the common proposal form, PII regulations and minimum terms and conditions, *Participating Insurers Agreement*, and relevant PII practice notes. The information available is frequently updated as more documentation becomes available.

Financial strength rating

The Society has introduced a new minimum financial strength rating requirement from a recognised rating agency for all participating insurers in 2017/18 of BBB (S&P, Fitch) or equivalent. The recognised rating agencies are Standard & Poor's, Fitch, AM Best, and Moody's. The Society also has the power to waive the minimum financial rating requirement for participating insurers, subject to such terms and conditions as the Society deems fit, such as provision of a suitable parental guarantee from a rated parent company. It should be noted that all participating insurers in the market are permitted to write insurance in this jurisdiction under the supervision of the Central Bank. The Society is not responsible for policing the financial stability of any insurer. The Society does not vet, approve, or regulate insurers.

Notification of claims

All claims made against solicitors' firms and circumstances that may give rise to such a claim should be notified to the firm's insurer as soon as possible. In particular, claims made between 1 December 2016

and 30 November 2017 (both dates inclusive) should be notified by the firm to their insurer by 30 November 2017. It is proper practice for firms to notify insurers of claims or circumstances during the year as they arise, not at the end of the indemnity period. Notifying all claims and circumstances at the end of the indemnity period is referred to as 'laundry listing' by insurers and is not looked on favourably. Firms should also ensure that their claims and circumstances notifications meet the notifications requirements set out in the insurance policy terms and conditions.

The minimum terms and conditions for PII were amended in the 2011 PII regulations, and this change is retained in the minimum terms and conditions for 2017/18, to permit firms to report claims, or circumstances of which they are aware prior to expiry of cover to their insurer, within three working days immediately following the end of the coverage period. Therefore, a three-working-day grace period from 30 November 2017 is in place with regard to notification of claims and circumstances to your insurer.

Quotes

Insurers are required to leave quotes to firms open for a period of not less than ten working days. This requirement was introduced in the 2012/13 indemnity period and remains in place for the 2017/18 indemnity period.

Run-off amendments

Amendments were made to the Run-off Fund under the 2016/17 regulations, which will come into effect on 1 December 2017, to increase the level of compliance of firms in the Run-off Fund with the Special Purpose Fund Manager with regard to claims and membership of the Run-off Fund. Under these new provisions, three levels of run-off cover have been introduced, with effect from 1 December 2017, depending on the com-

pliance of run-off firms:

- Compliant run-off firms will have cover in the Run-off Fund with the same minimum terms and conditions as those that exist in the market,
- Non-compliant run-off firms will have reduced cover in the Run-off Fund with the same minimum terms and conditions as those that exist in the market, with the exception that there will be no cover for claims by financial institutions,
- ARP run-off firms will continue to have cover in the Run-off Fund at the same level that exist in the ARP, with aggregate cover and no cover for claims by financial institutions.

Further information on changes to run-off cover provisions can be found at www.lawsociety.ie/PII.

Run-off Fund

The Run-off Fund provides run-off cover for firms ceasing practice that have renewed their PII for the current indemnity period, subject to meeting eligibility criteria, including that there is no succeeding practice in respect of the firm. Any firm intending to cease practice after 30 November 2017 is required to renew cover for the 2017/18 indemnity period.

Any applications to the Run-off Fund for cover must be made directly to the Special Purpose Fund Manager, not the Society. Further information on run-off cover and succeeding practices, including the contact details of the Special Purpose Fund Manager, can be found at www.lawsociety.ie/PII.

PII helpline

The Society continues to operate the PII Helpline to assist firms in dealing with PII queries. The Law Society's PII helpline is available from Monday to Friday, 10am to 4pm, to assist firms with PII queries – tel: 01 879 8707, email piihelp@lawsociety.ie.



FAMILY AND CHILD LAW COMMITTEE

REQUIREMENTS FOR MARRIAGE CERTIFICATES UNDER THE *CIRCUIT COURT RULES (FAMILY LAW)*

Practitioners should be aware of the provisions of rule 3(4) of the *Circuit Court Rules (Family Law) 2017*, which came into operation on 14 June 2017 and which provides as follows: “In any proceedings which concern the marriage of any person, an

original marriage certificate shall be produced. Where the certificate is not in Irish or English, the certificate, duly notarised, shall be produced together with a translation of that certificate into Irish or English, which translation shall be verified by the translator

on oath or affidavit.”

It should be noted that the only new requirement with regard to such certificates that are not in Irish or English relate to the translation. An affidavit must now be produced in which the translator swears that the

translation is a correct translation or the translator must swear to this in court.

The affidavit does not require to be sworn before a notary public, notwithstanding the reference to the words ‘duly notarised’.

GUIDANCE AND ETHICS COMMITTEE

TEN STEPS TO ACHIEVING YOUR GOALS

- 1) Success is the progressive realisation of a worthy goal. To be truly successful, you have to set goals.
- 2) Choose goals that are important to you and be clear on why you want to achieve them. Write down a vision of what you want your life to look like when you achieve the goal. For instance, if it's not having to worry about cash flow constantly, how would feel for you? How would it change your life? What is behind that goal that is important to you? The prospect of achieving it should make you feel good – you'll need that when things get tough – and, if you're doing it right, they inevitably will. Write this down and make it as vivid for yourself as possible. Don't worry about having this perfect at the start; you can refine it as you go along. But don't start without writing down the reason why you're doing it all in the first place.
- 3) Set ‘SMART’ goals. Your goals should be Specific, Measurable, Achievable, Results-focused and Time-defined. And, above all, they must be written down. For instance, improving cash flow isn't a SMART goal. But if you need €30,000 a month to cover everything, setting a goal to have ‘fees of €30,000 transferred consistently each month by [chosen date]’ can be a SMART goal.
- 4) Set ‘stretch goals’. Don't play too small. It's easy to set SMART goals that you can realise comfortably but that don't challenge you and move you forward towards why you are doing all of this in the first place. So set goals that stretch you and push you out of your comfort zone. SMART goals should be achievable, but they should also stretch you to go further than you would otherwise.
- 5) Have long-term goals, medium-term goals and short-term goals. Big picture, long-term goals are great and important, but they can seem too abstract and unattainable on their own. So set medium-term goals that lead in the direction of the long-term goal and set short-term goals that build to the medium-term ones. The best short term time-frame is 90 days – 12 weeks. (Read *The 12 Week Year* by Brian Moran and Michael Lennington.)
- 6) Break what you need to do to achieve your goal down into steps. Identify all of the elements that you need to have in place to realise your goal and then identify the actions that you need to take to bring each element about. Prioritise these actions and list them into a series of steps, with the first step as most important.
- 7) For example, if you want turnover of €30,000 a month, identify each practice area that can bring you each part of this – write down how much from each. Identify what matters you need in each practice area to give you that turnover. How many files of what type of matter? How long will each matter take to produce the turnover you require? Identify where this work might come from. What will you need to do to get it? Working back from your goal in this way, you can see step by step what you need to do to make it happen and you can plan the actions that you need to take in sequence to realise it.
- 8) Then just start with the first step and keep working on it until you have accomplished it. Don't quit or allow yourself to be distracted by something novel or more interesting. Consistent implementation of a carefully thought-out plan designed to achieve an important goal is difficult, takes hard work, and can get boring. This is where you need the clear vision identified at step 2 above. Write that down at the start, develop it as you go along, and refer back to it when you get disheartened.
- 9) Remember that you don't have to do everything required to achieve your goal – in fact, you shouldn't. You should only be doing the work that you can bring greatest value from. Always consider whether you are the best person to be doing any particular task required by your plan and delegate and outsource accordingly. Leverage the skills and resources of others. Look at sites like www.upwork.com.
- 10) Review your progress regularly and review your goals at the same time. See what is working and what isn't. Adjust your plan accordingly, always with a view to the goal. And when you realise your goal (including interim goals on the journey towards your main goal), take some time out to celebrate and congratulate yourself. Success is the progressive realisation of a worthy goal; it's a process, not an event. Take time to enjoy it along the way.



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 Michael O'Neill, a solicitor previously practising as Michael O'Neill at Kingscourt, 33 South Main Street, Naas, Co Kildare, and in the matter of the *Solicitors Acts 1954-2011* [2842/DT71/15; 2842/DT79/15; and High Court record 2017 no 61 SA]

Law Society of Ireland (applicant) Michael O'Neill (respondent solicitor)

On 2 March 2017, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- 1) Failed to keep record books of account, in breach of regulation 12 of the *Solicitors Accounts Regulations*, thereby making it difficult to ascertain the true position of client funds in the practice,
- 2) Allowed a deficit of client funds totalling €521,142 as of 31 May 2014 to arise in his practice,
- 3) Made round-sum transfers in the client account on a regular basis (207 transfers in a two-year period) purportedly as fees, but failed to post any fee notes in the two year period,
- 4) Failed to ensure there was furnished to the Society a closing accountant's report, as required by regulation 26(2) of the *Solicitors Accounts Regulations* in a timely manner or at all, having ceased practice on 4 August 2014.

The tribunal ordered that the matters be sent forward to the High Court and, in High Court record 2017 no 61 SA on 17 July 2017, the High Court ordered that:

- 1) The respondent solicitor is not a fit person to be a member of the solicitors' profession,

- 2) The name of the respondent solicitor shall be struck from the Roll of Solicitors,
- 3) The Law Society recover the costs of the proceedings and the costs of the proceedings before the Solicitors Disciplinary Tribunal, to include witness expenses when taxed or ascertained.

In the matter of Michael O'Neill, a solicitor previously practising as Michael O'Neill at Kingscourt, 33 South Main Street, Naas, Co Kildare, and in the matter of the *Solicitors Acts 1954-2011* [2842/DT37/14 and High Court record 2014 no 153 SA]
Law Society of Ireland (applicant) Michael O'Neill (respondent solicitor)

On 28 October 2014, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of professional misconduct in that he:

- 1) Failed to furnish to the Society an accountant's report for the year ended 31 December 2012 within six months of that date, in breach of regulation 21(1) of the *Solicitors Accounts Regulations 2001* (SI 421 of 2001),
- 2) Through his conduct, showed disregard for his statutory obligation to comply with the *Solicitors Accounts Regulations* and showed disregard for the Society's statutory obligation to monitor compliance with the regulations for the protection of clients and the public.

The tribunal referred this matter forward to the High Court with a recommendation that the respondent solicitor stand suspended from practice until such time as his accountant's report for the year ended 31 December 2012 was filed with the Society.

This matter came before the High Court on 17 July 2017, and the High Court noted the findings of misconduct and, having made a strike-off order (in the proceedings High Court record 2017 no 61 SA on 17 July 2017), made no further order in this matter.

In the matter of Paul Lambert, a former solicitor, previously practising as Merrion Legal, Butlers Court, 77 Sir John Rogerson's Quay, Dublin 2, and in the matter of an application by the Law Society of Ireland to the Solicitors Disciplinary Tribunal, and in the matter of the *Solicitors Acts 1954-2011* [8876/DT119/14]

Law Society of Ireland (applicant) Paul Lambert (respondent former solicitor)

On 25 July 2017, the Solicitors Disciplinary Tribunal found the respondent former solicitor guilty of professional misconduct in his practice as a solicitor in that he:

- 1) Failed to respond to the Society's letters of 7 November 2013, 25 November 2013, and 6 December 2013 within the time provided, in a timely manner, or at all,
- 2) Failed to comply with the direction made by the Complaints and Client Relations Committee on 12 December 2013 that he make a contribution of €400 towards the costs of the Society.

The tribunal ordered that the respondent former solicitor:

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

The solicitor's name was struck off the Roll of Solicitors by order of the High Court on 17 July 2017 in proceedings 2015 no 5 SA.

In the matter of John A Tobin, solicitor, practising as John A Tobin Solicitors, Level 3 Cornmarket, Robert Street, Limerick, and in the matter of an application by the Law Society of Ireland to the Solicitors Disciplinary Tribunal [4679/DT42/12; 4679/DT50/12; 4679/DT43/12; 4679/DT44/12; 4679/DT45/12; 4679/DT46/12; 4679/DT47/12; 4679/DT48/12; 4679/DT49/12, and High Court record 2013 no 104 SA]

Law Society of Ireland (applicant) John A Tobin (respondent solicitor)

On 18 June 2013, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

4679/DT42/12

- 1) Failed to comply with part or all of his undertaking dated 8 December 2003,
- 2) Failed to respond, either at all or in a timely manner, to correspondence from the complainant,
- 3) Failed to respond, either at all or in a timely manner, to correspondence from the Society,
- 4) Misrepresented to the bank, under cover letter dated 21 October 2008, the position regarding the registration of its security.

4679/DT50/12

- 1) Failed to comply with his undertaking dated 5 March 2004,
- 2) Failed to respond to correspondence from the complainant,



- 3) Failed to respond to correspondence from the Society,
4) Failed to comply with directions made by the committee.

4679/DT43/12

- 1) Failed to comply with part or all of his undertaking dated 7 June 2005,
2) Failed to respond, either at all or in a timely manner, to correspondence from the Society,
3) Failed to comply with part or all of the committee's directions.

4679/DT44/12

- 1) Failed to comply with part or all of his undertaking dated 12 July 2000,
2) Failed to respond, either at all or in a timely manner, to an order of the High Court,
3) Failed to respond, either at all or in a timely manner, to correspondence from the Society,
4) Failed to comply with part or all of the committee's directions.

4679/DT45/12

- 1) Failed to comply with part or all of his undertaking dated 7 June 2005,
2) Failed to respond, either at all or in a timely manner, to correspondence from the Society,
3) Failed to comply with part or all of the committee's directions.

4679/DT46/12

- 1) Failed to comply with part or all of his undertaking dated 7 June 2005,
2) Failed to respond, either at all or in a timely manner, to correspondence from the complainant,
3) Failed to respond, either at all or in a timely manner, to correspondence from the Society.

4679/DT47/12

- 1) Failed to comply with part or all of his undertaking dated 7 June 2005,
2) Failed to respond, either at all or in a timely manner, to correspondence from the complainant,
3) Failed to respond, either at all or in a timely manner, to correspondence from the Society,
4) Failed to comply with directions of the committee and/or the High Court.

4679/DT48/12

- 1) Failed to comply with part or all of his undertaking dated 4 May 2007,
2) Failed to respond, either at all or in a timely manner, to correspondence from the complainant,
3) Failed to respond, either at all or in a timely manner, to correspondence from the Society.

4679/DT49/12

- 1) Failed to comply with part or all of his undertaking dated 27 July 2005,
2) Failed to respond, either at all or in a timely manner, to correspondence from the Society,
3) Failed to comply with part or all of the committee's directions.


The Solicitors Disciplinary Tribunal referred the matter forward to the High Court and, on 13 February 2015, in record 2013 no 104 SA, the High Court made the following orders:

- 1) That the respondent solicitor is not a fit person to be a member of the solicitors' profession,
2) That the name of the respondent solicitor shall be struck from the Roll of Solicitors,
3) That the Law Society recover the costs of the proceedings, limited to a two-day hearing, and the costs of the proceedings before the Solicitors Disciplinary Tribunal, to include witness expenses as against the respondent when taxed or ascertained,
4) That the respondent have leave to appeal the within order and to lodge such an appeal within such period as is provided for in order 58 or order 86A of the *Rules of the Superior Courts* (as the case may be) and, in the event

- of execution, be further stayed until the further determination of such appeal,
5) That the costs order be stayed for a period of three months from the date of perfection of the order,
6) That any further application for a stay be made to the Court of Appeal.

The respondent solicitor appealed to the Court of Appeal and, by order dated 21 July 2017, the court made the following orders:

- 1) That the appeal be dismissed,
2) That the Law Society recover the costs of the appeal, to be taxed in default of agreement,
3) That execution on foot of the costs of the appeal be stayed for a period of 28 days from the date of perfection of the order and, in the event of an application to the Supreme Court for leave to appeal, to be further stayed pending the determination of such application and, in the event of leave to appeal being granted by the Supreme Court, to be further stayed pending the determination of that appeal.

Note: the order of the Court of Appeal was perfected on 8 September 2017. No notice of appeal was filed by the respondent solicitor. 

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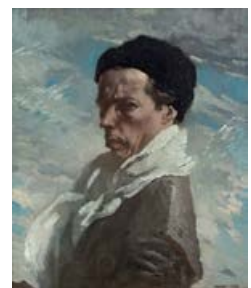
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NEWS FROM THE EU AND INTERNATIONAL AFFAIRS COMMITTEE
 EDITED BY TP KENNEDY, DIRECTOR OF EDUCATION, LAW SOCIETY OF IRELAND

CJEU UPHOLDS INTEL APPEAL – BUT THE SAGA CONTINUES

Early last month, the Court of Justice of the EU (CJEU) upheld Intel Corporation's appeal against the June 2014 judgment of the EU's General Court, dismissing its challenge to a May 2009 decision of the European Commission. After addressing both the jurisdictional application of EU competition rules and the commission's powers of investigation, the CJEU also considered whether loyalty rebates granted by a dominant entity are *per se* illegal under article 102 of the *Treaty on the Functioning of the EU* (see Case C-413/14-P, *Intel Corporation Inc v European Commission*, 6 September 2017).

Article 102 prevents the abuse of a dominant position in the EU (or in a substantial part of it) that affects trade between member states. Dominance is not illegal *per se*, but dominant undertakings are under a special responsibility not to hinder effective competition. Article 102 contains a non-exhaustive list of various types of abusive conduct, such as the imposition of unfair trading conditions. A dominant undertaking may argue that its behaviour is objectively justified and thus does not infringe article 102.

Intel investigation

The commission's focus on Intel's business practices began in October 2000, when AMD, the other key global supplier of computer chips or central processing units (CPUs), made a complaint that was supplemented in November 2003. In July 2005, commission officials carried out 'dawn raids'

both at Intel locations in Britain, Germany, Italy and Spain and at the premises of several Intel customers in these four member states and in France.

In July 2007, the commission issued a statement of objections (SO) concerning Intel's conduct in relation to five major original equipment manufacturers (OEMs): Dell, HP, Acer, NEC and IBM. Intel replied to this SO in January 2008. In July that year, the commission issued a supplementary SO concerning Intel's conduct vis-à-vis the German-based Media Saturn Holding (Europe's largest computer retailer through its Media Markt and Saturn chains) and another OEM, Lenovo. After various procedural wrangles, the commission imposed a negative decision on Intel in May 2009.

Commission's 2009 decision

The commission found that Intel was dominant in the worldwide market for the supply of CPUs of the 'x86 architecture' for, at least, the period covered by the decision, that is, October 2002 to December 2007.

The 2009 decision described two categories of abusive conduct resulting from Intel's wish to combat the threat posed by AMD to its leading position in the market for CPUs. First, the commission found that Intel awarded OEMs rebates that were conditional on these companies purchasing all or almost all of their x86 CPU requirements from Intel. For example, Dell's rebates were conditional on buying

Intel CPUs exclusively, whereas Lenovo's rebates were dependent on meeting its CPU needs for its entire production of desktop computers from Intel. Second, the commission found that Intel awarded three OEMs payments that were conditional on their delaying or cancelling the launch of AMD-based computers and/or putting restrictions on the distribution of such products. The commission characterised these payments as 'naked restrictions'. Examples of such restrictions included payments to Lenovo and Acer for postponing the launch of products containing AMD CPUs by a number of months.

The commission fined Intel €1.06 billion and ordered it to desist from the abusive conduct. At the time, this fine represented the largest ever imposed on a single firm by the commission for competition law infringements. (This record has subsequently been broken, first by the July 2016 decision to fine Daimler €1.08 billion for its participation in the trucks cartel and, more recently, by the June 2017 decision to fine Google €2.42 billion for abusing its market dominance as a search engine by giving an unfair advantage to its comparison shopping service, Google Shopping.)

In July 2009, Intel appealed the commission's finding of infringement and the fine imposed to the General Court.

The challenge

In its 2014 judgment, the General Court rejected Intel's arguments regarding the characterisation of

the conditional rebates, finding that these may be categorised as abusive without establishing whether the relevant measure has the capability of restricting competition. In addition, the court was not persuaded by Intel's jurisdictional arguments under public international law. It held that the substantial, immediate, and foreseeable effect that Intel's conduct vis-à-vis the Taiwanese-based Acer and the China-headquartered Lenovo would have in the European Economic Area brought this behaviour within the remit of EU competition law. The court also rejected Intel's argument that its right of defence had been infringed by the commission's failure to provide a record of an interview with a senior Dell executive. Indeed, the court held that the lack of minutes was cured by the commission's subsequent decision to provide an internal meeting note to Intel. After analysing and dismissing the other grounds of review, the General Court rejected Intel's appeal in its entirety.

Intel appealed this judgment to the CJEU in August 2014 on various grounds.

In particular, it argued that the lower court had not analysed the application of EU competition law to certain contracts correctly. Intel also challenged the General Court's findings regarding the impact of the alleged procedural irregularities in the administrative procedure before the commission. Finally, Intel claimed that the lower



'Lads, just turn it off and on again'

TAKING INTEL'S OVERALL BUSINESS STRATEGY INTO ACCOUNT, THE CJEU FOUND THAT INTEL'S AIM WAS TO ENSURE THAT NO RELEVANT LENOVO PRODUCT CONTAINING AN AMD CPU WOULD BE PUT ON THE MARKET ANYWHERE IN THE WORLD

court should have analysed the conditional rebates in light of all relevant circumstances.

Territorial application

Intel argued that the General Court had incorrectly found that the commission had jurisdiction to apply EU competition rules to contracts for the supply of CPUs to Lenovo in China. Moreover, it claimed that neither the test based on where the relevant practices are implemented nor the test based on the qualified effects of such conduct in the EU were satisfied.

In addition, Intel argued that the 'qualified effects' test is not allowed under the relevant case law. The CJEU rejected this argu-

ment, finding that the purpose of test is to prevent anti-competitive conduct that, while not adopted in the EU, is nonetheless liable to have an impact in the EU. Focusing on the Intel/Lenovo agreements, the court found that, under public international law, the 'qualified effects' test applies when it is foreseeable that the relevant conduct has an immediate and substantial effect in the EU. Taking Intel's overall business strategy into account, the CJEU found that Intel's aim was to ensure that no relevant Lenovo product containing an AMD CPU would be put on the market anywhere in the world, including the EEA/EU. Accordingly, the CJEU held that

the General Court was correct to find that this conduct was capable of having a substantial impact in the EEA. Accordingly, article 102 may apply to the relevant arrangements between Intel and Lenovo.

Commission investigation

The appellant argued that the General Court wrongly concluded that the commission's approach to its interview of a senior executive at Dell, Intel's largest customer, did not infringe its rights of defence. Under laws governing its enforcement of EU competition rules, the commission has the right to interview individuals or company representatives. The commission should also prepare a

record of this interview in a form of its own choosing.

These enforcement rules do not make a distinction between formal and informal interviews. Accordingly, the CJEU upheld Intel's appeal against the General Court's ruling that, since the meeting with the Dell executive was 'informal', it did not need to be recorded. In addition, the CJEU also sided with Intel's challenge to the General Court's finding that the disclosure of a short summary of this interview plus a 'follow-up' document remedied the lack of a record.

However, this breach is not sufficient if a judgment of the General Court is well-founded on other legal grounds. In this regard, the



THE CJEU'S JUDGMENT BRINGS A CERTAIN DEGREE OF CLARITY TO THE INTERPRETATION OF EU COMPETITION RULES REGARDING ABUSIVE BEHAVIOUR

CJEU noted that any information provided to the commission during the meeting with the senior Dell employee was not used to inculpate Intel. Indeed, notwithstanding the relevant procedural irregularity, the CJEU found that Intel did not show that the commission failed to record exculpatory evidence during the relevant interview. On this basis, the relevant legal errors are not, on this ground, sufficient to lead to a successful appeal against the General Court's judgment.

Conditional rebates

Intel argued that the General Court erred in law by failing to examine the conditional rebates in light of all relevant circumstances and without analysing the likelihood of that conduct restricting competition. In particular, Intel challenged the General Court's approach to the 'as-efficient competitor' or AEC test.

The CJEU recalled that the overall purpose of article 102 is neither to prevent the acquisition of a dominant position nor

to ensure that less efficient rivals remain in the same market as the dominant entity. Put another way, competition on the merits may lead to the exit/marginalisation of less efficient competitors. However, not all pricing practices are lawful – the CJEU considered that a system of payments or rebates that ties buyers to purchasing all or most of their requirements, whether the actual quantity is large or small, from a dominant supplier is an infringement of article 102.

That said, the commission must analyse whether the relevant practices are capable of restricting competition. More particularly, the CJEU held that the commission should analyse factors such as the extent of the relevant undertaking's dominant position; the share of the market involved by the impugned practice; the duration, amount, and conditions governing the relevant rebates; and whether the dominant undertaking's overall business strategy was to foreclose as-efficient competitors. Indeed,


this AEC test is also relevant in determining whether the relevant rebates may be objectively justified on the basis of efficiencies, with a resulting benefit to consumers.

The commission decided that the rebates granted by Intel were intrinsically anti-competitive, such that an analysis of all the relevant circumstances was not necessary. That said, the commission did, nonetheless, apply the AEC test before concluding that Intel's rebate scheme was capable of having foreclosure effects on an as-efficient competitor.

However, the General Court did not address Intel's challenge to the commission's application of the AEC test. Upholding the appeal, the CJEU thus found that the General Court was required to examine all of Intel's arguments regarding article 102, including the AEC test. On this basis, the CJEU set aside the June 2014 judgment and referred the case back to the General Court to analyse Intel's argument that, under the AEC test, its practices were not anti-competitive.

Next steps

The CJEU's judgment brings a certain degree of clarity to the interpretation of EU competition rules regarding abusive behaviour. From now on, exclusivity rebates should not, by their very nature, be seen as anti-competitive. Instead, a full effects-based analysis will be required, including an examination of any objective justifications. This represents good news for dominant firms, which may justifiably feel that their respective margins for commercial manoeuvre have been broadened.

As for the Intel case, the saga continues, with the General Court facing a decision on whether the US computer giant's criticisms of the commission's application of the AEC test are valid. Given Intel's overall strategy vis-à-vis AMD, convincing the General Court will be a challenge. 

Cormac Little is a partner and head of the competition and regulation unit in William Fry, Solicitors.



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

please contact Messrs James E Cahill & Company, Solicitors, Market Abbeyleix, Co Laois; tel: 057 873 1246, email: donalwdunne@securemail.ie

Cleary, Teresa (deceased), late of Haven Bay Care Centre, Ballynacubby, Kinsale, Co Cork, and previously of 27 Elmcastle Park, Kilnarnagh, Dublin 24, who died on 2 September 2017. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Kieran Moriarty, Coakley Moriarty Solicitors, New Road, Kenmare, Co Kerry; tel: 064 664 2511, email: law@cmsolicitors.com

WILLS

Adderley, Mary (deceased), late of 363 Collinswood, Collins Avenue, Dublin 9. Would any person having any knowledge of a will made by the above-named deceased, who died on 7 September 2017, please contact Patricia Cranny of PG Cranny & Company, Solicitors, 230 Swords Road, Santry, Dublin 9; DX 101005 Drumcondra; tel: 01 842 2919, email: info@pgcranny.ie

Butler, Peter (deceased), late of 222 Le Fanu Road, Ballyfermot, Dublin 10. Would any person having knowledge of the whereabouts of a will executed by the above-named deceased, who died on 21 July 2017, please contact Eoin

Clarke & Co, Solicitors, Unit 10 Mullingar Shopping Centre, Ashe Road, Mullingar, Co Westmeath; tel: 044 933 4565, email: gemma@clarkesolicitors.ie

Byrne, Kevin (deceased), late of 3 Castle Terrace Court, Malahide, Co Dublin, who died on 16 July 2017. Would any person having knowledge of the whereabouts of any will made or purported to have been made by the above-named deceased, or if any firm is holding same, please contact Patricia Byrne, Byrne and Company, Solicitors, 11 Malahide Road, Swords, Co Dublin; DX 91005 Swords; tel: 01 840 4346, email: patricia@byrnesolicitors.ie

Carroll, James Joseph (deceased), late of 1 Navan Road, Castleknock, Dublin 15, who died on 29 January 1992. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Anne Kelleher, Smith Foy & Partners, Solicitors, 59 Fitzwilliam Square, Dublin 2; tel: 01 676 0531, email: anne.kelleher@smithfoy.ie

Carroll, Michael (deceased), late of Mounteagle, Ballyroan, Co Laois, and St Brigid's Hospital, Shaen, Portlaoise, Co Laois. Would any person holding or having any knowledge of a will made by the above-named deceased, who died on 14 June 2017,

Cousins, Clare (deceased), late of Laurel Lodge Nursing Home, Longford, and formerly of Derreen House, Clondra, Co Longford, who died on 6 March 2016. Would any person having knowledge of the whereabouts of any will made or purported to have been made by the above named deceased, or if any firm is holding same, please contact Early & Baldwin, Solicitors, 27/28 Marino Mart, Fairview, Dublin 3; tel: 01 833 3097, fax: 01 833 2515, email: info@baldwinlegal.com; ref: MOD/11538

Croke, Roisin (deceased), late of 2 Dock Cottages, Passage West, Co Cork, who died on 8 August 2017. Would any person having

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knowledge of any will made by the above-named deceased please contact Killian O'Mullane, Murphy English & Co, Solicitors, Sunville, Cork Road, Carrigaline, Co Cork; tel: 021 437 2425, email: killian@murphyenglish.ie

Darlington, Madeline (deceased), late of Ballymakealy Upper, Killeenlea, Celbridge, Co Kildare. Would any person having knowledge of the whereabouts of any will executed by the above-named deceased please contact James V Tighe & Co, Solicitors, Main Street, Celbridge, Co Kildare; tel: 01 627 2397, email: info@jamesvtighe.com

Fennell, Ann (deceased), late of 31 Devenish Road, Kimmage, Dublin 12, who died on 2 Sep-

tember 2017. Would any solicitor holding or having knowledge of a will made by the above-named deceased, or if any firm is holding a will, please contact Michael Hayes & Co, Solicitors, 1 Sundrive Road, Dublin 2; DX 111001; tel: 01 492 2332, email: mail@mhayeslaw.com

Fitzsimons, Patrick (deceased), late of 10 Milford, Malahide, in the county of Dublin, who died on 11 April 2015. Would any person having knowledge of the whereabouts of a will made by the above-named deceased on 1 May 2003, or any other will made by the deceased, please contact Grainne Donnelly & Co, Solicitors, 10 Green Gate, Killeen Road, Naas, Co Kildare (ref: GD/25/16/SOR); tel: 045 883 411, fax: 045 883 409, email: info@gdonnelly.com

Kane, Mary Theresa (otherwise Marie) (née Foley, née Webster) (deceased), late of 137 Meadowvale, Blackrock, Co Dublin. Would any person having any knowledge of a will executed by the above-named deceased, who died on 18 September 2017, please contact John A Sinnott & Company, Solicitors, Market Square, Enniscorthy, Co Wexford; tel: 053 923 3111, email: info@johnsinnottsolicitors.ie

Kavanagh, Joseph (deceased), late of 27 Stephen's Road, Inchicore, Dublin 8, who died on 22 February 1996. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please

contact Mark Bergin, solicitor, O'Connor & Bergin, Solicitors, 234-236 The Capel Building, Mary's Abbey, Dublin 7; tel: 01 873 2411, email: mark.bergin@oconnorbergin.ie

Keane, James (deceased), late of Corraslustria, Ballinlough, Co Roscommon. Would any person having knowledge of the whereabouts of any will made by the above-named deceased, who died on 11 July 2017, please contact O'Dwyer, Solicitors, Bridge Street, Ballyhaunis, Co Mayo; tel: 094 963 0011, fax: 094 963 0575, email: info@odwyersolicitors.ie

Kelly, William (deceased), late of 10 South Terrace, Inchicore, Dublin 8, who died on 23 July 2017. Would any person having knowledge of any will made by the above-named deceased please contact Johnston Solicitors, 9 Claddagh Green, Ballyfermot, Dublin 10; email: info@johnstonsolicitors.ie

McGovern, James (deceased), late of Carrigal, Ballywilliam, Nenagh, Co Tipperary, who died on 5 June 2017. Would any person having knowledge of a will made in 2007/2008 by the above-named deceased please contact Noel McGovern, Carrigal, Ballywilliam, Nenagh, Co Tipperary; tel: 067 48478 or 086 327 7952

O'Briain, Colm, SC (deceased),

late of 9 Tritonville Road, Sandymount, Dublin 4, who died on 25 May 2016. Would any person having knowledge of the whereabouts of a will made by the above-named deceased please contact MacGuill & Company, Solicitors, 34 Charles Street West, Dublin 7; tel: 01 878 7022, email: info@macguill.ie

O'Callaghan, Kathleen (deceased), late of 29 Prosperity Square, off Barrack Street, Cork, who died on 21 July 2016. Would any person having knowledge of the location of a will made by the deceased, or if a firm is holding same, please contact McCullagh Wall, Solicitors, Rathmore House, South Douglas Road, Cork; tel: 021 489 6311, email: lbyrne@mcw.ie

Soden, Eugene (deceased), late of 7 Roselawn Drive, Boghall Road, Bray, Co Wicklow, who died on 13 April 2017. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Rosemary Gantly Solicitors, 5 Carlton Terrace, Novara Avenue, Bray, Co Wicklow; tel: 01 276 1707, email: info@rosemarygantly.ie

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DE PROFUNDIS
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New research suggests that 42% of British lawyers swear at work, *Legal Cheek* reports. This compares with 36% in finance, 32% in retail, and 29% in pharma. The Soap Supplier study polled 2,000 adults, including 125 'legal industry' employees.

Foul-mouthed lawyers failed to top the list, however. Pole position went to workers in the energy sector (65%).

One anonymous City lawyer said: "A frequent thing that happens is people mute conference calls to unleash a barrage of obscenities at the inanimate phone and then un-mute to continue the discussion as normal." Another said: "If anyone ever bothers to ask 'what's wrong?' when they hear a colleague shout 'for f*** sake!', it's more often than not met with 'oh nothing ... just an email from the client'."



'DON'T MAKE STUFF UP', LAWYER ADVISES COPS

Two Chicago aviation security officers have been fired in connection with an incident last April in which a Kentucky doctor was dragged off a United Airlines flight, the *ABA Journal* reports. Dr Dao lost two teeth, suffered a broken nose, and sustained a concussion in the incident, which was recorded on passengers' mobile phones and subsequently went viral.

According to the city inspector general, one officer was fired for escalating the conflict, while the other lost his job for removing information about the incident from an employee report.

Dr Dao hired Chicago lawyer Thomas Demetrio before reaching a confidential settlement with the airline.

"There is a lesson to be learned here for police officers at all levels," Demetrio said.

"Do not state something that is clearly contrary to video viewed by the world. But for the video, the filed report stating that only 'minimal' force was used would

have been unnoticed. Simply put, don't make stuff up.

"Also, the inspector general's report should become the poster child for why passengers should

always maintain the right to videotape mistreatment of all kinds. Our cell phones are the best deterrent to ensure mistreatment becomes a rarity."

WALLABY WILL IS FAIR DINKUM

A dead man's unsent text message, which left his home and pension to his brother rather than his wife, has been ruled a legitimate will by the Brisbane Supreme Court, RTÉ reports. The draft message to the deceased's brother was found on the man's mobile phone after he committed suicide in October 2016.

"The informal nature of the text does not exclude it from being sufficient to represent the deceased's testamentary intentions," Ms Justice Susan Brown said.



"He was texting his will when he fell into that hole"

The text read: "You and [nephew] keep all that I have house and superannuation, put my ashes in the back garden ... [wife] will take her stuff only she's ok gone back

to her ex AGAIN I'm beaten," it read. The message provided the man's bank account details and was signed off 'My will', followed by a smiley-face emoji.

His wife argued that, since the message had never been sent, it could not be accepted as a will. The court found otherwise, saying that the wording indicated an intention to have it included in his will.

Despite the ruling, the judge said that the man's wife could make a further application for the estate.



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Our client, a Top 10 Dublin law firm, is seeking to hire a Banking Solicitor with 1+ years' PQE. The successful candidate will be part of an extremely well established banking and finance team, reporting to the head of the unit who is a recognised expert in banking and finance law in Ireland. The team represents a mix of domestic and international lenders and borrowers, including major banks, senior lenders, mezzanine lenders, hedge funds and developers. A Certificate in Banking Law Practice & Bankruptcy would be advantageous but not essential.


Ref: 913633

Should you require further information about any of these roles or any other legal recruitment requirements, please contact **Michael Minogue, Assistant Manager** (m.minogue@brightwater.ie) or **Sorcha Corcoran** (s.corcoran@brightwater.ie) in strictest confidence.

RECRUITMENT CONSULTANT / Dublin / €50,000 - €100,000 OTE

Take control of your legal career

A career in recruitment will allow you to build on your experience, control your earnings and work with ambitious, educated peers. Visit brightwater.ie/become-a-recruiter if you would like to learn more or to apply, call Michelle Magner on 01 6621000.



We provide clear advice leading to informed decision making.

We have significant new opportunities for practitioners across many practice areas from Recently Qualified to Partner level. The following are examples of the roles our clients are seeking to fill. Please make sure to visit our website for other positions.

Banking Solicitor – Associate to Senior Associate – J00480

This Top 6 Dublin law firm requires an experienced solicitor to join its Banking and Finance Group dealing with Irish and international banks and also financial institutions and corporations. The role in question is for an experienced solicitor who can assist with a wide range of issues including: Portfolio sales; Secured facilities; Acquisition and infrastructure finance; Regulation & Compliance; Enforcement.

Commercial Property/Real Estate Solicitor – Associate to Senior Associate – MB0012

Our client, a progressive Dublin-based law firm, is seeking to recruit an experienced Commercial Property/Real Estate Solicitor to join its Commercial Property Department to assist both public and private sector Clients. You will be a qualified Solicitor with commercial property experience dealing with acquisitions, disposals, due diligence, landlord and tenant and asset management.

Commercial Property Solicitor – Assistant to Associate level – 2 years+ pqe – PP0313

Our client, a leading Property practice, is seeking to recruit a commercial property solicitor. The successful candidate will have at least two years' experience in landlord and tenant matters, sales and re-financings. The team works on a full range of practice areas which expand to construction matters, finance and green energy projects.

Competition and Regulated Markets Solicitor – Assistant to Associate – J00469

An opportunity has arisen in a Top 6 Dublin law firm for a solicitor to join its Competition & Regulated Markets Group dealing with European and Irish law including compliance & regulation. There is a wide variety of work on offer in a broad range of industrial sectors. You will have experience of mid to top tier practice coupled with a strong academic background and excellent technical skills.

Corporate – Commercial Lawyer – Assistant to Associate – J00307

A leading corporate and commercial law firm is seeking to recruit a Corporate Solicitor to join its long established and expanding Corporate Team. The successful candidate will be an ambitious solicitor based in Dublin or be a solicitor relocating from another common law jurisdiction with the following experience and attributes; Experience in corporate transactions; First-rate technical skills; Proven ability to work as part of a team.

Corporate Solicitor – 5 yrs+ pqe – J00445

Our client, a fast growing commercial law firm based in Dublin's City Centre, is seeking to hire an experienced Solicitor to join its Corporate Team. The successful Candidate will be a 5-year+ qualified Corporate Solicitor with experience in general commercial contract work including advising Clients on; Joint Ventures; Mergers and Acquisitions; Corporate Finance; Corporate Governance.

Data Protection Solicitor – Assistant to Associate level – 2 years+ pqe – MB0048

Our client, a well established yet progressive and innovative law firm, is seeking to recruit a Data Protection/Freedom of Information solicitor to service both public and private clients. This is a fast paced and evolving legal arena and requires an ambitious practitioner with at least two years' proven experience in this field. The role will involve:

- Drafting/reviewing data policies
- Advising Data Protection Officers
- Providing training to Clients
- Conducting GDPR Readiness Assessments.

Litigation Assistant – Recently Qualified/Assistant Level – MB0044

Our client is a well established commercial practice based in Dublin 4. The successful candidate will join a growing litigation team and will be expected to deal with commercial disputes to include debt recovery and insolvency. A strong opportunity for a junior solicitor to develop a career in this field.

Privacy/IT Lawyer – Associate to Senior Associate – MB0018

Our client, a full service business law firm, is seeking to recruit an experienced lawyer to join its Privacy and Data Security Team dealing with all issues pertaining to data protection and privacy law compliance. This is a complex and rapidly evolving area of law advising clients on a global scale. You will be a qualified solicitor or barrister with expertise in both private and data security law gained either in private practice or as in-house counsel.

For more information on these and other vacancies, please visit our website or contact Michael Benson bcl solr. in strict confidence at: Benson & Associates, Suite 113, The Capel Building, St. Mary's Abbey, Dublin 7.

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