Future shock
'Predictive analytics' and the further commodification of the business of law

Cherry bomb
'Second chance' insolvency solutions for businesses and individuals

Moore's treat
The *Gazette* speaks to the incoming managing partner of top firm Arthur Cox

gazette
LAW SOCIETY

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SHINING A LIGHT

Law Society launches solicitors' well-being supports

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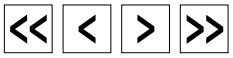

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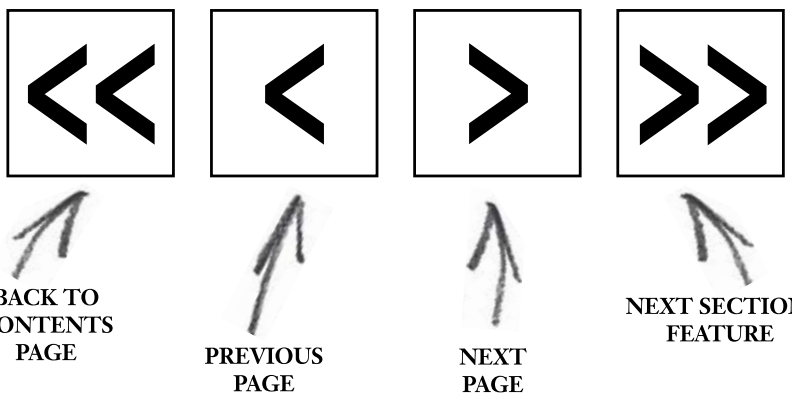

... enjoy

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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*

STEPS IN THE RIGHT DIRECTION

There is much emphasis this month, and much of interest to read, in the pages that follow in relation to the subject of mental health and well-being. You will see the various support programmes that are being rolled out by the Law Society, continuing the work begun and fostered by my predecessor Michael Quinlan. Please take time to read these articles – they contain valuable insights, advice and signposts.

By the time you read this, various parts of the *Legal Services Regulation Act* will have been commenced. A huge positive is the introduction of LLPs, which will enable partnerships to limit their personal liability.

This brings the business of the provision of legal services into line with all other businesses, which have had the ability to limit their liability for nearly two centuries, and also into line with international norms. Guidance is being issued in relation to registration processes, which we are promised will be straightforward and inexpensive.

Common sense

We must not forget, however, that this legislation covers only partnerships, and not sole practitioners or principals. There is no justification for this distinction, but we cannot overemphasise the difficulty and, indeed, political resistance in some quarters, even to what has been achieved to date.

We will return to this unfairness with the Legal Services Regulatory Authority and, hopefully, when it is seen that the world hasn't stopped turning because of LLPs, common sense will prevail and the legislation will be extended to sole practitioners.

Likewise, the new rules in relation to section 150 notices, at time of writing, are due to come into effect. The Society is promulgating guidance and precedents in relation to the new obligations, so do take note. No doubt, most bar associations will be running CPD sessions on the new regulations, so please sign up and improve your CPD points' score before the current CPD cycle closes.

A large number of Irish solicitors and barristers represented their firms and professions at the recent IBA conference in South Korea. I have commented before on the importance of small countries having big friends. I am glad to say that the Irish legal profession is held in high regard internationally, with many chairs and speakers contributing to various sessions.

Crowdfunding challenges

One of these dealt with the ethics and issues of crowdfunded litigation. The President of the High Court commented recently that only the very rich or the very poor can afford to litigate – there is very much more than a grain of truth in this. Crowdfunding and, indeed, commercial funders, as well as more exotic products like blockchain-based, security-token offerings are becoming more prevalent internationally as a means of financing litigation, particularly of the public-interest type.

Whether these innovations breach the old rules of maintenance and champerty have not yet been tested in Ireland, but as those rules are based on a perception of public policy, there may well be rapid development of the law in this area. It's hard to argue that public-interest litigation could be against public policy.

We had a striking example of this in Britain recently, with the successful outcome of the Miller/Cherry litigation, ending with the Supreme Court holding that parliament had been suspended illegally by the prime minister.

LAW SOCIETY OF IRELAND

> THIS WAS A STRIKING VINDICATION OF THE ROLE OF THE COURTS IN CURBING EXECUTIVE EXCESS

Whatever your views on Brexit, this was a striking vindication of the role of the courts in curbing executive excess. In a world where institutions, conventions, and the rule of law itself are increasingly under threat, it was a very welcome outcome. This case was crowdfunded, as were a number of other Brexit-related cases.

As ever, if you have any comments or queries, please contact me at president@lawsociety.ie.

PATRICK DORGAN,
PRESIDENT

gazette
LAW SOCIETY

PIC: SHUTTERSTOCK

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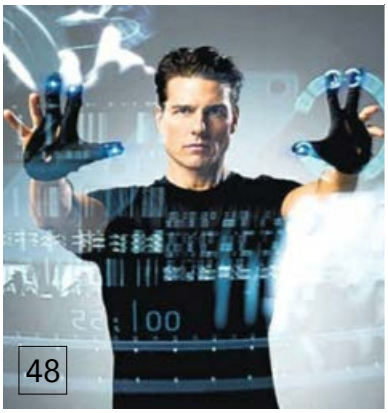


FEATURES

REGULARS

THE BIG PICTURE

PIC: CHRIS MCGRATH/GETTY IMAGES

CHINA IN YOUR HAND

A protester throws an egg at police during clashes after an anti-government rally in Hong Kong, China, on 25 August 2019. Pro-democracy protesters have continued rallies on the city's streets against a controversial extradition bill since 9 June. The city is in crisis after waves of demonstrations and several violent clashes. Hong Kong's Chief Executive Carrie Lam has apologised for introducing the bill and declared it "dead". Undeterred, protests have continued to draw large crowds, with demands continuing for Lam's resignation and complete withdrawal of the bill

CHIEF JUSTICE CONGRATULATES NEW NOTARIES

At the graduation ceremony for candidate notaries of the Diploma in Notarial Law and Practice of the Faculty of Notaries Public in Ireland/Institute of Notarial Studies were: Chief Justice Frank Clarke, Dean Mary Casey (faculty), deputy dean Justin McKenna, dean emeritus Michael V O'Mahony, Dr Eamonn G Hall (institute director), dean emeritus Rory O'Connor, Michal M Moran (faculty secretary), members of the governing council of the faculty, and graduates

POSTGRAD DIPLOMA IN INTERNATIONAL FINANCIAL SERVICES LAW

The conferring ceremony for the Postgraduate Diploma in International Financial Services Law took place on 3 September at the O'Reilly Hall in UCD. The diploma is a collaboration between Law Society Finuas Skillnet (LSFS) and the UCD Sutherland School of Law, and is funded by Skillnet Ireland. At the conferring ceremony were *(from l to r)*: Michelle Nolan (LSFS steering committee), Lorraine Lally BL, Aidan McGrath, Elaine Gallaher, Dr Noel McGrath (UCD academic programme director), Conor McEneaney (awarded the first LLM in International Financial Services Law) and Sonia McEntee (LSFS steering committee)

STAFFORDS CELEBRATE IN STYLE

PIC: JASON CLARKE PHOTOGRAPHY

Caoimhe Stafford is congratulated by family members at the Blackhall Place parchment ceremony on 18 July *(l to r)*: Jim, Caoimhe and Grainne Stafford

KINGDOM'S CLUSTER IS A CROWNING SUCCESS

At the Tralee Finuas Skillnet Cluster on 5 September at Ballygarry House, Tralee, were *(front, l to r)*: Teri Kelly (director of representation and member services, Law Society) and Katherine Kane (Law Society Finuas Skillnet); *(back, l to r)*: Clodagh O'Brian (Crowe, Dublin), Joyce Good Hammond (Hammond Good Solicitors), John Galvin (secretary, Kerry Law Society), Patrick Johnson (Courts Service), Susan Bourke (digital marketing strategist, Sligo) and Michelle Nolan (Law Society Finuas Skillnet)

Paul Cannon, Margarita Purtill, Aoife Thornton and Maurice O'Sullivan

Michael Lane, Mary Lawlor, Brian O'Regan and Padraig Foley

ALL PICS: DOMNICK WALSH PHOTOGRAPHY

Conor Murphy, Michelle Spillane, Fiona O'Sullivan and James Morris

Paul O'Donoghue, John Galvin and David Ramsay

Attendees at Tralee's Finuas Skillnet Cluster on 5 September

REVISED PRACTICE FOR CHARITABLE BEQUESTS

Solicitors will be aware that, when lodging applications for grants where the will contains a charitable legacy, they are required to lodge an additional form (the PAS3 form) for transmission by the Probate Office to the Charities Regulator, in compliance with the statutory obligations of the Probate Office under the *Charities Acts*.

The Probate Office and the Charities Regulator will be introducing a slightly revised practice, whereby solicitors applying for grants where the will contains a charitable legacy must complete a new electronic form, the 'Charitable Bequest Form', which replaces the existing PAS3 form.

PIC: SHUTTERSTOCK

It is intended that this revised practice shall come into operation with effect from 1 October 2019. Solicitors are requested to cooperate with the Probate Office and the Charities Regulator in implementing this new practice.

The new form must be submitted electronically to the Charities Regulator via the Charities Regulator's 'MyAccount' system and, in addition, must be downloaded and printed for signing by the solicitor and for lodging with the application for a grant to the Probate Office.

Before the form may be submitted, a solicitor must either log in or create a new account in the 'MyAccount' system. You will find more information about this system by visiting www.charitiesregulator.ie/en/myaccount.

Further information about the form may be obtained by visiting www.charitiesregulator.ie (see 'Information for charities' in the top menu bar and select '*Charities Acts 1961 and 1973* applications' from the drop-down menu).

DON'T WORRY, BE APPY

The Law Society Library has launched a new mobile app for its catalogue, which will be freely available to members on all iOS and Android devices, *writes deputy librarian Mairead O'Sullivan*.

You can download the app from the App Store or Google Play. Just search for 'Law Society Library' and click download.

The new app is a convenient way to avail of the library catalogue. You can search for books, place 'holds', and renew books without having to contact the library directly.

You can also search for, and download, signed unreported judgments in PDF format. This feature is especially useful if you need to locate a judgment while away from your desktop.

In order to use the new app, you will be required to login with a username and password. To receive your unique username and password, please contact the library at libraryenquire@lawsociety.ie.

Feedback on the app should be emailed to m.osullivan@lawsociety.ie.

IRELAND'S COURT-HOUSES BETWEEN THE COVERS

The Irish Architectural Archive (IAA) has published a new book exploring the architecture of Irish courthouses from the early 17th century to the modern day.

Ireland's Court Houses, edited by Paul Burns, Ciaran O'Connor and Colum O'Riordan, was launched in mid-September at the IAA's headquarters on Merrion Square, Dublin, by Chief Justice Frank Clarke.

The book examines the evolution of Ireland's courthouses from "a legal, historical and architectural perspective, with a particular focus on the recently completed programme of restoration, upgrading and new construction".

The book also contains, for the first time in a single publication, a comprehensive listing of courthouses across the entire island of Ireland.

Ireland's Court Houses is currently for sale at the IAA reading room on Merrion Square, and will soon be available in bookshops.

SOCIETY CHAMPIONS MENTAL-HEALTH AND WELL-BEING TRAINING

Mental Health First Aid is evidence-based training that teaches people how to recognise mental-health problems earlier, offers support, and empowers the person having the difficulty to engage with evidence-based supports, *writes Donal Scanlan, manager of Mental Health First Aid Ireland.*

There is growing concern across the legal professions in Ireland and abroad about lawyer mental health and well-being. Recent research (see p28) reveals that two-thirds of Irish solicitor survey respondents reported that stress negatively affects their ability to do their job. Half said that their mental health had been affected to a high degree, leading to problems such as depression, insomnia, and anxiety.

PIC: SHUTTERSTOCK

Peer support

Peer support is valued by respondents, but it is a relatively untapped resource – the research shows that members know about, but rarely use, existing supports such as LawCare or Consult a Colleague. Respondents saw a need for increased training and a focus on crisis-management skills regarding mental health, stress and trauma.

Stress-related mental illness is still hidden, and employees remain reluctant to open up and discuss it with their colleagues, friends or family. According to the Irish organisation See Change in its report, *What is Stigma? A Guide to Understanding Mental-health Stigma*, 46% of under 35-year-olds would conceal a mental-health difficulty, while 42% living in rural communities would conceal a mental-health difficulty from family, friends or colleagues – 4% higher than the national average.

Investing in the mental health of staff has the potential to reduce absenteeism, improve productivity, increase engagement, reduce errors, and potentially improve overall job satisfaction – and ultimately attract and retain the best talent.

Mental Health First Aid Ireland (MHFA) is the only licensed provider of the service in Ireland and, in the last five years, has trained close to 6,000 people. The company offers MHFA training throughout the country. In the corporate world, their list of clients is extensive.

Mental-health first aid

Now, Mental Health First Aid Ireland is partnering with the Law Society to make the MHFA more accessible to the legal community. Firms such as William Fry are already using Mental Health First Aid training as a way of breaking down the barriers of stigma, improving confidence and the willingness to create more supportive and mentally healthier workplaces.

Learn more about MHFA courses and how to access its publicly funded or corporate rates at MHFA Ireland (www.mhfaireland.ie).

ENDANGERED LAWYERS

VERONICA KOMAN, INDONESIA

PIC: FACEBOOK/VERONICA KOMAN

Veronica Koman *(left)*

Veronica Koman has provided legal aid to Papuan political activists and documented human rights violations in West Papua, a restive and impoverished region that became part of Indonesia 50 years ago. Previously a Dutch colony, it was formally incorporated into Indonesia in 1969 after a UN-sponsored ballot, which was seen by many as a sham.

Regarded as an outspoken government critic, on 5 September she was accused by the police of "spreading provocative news", having tweeted about an incident in Surabaya in mid-August where military and nationalist militia were captured on video calling Papuan students "monkeys" and "dogs", and arresting them in their dormitory using violence and tear gas.

East Java police said she had provoked and inflamed anti-racist riots that have swept across West Papua in recent weeks, and accused her of spreading fake news and provocative material. She faces charges under the controversial *Electronic Information and Transactions Law*, the penalty for which is a term of imprisonment of up to six years and a fine of around €65,000.

Thousands in the two West Papuan provinces protested about the harsh arrests of the 43 Papuan students, and many were arrested. The protests took place in the wider context of a movement for independence or greater autonomy. This is of concern to the authorities in the mineral-rich provinces, who cut internet access for over two weeks in the remote area, where foreign journalists are not allowed access.

The Jakarta Legal Aid Institute strongly condemned this latest move by the police. "This sets a dangerous precedent and could threaten law and democracy in Indonesia," said Muhamad Isnur of the institute.

Michelle Bachelet, the UN High Commissioner for Human Rights, has been blocked from visiting West Papua. She expressed concern at the situation and called for dialogue, the stepping down of violence, and the restoration of internet connections. "Blanket internet shutdowns are likely to contravene freedom of expression, and limiting communications may exacerbate tensions," she stated.

Veronica Koman is believed to have left the jurisdiction. Police say they will seek international cooperation to trace her and have her returned to face trial.

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

Ó BUACHALLA LEADS PR FUNCTION AT LEINSTER RUGBY

Solicitor Marcus Ó Buachalla has been appointed to lead the communications and media team at Leinster Rugby. He is responsible for all communications for the Guinness PRO14 and Heineken Champions Cup side.

A UCD business and legal studies graduate, Ó Buachalla has worked with the club in a PR role since 2014, having qualified as a solicitor in 2007.

He told the *Gazette*: "It's been an interesting journey from qualifying with William Fry over ten years ago now, but I loved every moment of my legal training and post-qualification experience with them.

"The five years' experience of working at William Fry gave me a great professional foundation, and I am delighted to have been able to put that into practice at Leinster Rugby, and I look forward to my new role."

The club's Guinness PRO14 home season kicked off on 4 October, with a match against Ospreys at the RDS Arena in Dublin.

AN INCLUSIVE APPROACH

Trainee solicitors at the Law School recently attended a lecture titled 'An inclusive approach to clients and others', as part of their professional development skills module.

The module is designed by course managers Colette Reid and John Lunney. Focusing on literacy and disability, trainees heard from Fergus Dolan of the National Adult Literacy Agency (NALA) and Dónal Rice of the National Disability Authority of Ireland (NDA).

Dolan highlighted the causes, extent and responses to adult literacy difficulties in Ireland, and what solicitors can do to meet the needs of clients. Over the course of their careers, solicitors will encounter many people with reading, writing and numeracy difficulties.

Rice explained how the NDA provides information and advice to people with disabilities. He explored the meaning of the term 'disability' and the broad range of disabilities it encompasses, observing that many of us will develop a disability as we age.

KERRY CLUSTER KICKS OFF

The first of this year's autumn 'cluster' events received a royal welcome in the Kingdom's largest town, Tralee. These educational and networking events for solicitors are organised by Law Society Finuas Skillnet and local bar associations, in this instance, the Kerry Law Society.

Over 140 attendees received updates on wills and trust drafting (Anne Stephenson), e-licensing, courts and technology (Patrick Johnson), conveyancing (Joyce Good Hammond), civil litigation (Shane MacSweeney), digital marketing (Susan Bourke), and LLPs (Paul Keane). Members were introduced to the small practice support project by Teri Kelly (Law Society Director of Representation and Member Services) and Clodagh O'Brien (Crowe). They showcased the supports available to members through the new Small Practice Business Hub.

Tour of regions

Cluster events are coming to a venue near you, with trips to Monaghan (October), Mayo, Cork and Kilkenny (November), and Dublin (December).

The fee (€135) includes the event, resource materials, a networking lunch, and the all-important CPD hours covering management, general and regulatory matters.

Law Society Finuas Skillnet is grateful to all bar associations around the country that collaborate with it in bringing education and training to members.

Bookings can now be placed for the following cluster events:

- 11 October – North East CPD day (Glencarn Hotel, Castleblayney, Co Monaghan).

November

- 7 and 8 November – Connaught solicitors' symposium, parts 1 and 2 (Breaffy House Hotel, Castlebar, Co Mayo),
- 15 November – Practitioner update, Cork (Kingsley Hotel, Cork), and
- 22 November – General practice update, Kilkenny (Hotel Kilkenny, Kilkenny).

December

- 6 December – Practice and regulation symposium, Dublin (Shelbourne Hotel, Dublin).

For details of Law Society Finuas Skillnet cluster events in your region, email finuasskillnet@lawsociety.ie or visit www.lawsociety.ie/skillnetcluster.

BREXIT TOPS THE AGENDA IN GLASGOW

The likely effects of Brexit on law and legal practitioners was inevitably the top item on the agenda in Glasgow recently, when the leaders of the Law Societies of Ireland (LSI), Scotland (LSS), Northern Ireland (LSNI) and England and Wales (LSEW) met, as they do twice every year. Pictured prior to the meeting are *(front, l to r)*: Patrick Dorgan (president, LSI), John Mulholland (president, LSS), Suzanne Rice (president, LSNI) and David Greene (vice-president, LSEW); *(middle, l to r)*: Rowan White (vice-president, LSNI), Lorna Jack (CEO, LSS), Amanda Millar (vice-president, LSS) and Ken Murphy (director general, LSI); *(back, l to r)*: Paul Tennant (CEO, LSEW) and Alan Hunter (CEO, LSNI)

IT'S ALL IN THE MIND FOR YOUNGER MEMBERS' COMMITTEE CONFERENCE

'The mindful lawyer' is the title of this year's annual conference of the Law Society's Younger Members' Committee. It will take place on 10 October 2019, from 2-5pm, in the Green Hall at Blackhall Place.

Organised in partnership with Law Society Finuas Skillnet, the conference will discuss mindfulness, and how to integrate thoughtful practices into work and home life in order to improve mental health and productivity.

The event's main speakers are Antoinette Moriarty (psychotherapist and Law School psychological services manager), Fiona Mc Keever (executive and leadership coach), Ursula Cullen (solicitor, mindset coach, and legal counsel to CPL Group in Ireland), and Gerry Hussey (performance psychology consultant and motivational speaker).

PIC: CIAN REDMOND

They will discuss:

- The importance of mental health, and its significance for lawyers and their work,
- Career change and development, and how proactive work practices can enhance your career in the long-term,
- How mindfulness can be applied to, and implemented at, home and work,
- Working thoughtfully in a highly pressurised environment, drawing on the techniques of high-performance athletes to help lawyers succeed in a sustainable way.

The event will include an interactive panel discussion and Q&A session. Three CPD management and professional development skills points are available (by group study) for participants.

The booking form and full brochure can be viewed at www.lawsociety.ie (search for 'committee conferences').

Queries should be emailed to finuasskillnet@lawsociety.ie.

PPC HYBRID MAKES SOLICITOR ROUTE MORE ACCESSIBLE

Encouraging greater access to legal education and providing a more flexible route to becoming a solicitor is a key factor in the Law Society's new Professional Practice Course Hybrid (PPC Hybrid), *writes Rory O'Boyle* (Law School course manager). The course is being launched in December 2019.

This follows the recommendations of the *Peart Commission Report*, which sets out a vision for the future of solicitor training in Ireland. PPC Hybrid is one of its key recommendations.

O'Boyle explains: "The PPC Hybrid is specifically aimed at delivering a flexible route to the solicitor qualification without the traditional requirement for trainees to be on-site at Blackhall Place in Dublin for a full-time, continuous period.

"The new course will potentially facilitate access for a range of people, including, for example, mature and regional students, as well as those with parental or other family commitments."

Rory O'Boyle (PPC course manager), TP Kennedy (director of education) and Rebecca Raftery (outreach executive)

Innovation

The course is delivered through an optimised blended-learning format, which combines face-to-face tuition with online lectures. Online content will be released to 'play on demand'.

During the PPC1 Hybrid, ten intensive weekend sessions will facilitate revision lectures, workshops, and small-group interactions. In total, the PPC1 Hybrid will comprise approximately 230 contact hours. This compares with approximately 363 contact hours for the traditional PPC1 course.

For the PPC Hybrid, on-site sessions will be supplemented by best practice in online learning: "Trainees attending the PPC Hybrid are provided with the necessary resources to fully assist and support their learning experience," says O'Boyle.

"The course is also structured so that trainees will be able to continue working during their legal education, with on-site tuition occurring primarily at once-monthly weekend sessions.

"Importantly, if the trainee's employment is with a practising solicitor in the State, the trainee may accrue partial credit of up to five months for in-office training that occurs during the PPC1. This is in addition to any credit that might apply prior to the PPC1."

In-office training

The PPC1 Hybrid begins in December 2019 and runs through to October 2020. The PPC2 Hybrid will run from August 2021 to December 2021.

The 24 months of in-office training begins after completing the PPC1 (that is, in December 2020). But trainees may be eligible to claim prior credit of up to five months for in-office training that occurs during the PPC1, together with four months of in-office training credit that occurs prior to the PPC1. This means that some trainees will qualify as early as March 2022.

Future-proofing

Although the PPC Hybrid may be of specific interest to those who previously could not commit to being on-site at Blackhall Place for extended periods, O'Boyle says: "Regardless of their particular background, entrants to the Society's solicitor training can now decide on which route suits them best in terms of time, cost, and the preferred method of study.

"We look forward to welcoming trainee solicitors of all educational and career backgrounds who previously might not have felt able to pursue the solicitor qualification," he says.

The PPC Hybrid will start with an induction day on 18 December 2019, at which iPads will be distributed and initial online lectures released. Find out more about the PPC Hybrid option, course structure, and digital learning resources at www.lawsociety.ie/ppchybrid. Spaces available on this course are limited, and places are offered on a first-come, first-served basis.

To be eligible to apply for the PPC Hybrid, you must first have passed the FE1s. In order to secure a place on the course, aspiring trainees must then complete the application form and submit it to the Law School as early as possible, to avoid disappointment. To receive an application pack, email: ppchybrid@lawsociety.ie.

ANSWER TO HER PRAYERS!

Sinéad NicAmbróis intends to apply for the PPC Hybrid course. She says: "This is an answer to my prayers, as having to move to Dublin to attend the PPC would be quite difficult – not only financially, but also practically.

"I am a single mother from Donegal and working as a legal executive at William G Henry & Co, Solicitors. This course will allow me to further my career while continuing to work in my locality, and be near to my family. For me, it's opening up a horizon I never thought possible."

SOCIETY REACHES OUT TO STRESSED SOLICITORS

Teri Kelly outlines new research on stress and well-being in the profession – and the supports that the Law Society is putting in place to help members

TERI KELLY IS THE LAW SOCIETY'S DIRECTOR OF REPRESENTATION AND MEMBER SERVICES

IN THE STUDY, 94% OF YOU TOLD US THAT YOU BELIEVE THE LAW SOCIETY SHOULD BE ACTIVELY ENGAGED IN PROMOTING PROFESSIONAL WELL-BEING AMONG SOLICITORS, AS WELL AS SUICIDE-PREVENTION MEASURES

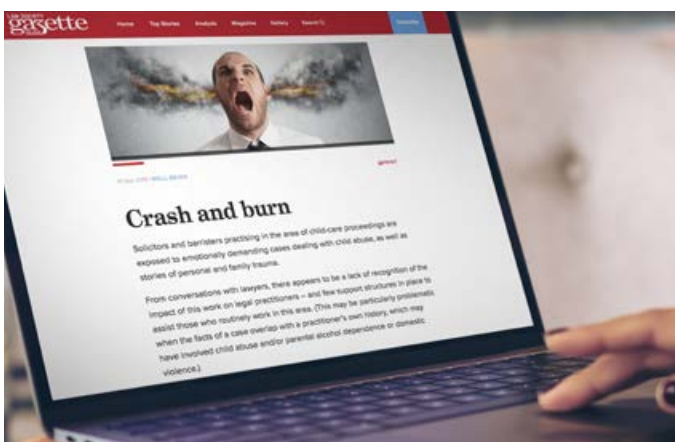
While it is immensely rewarding, working as a solicitor isn't easy. In research commissioned by the Law Society (see p28), you told us about the pressure of work deadlines, client demands, billable hours' targets and keeping up with the ever-increasing complexity of legal practice. Some of you described working in toxic workplaces. Sometimes you struggle to balance work stresses with the needs of your family or other demands in your life.

As you work to serve your clients, sometimes you can take on their problems as your own. Experiencing traumatic events is not uncommon in the course of your work, especially in family and criminal law practice.

There is evidence that legal professions around the world experience high levels of stress that negatively affect practitioners' mental health and well-being. Immediate past-president Michael Quinlan suspected that solicitors in Ireland were also suffering. Michael thought Irish solicitors owed themselves a duty of care to look after themselves emotionally and psychologically. This is why he initiated a project for the Law Society to increase its supports of the mental health and well-being of the profession.

In 2018, the Society asked Psychology at Work, an independent consultancy firm, to carry out a study on indicative levels of stress and well-being within the solicitors' profession, and on how current mental-health supports being offered to Law Society members are perceived.

Disappointingly – but not surprisingly – the study concluded that Law Society members experience high levels of stress that has a negative impact on their mental health and well-being.



It also revealed that, according to the WHO-5 Well-being Index, solicitors in Ireland have a lower well-being score than the lowest average population score in the EU.

What the study also showed, however, is that solicitors want to know more about how to support colleagues who are experiencing stress or distress, or are in suicidal crisis. It affirmed that we want to be there for one another. We understand that building a community and network of solicitors who are compassionate, who can notice when someone is in distress, and who can be vulnerable and imperfect around each other is human, and gives us all a sense of well-being.

In the study, 94% of you told us that you believe the Law Society should be actively engaged in promoting professional well-being among solicitors, as well as suicide-prevention measures. Currently, the Society supports well-being services for members, including LawCare (a mental health and well-being helpline and website) and Consult a Colleague (a professional practice helpline). These services are run independently of the Law Society under rules of total confidentiality.

Following the findings of Psychology at Work, the Law Society will be doing more to help you by providing access to supports,

PIC: SHUTTERSTOCK

guidance, and education on professional well-being. It is important to note that services will not be provided directly by the Society. Instead, we will provide signposting to independent services, which will always adhere to total confidentiality.

Well-being Project

The Law Society has initiated a Professional Well-being Project to provide these practical supports, education, and guidance across three pillars: workplace culture, resilience and well-being, and emotional and psychological health. The project also aims to address stigma in the profession about talking about and seeking help in relation to these issues.

The project is getting underway now. Some of the supports you can expect to see in the course of the coming months include:

- Regular articles in the *Gazette*, *eZine* and on the online Professional Well-being Hub about mental health and professional well-being topics,
- Mental health and well-being signposts for members where they can seek help,
- Regular seminars and CPD training on these issues,
- Launch of an opt-in Employee Assistance Programme, which will be of particular help to our sole-practitioner and smaller-firm members,
- Mental Health First Aid training information and guidance (see page 9),
- An annual conference on 'the business of well-being' (the first of these is planned for April 2020),
- Best-practice mental health

THE PROJECT AIMS TO ADDRESS STIGMA IN THE PROFESSION ABOUT TALKING ABOUT AND SEEKING HELP IN RELATION TO MENTAL-HEALTH ISSUES

guidelines for firms, which will be available on the Professional Well-being Hub (see panel),
- A Peer Support Network, providing a space for confidentiality, trust, and reflection in the profession will be piloted,
- Guidance on executive coaching and direction for members where they can access services,
- Collaboration with mental-health and well-being organisations – including Critical Incident Stress Management Network Ireland, Mental Health First Aid, and National Suicide Prevention Ireland – to understand how they can help members.

You can expect to read about many professional well-being subjects in these pages, as well as across other Law Society communications. Some topics you can expect to learn more about include:
- The business benefits of supporting your staff's mental health and well-being,
- Employers' legal obligations to provide psychologically safe workplaces, and the benefits of employee assistance programmes,
- How to recognise and prevent bullying behaviour in ourselves, our colleagues, and our staff,
- The business damage caused by hostile and aggressive work environments,
- The benefits of peer support and how to establish supportive peer relationships for yourself and for your staff,
- How to establish suicide-safe systems in your workplace,
- Addiction,
- The psychology of perfectionism and imposter syndrome,
- The psychology of belonging and how it affects performance at work,
- Skills for responding appropriately to distressed and/or vulnerable clients, and
- How to prevent burn-out in ourselves, our colleagues, and our staff.

We want to hear what you think about what is planned for the Professional Well-being Project. If you would like to get in touch about this article, or have any questions on what the Law Society is planning on well-being and mental health for the solicitors' profession, please contact professionalwellbeing@lawsociety.ie.

If this article has brought up any personal issues or concerns for you, please visit the Professional Well-being Hub (see panel) to find a list of independent services you can connect with.

FOCAL POINT

PROFESSIONAL WELL-BEING HUB

You can find some of the supports developed through the project, including the Professional Well-being Hub – www.lawsociety.ie/wellbeinghub. The hub is now live and:
- Provides access to current supports available through the Law Society on professional well-being,
- Signposts members towards up-to-date information on emotional and psychological supports available to them outside of the Society, and
- Provides guidance, tools, templates, and policies to support mental health and well-being in the profession.

Check back regularly for new content and supports.

Education

Training in trauma awareness skills (children and young people), with CPD hours available, has been developed by the Society to provide hands-on, practical skills training for those working with children. The programme began on 11 September and will run again next February. The course will equip participants to work more effectively with children to gain an understanding of how to avoid secondary traumatisation of children, and to develop self-care techniques.

WHO YOU GONNA CALL?

LAWCARE

LawCare's vision is of a legal community that values, promotes and supports good mental health and well-being.

It supports and promotes good mental health and well-being in the legal community throughout Ireland. Its mission is to help the legal community with personal or professional concerns that may be affecting their mental health and well-being, and to promote understanding of how and when to seek help, without fear or stigma.

LawCare helps all branches of the legal profession: solicitors, barristers, barristers' clerks, judges, legal executives, paralegals, trade mark attorneys, patent agents, costs lawyers and their staff and families. Support spans legal life from student through to retirement.

Tel: 1800 991 801 *(free)*
www.lawcare.ie

CONSULT A COLLEAGUE

The Consult a Colleague Helpline is available to confidentially assist every member of the profession nationwide with any problem, whether personal or professional, free of charge.The volunteers on the panel who provide the service are all solicitors of considerable experience.

Each solicitor is rostered and two solicitors are on call at all times. Whoever calls the helpline will hear a recorded message giving the contact details of those on call. Or if preferred, you can call any of the volunteers on our panel.

Callers can remain anonymous throughout. If you have a professional or personal issue or a difficult scenario requiring a second opinion, the Consult a Colleague Helpline is there to help you.

Tel: 01 284 8484
www.consultacolleague.ie

JMA SPOTLIGHTS NI RAPE TRIAL INVESTIGATION

BBC Northern Ireland's *Spotlight* investigation 'When is sex rape?' stood out for the judges at this year's Justice Media Awards. **Mark McDermott** reports

MARK MCDERMOTT IS EDITOR OF THE *LAW SOCIETY GAZETTE*

JOURNALISM THAT PROMOTES A GREATER PUBLIC UNDERSTANDING OF THE LAW, THE LEGAL SYSTEM AND SPECIFIC LEGAL ISSUES IS OF IMMEASURABLE VALUE – AND THIS YEAR'S AWARDS RECOGNISE SOME FINE EXAMPLES

BBC Northern Ireland was the overall winner of this year's Justice Media Awards for its *Spotlight* programme, 'When is sex rape?' The television feature took the top award in the 'Broadcast Journalism (TV/video)' category – and went on to win the overall prize.

The judges described the work of Richard Newman, Lyndsey Telford, Gwyneth Jones and Jeremy Adams as "encapsulating everything that the Justice Media Awards strive to promote and encourage".

The awards are organised by the Law Society of Ireland and are the country's longest continuously running media awards.

A total of 120 leading journalists gathered at the Society's headquarters in Dublin on 27 June, where they vied for 35 prestigious awards and merits.

"We believe it is hugely important to recognise and reward excellence in legal journalism," said Law Society President Patrick Dorgan. "Journalism that promotes a greater public understanding of the law, the legal system, and specific legal issues is of immeasurable value – and this year's awards recognise some fine examples."

Best of the press

Tony Connelly (RTÉ) won in the daily 'Print/Online Journalism' category for his article 'How the backstop deal was done – and why Cox blew it apart'. Judges described it as: "Brilliant, highly entertaining and searingly insightful reporting by a journalist at the height of his powers, amid the floundering and tension surrounding the Brexit backstop talks."

The 'Sunday Print/Online Journalism' award went to Elaine Byrne (*Sunday Business Post*) for her article, 'Due process abandoned on the altar of social media'. The judging panel described the article as "gutsy – challenging widely held public opinions on the outcome of one of the most high-profile trials ever held on the island of Ireland".

Jess Casey of the *Limerick Leader* took the provincial newspaper award for her article: 'It's abuse all over again: legal fight has put former students 'through the mill'.' "This was an important piece of reporting, focusing on the voice of the victim, and strong analysis of a difficult legal anomaly … ultimately leading to a change in redress scheme policy," the judges said.

JMA winners: Elaine Byrne (*Sunday Business Post*), Helen Bruce (*Irish Daily Mail*), Jess Casey (*Limerick Leader*), Eamon Hickson (Radio Kerry), Fiona McGarry (Clare FM), Frank Greaney (Newstalk), Andrea Gilligan (Newstalk), Richard Newman (BBC NI), Paul O'Donoghue (*The Times*, Ireland edition), Paddy Hayes (TG4), and Lynsey Telford (BBC NI)

Top of the tower

Newstalk's Andrea Gilligan took the top gong in the 'National Broadcast Journalism' category for her programme, 'Sentencing: crime and punishment'. The judges praised "the expertise of a deeply credible and influential

ALL PICS: JASON CLARKE PHOTOGRAPHY

The overall winners and merit recipients at the 28th Justice Media Awards

expert panel, moderated by a presenter with a clear vision ... The listener comes away with a strong sense of the 'hows' and 'whys' of sentencing in the Irish courts".

The local radio category award went to Fiona McGarry (Clare FM) for 'Bedford Row: supporting Clare's prison families'. Described as an "excellent radio feature", it shone a light on an innovative court project that replaced the 'poor box' with a special fund that is used to provide advice, support, counselling and vocational training to prisoners and their families.

Helen Bruce (*Irish Daily Mail* and *Extra.ie*) was back on the winner's podium for her court report titled 'The Cervical Check scandal'. The judges described it as: "Hugely impressive – genuine front-page exposé news, centred around the voices of the women most affected."

In the broadcasting court reporting category, Frank Greaney (Newstalk) took the award for his series of radio reports titled: 'The Mr Moonlight trial: Mary Lowry takes the stand'. The judges praised Greaney's daily coverage of the trial, which provided listeners with a comprehensive account of Mary Lowry's evidence.

Human rights spotlight

Paddy Hayes (Magamedia/TG4) won in the Human Rights/Social Justice category for his documentary '*Finné*: Martin Conmey' about a wrongfully convicted man's campaign to clear his name. "This excellent documentary highlights an often unseen side of Ireland's criminal justice system: those wrongfully convicted of the most serious crimes and their battle for justice," said the judges.

A series of articles exposing the difficulties faced by Honduran workers in their mission to unionise won the 'International Justice Reporting' category. Written by Paul O'Donoghue (*The Times*, Ireland edition), the winning article, 'How labour problems in Honduras tainted Fyffes' fair trade image', was a follow-up to a previous winning article. Paul's "detailed, consistent and persistent reporting on the international conduct of a major Irish company has already had a positive impact on the lives of workers in one of the world's poorest regions", the judges said.

The 'Newcomer of the Year' award went to Eamonn Hickson (Radio Kerry). His "distinctive voice" and talent for court reporting impressed the judges: "Balancing complex and sometimes distressing detail with concise reporting, he also demonstrates a strong eye for the human impact of the courts system and its failings," they said.

The 28th anniversary of the Justice Media Awards attracted more than 220 entries. The awards were originally established to foster a greater public understanding of the law, the legal system and specific legal issues. g

120 LEADING JOURNALISTS GATHERED AT THE LAW SOCIETY'S HEADQUARTERS IN DUBLIN ON 27 JUNE

MR BRIGHTSIDE

US Judge Craig D Hannah believes that drug-use masks despair, and that every addict before his court deserves a shot at redemption. **Mary Hallissey** reports

MARY HALLISSEY IS A JOURNALIST WITH GAZETTE.IE

A COCAINE-USER AT THE AGE OF 14, HE WENT ON A DRUG BINGE THE NIGHT BEFORE ENTERING OFFICER TRAINING SCHOOL FOR THE MARINES. HE WAS DRUG-TESTED ON ARRIVAL AND, BUSTED, LOST HIS TRAINING PLACE – AN EVENT HE DESCRIBES AS A LIGHTBULB MOMENT

Judge Craig D Hannah prays silently before he enters court each day, conscious of the grave responsibility of his role. A practising Baptist, he feels the judge's role is akin to that of a loving parent knowing what's right and decent, and striving to see the best in a wayward child. He believes that everyone is capable of redemption and that jail must never be an 'offender warehouse', but a place of learning how not to reoffend.

We all have a dark side, Judge Hannah says. He knows that good people can make mistakes and that those he sees in his court are at their worst point. "We always have to forgive each other," he says. "It's hard standing in judgment. You have to be fair and just and merciful, and you have to walk humbly with God at your side.

"I am a custodian of the law. I have to follow the laws in front of me because men much wiser than me came up with them.

"Sometimes my job tells me that I'm not the person who can redeem … that the law says a certain offence means you have to go away for a while," he says.

But where he can, he will offer a different path.

"Users are self-medicating. Most of our clients have co-occurring disorders. Once you take off the mask of drug use, they have to deal with the real-life issues, which are the reason why they were using in the first place."

As a young man, he paid the price for his own personal dark side. He grew up in a crime-ridden Buffalo neighbourhood, where drug use was normal.

A cocaine-user at the age of 14, he went on a drug binge the night before entering officer training school for the Marines. He was drug-tested on arrival and, busted, lost his training place. He describes ruining this chance as a lightbulb moment.

"It hurt, but I describe it as the best day and the worst day of my life. I always think you are put in a place where you need to be," he says.

That disappointment made him work harder and aim for law school.

Diversion ahead

The drug diversion programme at his Buffalo court, in upstate New York, has drawn wide attention. It's the first treatment court of its kind in the US, as the search continues for ways to counter an opioid epidemic sweeping the country.

Hannah's court is oriented more towards social work rather than legal work. He sees his job as a public servant and judge as helping people become a "better version" of themselves.

His hometown of Buffalo, the second biggest city in New York State, "really took a hit when the steel plants closed". Many plant and factory workers suffered injuries leading to chronic pain, for which they were then over-prescribed painkilling medication.

"The majority of the individuals that I see were living very productive lives. They got an injury and went to seek help for the pain – hard-working individuals from all walks of life, who had families, jobs, maybe even a business supporting other people."

As doctors gradually realised the addictive nature of this medication and stopped prescribing, users turned to the closest alternative – heroin. A computerised programme to prevent patients from 'doctor-shopping' for pain prescriptions sped up the switch from prescribed opioids to heroin.

"Some of the heroin our individuals were seeking was not actually heroin at all, but Fentanyl and Carfentanil, which are at least 50 times as strong as what they were used to taking. That's why we had a huge rise in overdoses," says Hannah.

In 2017, the number of US deaths involving opioids (including prescription opioids and illegal opioids, like heroin and illicitly manufactured fentanyl), was six times higher than in 1999.

On average, 130 Americans die every day from an opioid overdose – or a total of 70,200 in 2017 – according to government figures.

"These painkillers were marketed as being addictive-free, as being safe," Hannah says. "It's a tragedy. Doctors relied on that, but it was totally wrong, because they are just as addictive as any other opiate."

Blame for the crisis has spread to the drug manufacturers.

PIC: CIAN REDMOND

Several US lawsuits are pending now against big pharmaceutical firms to hold them accountable for marketing addictive prescription drugs as safe, but none has yet gone to verdict.

Cutting the red tape

Judge Hannah believes there are lessons to be learned from past mistakes, since ostracising addicts clearly hasn't worked. "We knew we had to handle this in a much more effective way."

Defendants before the judge are sent for treatment at the time of arraignment, when they are charged in his court, usually with misdemeanours or low-level felonies as a result of trying to feed a drug habit. Addicts get drug treatment within hours of arrest, and behavioural counselling within days.

"The beauty of it is that we cut all the red tape. We have our community partners [offering insurance, housing, education, health and transport services] present in court, so that our clients get the treatment they need, regardless of whether they have insurance."

A lot of the services were already in place – Judge Hannah's court became the focal point to bring them all together. He describes it as 'community mapping' to pool resources, so clients don't leave court without the ancillary services in place.

"In our programme, we don't sanction use, we sanction behaviour, because these are individuals with an addiction, an illness. Our job is to change their mind-set and give them the habit of doing what productive people are doing – getting up every day and taking care of business," he says. "Most of our clients have burnt every bridge to feed their habit, so they are charged with grand theft, burglaries, home invasion, unauthorised use of vehicles."

Criminal charges are put on hold while drug users engage with the therapeutic process. Though no promises are made, Hannah says public prosecutors have been supportive of the process, once they see an effort to change destructive behaviour.

Clients are released to treatment facilities, but they have to report to court every day and obey an 8pm curfew.

Judge Hannah's court uses positive language – clients, not defendants, and hiccups, not relapses. He uses these euphemisms to build up hope and respect.

The goal is to keep people alive. Of the almost 500 users who have passed through the programme since 2017, only three have overdosed.

Medical, not criminal

The biggest initial opposition to the drug diversion programme was from defence lawyers because, at arraignment, clients make a full admission without being advised of their rights by a lawyer.

"It only took months [to get full backing]. We definitely had buy-in from the prosecutors' office at the start, and once we had buy-in from the defence, everything just sky-rocketed," says Judge Hannah.

But he muses that the law is ultimately an extremely conservative profession. Many of his colleagues find it difficult to accept that drug crime is a medical rather than criminal problem.

"It doesn't go over well at cocktail parties," he says. "But it's our job to educate each other. It's our job to look after the least, the lost, and the overlooked. It's our job to let them know that there is a better way out there. Most of these individuals don't even want help. But they trust lawyers." g

A STITCH IN TIME...

Though ultimately a matter for lawmakers, the *ex officio* obligation on courts to assess the unfairness of contractual terms under the *Unfair Contract Terms Directive* could perhaps usefully be placed on a legislative footing, says **Max Barrett**

MAX BARRETT IS A JUDGE OF THE HIGH COURT OF IRELAND

ONE POSSIBLE SURPRISE, POST-*COUNIHAN*, IS THAT THERE DOES NOT APPEAR TO BE ANY REPORTED CASE LAW IN WHICH UNFAIR TERMS HAVE BEEN IDENTIFIED BY AN IRISH COURT UNDER THE DIRECTIVE

Any views expressed in this article are personal

The High Court, in *AIB v Counihan* ([2016] IEHC 72), a judgment of this author, acknowledged the *ex officio* obligation existing under ECJ case law for a national court to assess, of its own motion, whether a contractual term falling within the scope of the *Unfair Contract Terms Directive* (93/13/EEC) is unfair.

That judgment was delivered by reference to the decision of the ECJ in such case law as *Aziz* (Case C-415/11).

This article considers certain themes that might be perceived to arise from the above case law and related decisions (see also *Gazette*, April 2017, pp40-43).

Ex officio obligation

There is a slew of binding ECJ case law concerning the *ex officio* obligation. The Irish courts seek always to implement obligations incumbent upon them under binding ECJ case law.

Separate from *Counihan*, the *ex officio* obligation has now been accepted in Ireland in *EBS Ltd v Kenehan* ([2017] IEHC 604). Moreover, various judges of, for example, the High Court, have repeatedly discharged the *ex officio* obligation in numerous cases. So the *ex officio* obligation is both recognised and realised by the Irish courts.

The inquisitorial nature of the *ex officio* obligation might be contended to sit uneasily in our common law/adversarial justice system. At least two points, however, can be made in this regard.

First, the ECJ has repeatedly pointed to the existence of the *ex officio* obligation. It would be surprising if a court that includes Irish, and (for now) British, judges never recalled in those decisions that Ireland and Britain have adversarial justice systems.

Second, looking to the rationale that informs the *ex officio* obligation, being the need for the imbalance between consumer and seller/supplier to be corrected by positive action unconnected with the parties to the contract, this is clearly an issue that affects consumers in common and civil law jurisdictions.

It follows that, although the form of the obligation may seem unusual, any notion that the ECJ perceives the benefit of the obligation to be confined to consumers in civil law jurisdictions is unconvincing.

Unfair terms presenting

One possible surprise, post-*Counihan*, is that there does not appear to be any reported case law in which unfair terms have been identified by an Irish court in the exercise of its *ex officio* obligation.

One commentator suggests that the reason this may be so, in the mortgage/repossession context, is that: "All borrowers understand that the fundamental essence of mortgage agreements is that, if scheduled loan repayments are missed, the secured asset may be repossessed. The sad reality is that the overwhelming majority of repossession cases turn simply on that fundamental principle" (Martin, E, 24(4) *Commercial Law Practitioner* 71, 76).

Another possibility is that all consumer contracts considered by the courts to this time, in the discharge of their *ex officio* obligation, have been carefully drafted with the directive in mind.

A further possibility is that, while unfair terms may exist, consumer debtors do not typically seek in their pleadings to assist the courts by identifying such terms as they consider to be unfair and/or to operate unfairly in their particular context. It is not necessary that consumer debtors should do so, and I do not mean to suggest that unfair terms have ever passed muster before the courts. However, it would seem likely to assist consumer debtors if a court were to be informed – albeit that it would not be limited in its analysis – as to the particular concern(s) that a particular consumer considers to present in her or his case.

Main subject-matter

Article 4(2) of the directive states: "Assessment of the unfair nature of the terms shall [not] … relate to the definition of the main sub-

PIC: SHUTTERSTOCK

ject matter of the contract nor… insofar as these terms are in plain intelligible language."

Article 4(2) has given rise to difficulty across the EU. As the European Commission notes in a relatively recent working document issued as part of a 'fitness check' of European consumer law (SWD [2017] 209 final, 23 May 2017), "There is … a degree of uncertainty about the meaning of the [term] … 'main subject matter'."

In *Kearney v Permanent TSB plc* ([2018] IEHC 159), which seems to be the sole written judgment to this time that indicates article 4(2) expressly to have been raised as an issue, the point was met by the court's finding that those proceedings were not concerned with terms defining the main subject-matter of the contract before it. This aspect of the directive may yet arise for further consideration in future case law.

Can consumers have cause for complaint regarding a contract if they took legal advice on that contract before it was concluded?

A number of points might be made:

1) The directive draws no express distinction between consumers aided/unaided by a lawyer,
2) Any emphasis on the involvement of a lawyer when a contract was concluded sits uneasily with the observation of the ECJ in *Faber* (Case C-497/13) that whether a consumer is assisted by a lawyer or not cannot alter the effectiveness of the protection of EU law,
3) It seems to follow from (2) that, to have regard to the fact that a consumer was so assisted, would depart from the paradigm of *ex officio* assessment arising under ECJ case law,
4) To have regard to the involvement of a lawyer when a contract was concluded appears to assume (a) an equality of expertise in all practice areas among all lawyers, and (b) that a consumer client's instructions necessarily embraced the seeking of advice in relation to the directive, as implemented.

Legislative change

In the UK, the *ex officio* obligation has now been placed on a formal footing by the *Consumer Rights Act 2015*.

If Irish civil procedure legislation has to change to accommodate the binding requirements of ECJ case law, directed to the laudable end of protecting vulnerable consumers, then it has to change.

A possible further incentive for any necessary change is that, for example, in *Tomášová v Slovenská Republika* (Case C-168/15), the ECJ has signalled that there can be potential financial implications for a member state in the, admittedly unlikely, event of manifest infringement by a last instance court of EU law, or breach by such a court of well-established ECJ case law.

To ensure the protection of vulnerable consumers, the need for demonstrable compliance with the *ex officio* obligation cannot, perhaps, be overstated. Though a matter ultimately for lawmakers, it might be contended that an optimal way of delineating the scope of, and ensuring ongoing compliance with, the *ex officio* obligation would be to place it on a legislative footing, whether through statute or otherwise. g

IN THE TRENCHES

When RTÉ does *Reeling in the Years* for 2019, Brexit is likely to dominate – but the producers will have to hand over a decent segment to the insurance crisis. **Stuart Gilhooly** reports from the front line

STUART GILHOOLY IS A PARTNER WITH DUBLIN LAW FIRM HJ WARD AND CO

IS IT MORALLY RIGHT THAT A PERSONAL INJURIES VICTIM SHOULD BE PENALISED BY A LEGISLATURE THAT DOES NOT APPEAR TO HAVE CONSIDERED THE RIGHTS OF THE VICTIM TO BE AS IMPORTANT AS THOSE OF THE WRONGDOER?

The reasons for the egregious treatment of small businesses by insurance companies have been argued to the point of tedium, but it bears saying one more time. The outrageous increase in premiums and, in many cases, outright refusal to quote certain industries has little or nothing to do with damages – which have not increased, but in fact decreased, over the course of the last six years.

The level of damages in England and Wales are often cited as an antidote to our insurance crisis. This is patent nonsense that is not backed up by a shred of evidence. What we do know is that damages are lower in that jurisdiction but, as demonstrated by UCC economist Martin Kenneally (see September *Gazette*, p40), motor insurance premiums are, in fact, higher there than in this country. All the evidence suggests that damages award levels play no substantial role in the calculation of premiums.

Be that as it may, the furore around the issue and the successful lobbying by the insurance industry and various business groups to Government has convinced the legislature that the recommendation of the Personal Injuries Commission to provide a power to the proposed Judicial Council to produce personal injuries guidelines should be prioritised. This is a perfectly laudable objective and has resulted in the judicial council legislation being fast-tracked.

This would not be a problem were it not for two factors. The political mood-music was less 'gentle classical' than it was 'heavy metal'. Although the Minister for Justice was judicious and measured in his pronouncements, the same cannot be said for some of his colleagues. Much was made of the necessity to substantially reduce damages. This may create an issue if a constitutional problem arises in the future, given the clear necessity for the legislature to keep their counsel on the level of damages – which is clearly a matter for the courts, as envisaged by the doctrine of the separation of powers.

Onerous timeline

A further issue arises, however: the undue haste with which the legislation was ultimately drafted and passed. In the first instance, it has created a timescale that is highly optimistic for a judiciary that is also expected to dispense justice over the same period. Secondly, however, it does not seem to have considered the ramifications of creating a new set of guidelines that may be entirely at variance with those currently in place – the *Book of Quantum*.

Before examining these potential pitfalls, let's look, in summary, at what the legislation actually proposes.

The Personal Injuries Guidelines Committee (PIGC) cannot come into existence until the Judicial Council itself comes into being. How long this will take is unclear, as it presumably will require some formal infrastructure around it.

Once the council has commenced operations, it will, at its first meeting, specify a date on which it will establish a PIGC, not later than three months after that first meeting. The PIGC will comprise one judge from each of the Supreme Court, Court of Appeal, Circuit Court and District Court, two judges of the High Court, and one other judge from either Circuit Court or District Court. All seven judges will be nominated by the Chief Justice, who will also determine the chairperson.

There will be no membership outside of these seven judges, and they alone will determine the guidelines. However, they may consult with anyone they deem appropriate. In this regard, specific mention is made of PIAB. In addition, they may seek records or conduct research on damages awards, both here and abroad, as well as refer to settlements.

The first meeting must take place within one month of establishment of the PIGC. While these timelines are perfectly reasonable, the ambitious and probably unrealistic element is the requirement to produce the first draft of guidelines to the board of the council within six months of establishment. The judges will have to find time outside of their day-to-day court hearings to com-

PIC: SHUTTERSTOCK

plete this hugely onerous task.

The content of the guidelines is critical. Although much discussion has taken place in the media, the Dáil, and in the pub as to the appropriate level of damages, our judiciary, in the form of the PIGC, will be aware of the separation of powers and will have regard only to the legislation. Section 90(3) of the act sets out the matters it must consider in preparing or reviewing draft guidelines. These are the level of damages awarded in courts in this State, in courts outside this State that the committee may consider relevant, the principles for assessment of damages laid down by our superior courts, guidelines for classification of personal injuries, the need to promote consistency, and such other factors as the committee or board considers relevant arising from documents received, or other discussions or conferences.

It is notable that the level of insurance premiums in this country is not referred to as a factor in such consideration.

Issues of application

However, it is in the practical application of the new guidelines that serious and possibly constitutional problems may arise. As things stand, the *Book of Quantum* (BOQ) compiled by PIAB governs damages in the State. Section 22 of the *Civil Liability and Courts 2004* requires the courts to have regard to the BOQ when assessing damages. This section will now be amended to require the courts to have regard to the guidelines and, "where it departs from those guidelines, state the reasons for such departure in giving its decision".

The difficulty arises in the passage of time between the rejection of a PIAB award and the determination of damages in a court case. This can often take several years.

If, for instance, damages in the new guidelines are considerably lower than those in the BOQ (and let's not pretend that this isn't the expectation of many looking in from the outside), then the provisions of section 51A of the *PIAB (Amendment) Act 2007* may pose a constitutional question.

This states, essentially, that if a claimant rejects an award that is accepted by the respondent, and fails to obtain a higher award in court proceedings, then no award of costs may be made by the court.

So, say for instance that a claimant rejects a PIAB assessment using the BOQ as its guide and then, some years later, receives a lower award due to a radically different damages profile in the form of the guidelines, and is then denied his costs by a court with no discretion to award them, he could legitimately argue his constitutional rights have been violated.

Similar considerations arise in situations of tenders or lodgements, although judicial discretion does allow for special circumstances that could be argued in that situation. However, no such discretion exists in the case of section 51A, which has not been repealed and for which no transition period is contemplated.

Aside altogether from legal or constitutional implications, is it morally right that a personal injuries victim, injured by the negligence of another, should be penalised by a legislature that does not appear to have considered the rights of the victim to be as important as those of the wrongdoer? g

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LAW SOCIETY OF IRELAND

LAW SOCIETY GALA 2019

SUPPORTING THE SOLICITORS' BENEVOLENT ASSOCIATION

Friday 11 October 2019

SHELBOURNE HOTEL, DUBLIN.

SPECIAL GUEST:
Oliver Callan
Star of 'Callan's Kicks', Ireland's top impressionist and satirist

This October, the Law Society Gala 2019 will take place in the historic Shelbourne Hotel in the heart of Dublin. This black-tie dinner raises funds for the Solicitors' Benevolent Association (SBA) and is a social highlight for the solicitors' profession.

Guest speaker Oliver Callan is back by popular demand to entertain guests for the evening.

Table dinner package for 12 guests: €2,400 (plus VAT). Individual dinner seats: €200 (plus VAT) per person.

To book your place, visit **www.lawsociety.ie/gala**

Law Society Gala profits will be donated to the Solicitors' Benevolent Association, which provides assistance to members or former members of the solicitors' profession in Ireland and their wives, husbands, widows, widowers, families and immediate dependants who are in need.

'DEFENSIVE MEDICINE' – A BLAME GAME?

From: Robert Harley, Harley Associates, Inc, 11th Avenue, Brooklyn, NY 11218

The phrase 'defensive medicine' in an article in your May issue (see 'Just what the doctor ordered', May *Gazette*, pp38-41) caught my attention. I have had a 55-year career in medical malpractice litigation in New York, five years defending such cases, 30 years representing patients, and the last 20 as a mediator attempting to settle cases on behalf of both sides.

I'm not sure what the phrase means in Ireland, but in America it is an article of faith among some in the medical profession that many expensive tests and studies are ordered, not for legitimate diagnostic purposes, but rather to establish the fact that the treating doctor has done everything possible for the patient – a fact that can be used in the defence of any claim against the practitioner. This argument holds that this sort of 'defensive medicine' is one of the drivers of the high cost of American medical care. It is a reflexive trope: blame the lawyers.

That this belief is a fantasy is easily demonstrated. When Dr Smith orders, let us say, an MRI for his patient, that order must be approved by the patient's medical insurance company. That insurance company bases its decision on whether the MRI is medically necessary and upon the company's goal of containing costs (not necessarily in that order). The patient's insurance company has no interest in the abstract (to it) goal of preventing Dr Smith from being sued.

If, on the other hand, 'defensive medicine' means exploring every reasonable cause for a patient's distress and, given that a claim against the doctor can only be successful if she negligently fails to consider and test for all reasonable possibilities, then defensive medicine is a practice we should all support.

GDPR A 'KAFKAESQUE MONSTER'

From: Richard E McDonnell, Market Square, Ardee, Co Louth

Is it finally starting to dawn on EU bureaucrats and the Irish politicians who implemented them that, in the GDPR, they have created a Kafkaesque bureaucratic monster, which is only beginning to show its voracious teeth?

As usual, draconian laws were imposed on us all without anyone thinking them through and understanding what they would mean for the 'little people' who have to live with them.

A perhaps well-meaning initiative to curb the supranational powers of vast corporations (such as Google, Facebook and Amazon, for example) and their access to and retention of personal information, will ultimately (if left unchecked) wipe out huge swathes of SMEs as they get sued for unintentional breaches by a litigious public (in this country), in what Government spokespeople and the broadcast media regularly refer to as our 'compensation culture'.

Maybe the penny will drop when the Government itself is hit with thousands of claims for damages for the Public Services Card debacle (and lots more in a similar vein to follow), and which will make the army-deafness claims seem like a mere bagatelle by comparison.

The only corporations huge enough not to be wiped out by such mass claims, ironically, will be the very ones that the GDPR insanity was designed to curb. Maybe the next time drastic changes are introduced, the bureaucrats and politicians might think them through first, and try to understand what they will mean on the ground for ordinary people trying to make a living.

In the meantime, I would urge a suspension of the GDPR until they can get it right and, immediately, a nominal limit (on a sliding scale) on how much compensation should be payable to an individual whose GDPR rights have been (accidentally) infringed. For example, €500 per civil claim for companies with an annual turnover of less than €1 million, and so on? If this is not implemented quickly, I fear that thousands of small companies will be hit with claims they can't afford to meet, and be put out of business.

INTERIM PAYMENT SUCCESS!

From: Caroline Fanning, Fanning & Associates, Foxrock, Dublin 18

Thank you to the *Gazette* and Karl Shirran BL for the excellent, useful, and practical article on getting interim payment on account for fees owed (typically from insurance companies) from the High Court (see May *Gazette*, p46), which I successfully obtained on 20 June 2019 from Mr Justice Cross.

Judge Cross stated that it was his practice to award an interim payment equating to half the bill, and not to make an order of costs in these applications.

Every business needs cashflow. The issue of taxation of costs is a contentious one, as it can take months and a lot of time and expense to set a matter down for taxation.

Solicitors acting for private clients who successfully defend proceedings taken by a person in receipt of legal aid can apply, pursuant to section 36 of the *Civil Legal Aid Act 1995*, to the Legal Aid Board for an *ex gratia* payment towards the legal costs incurred. The board has the discretion, both in relation to the making of the payment and the amount considered appropriate, to make such a payment. g

Sunshine ON A RAINY DAY

The Law Society recently commissioned a nationwide survey to learn more about members' mental health and well-being. Worryingly, solicitors' well-being appears to be considerably lower than the EU average population score, write **Eoin Galavan** and **Tom Millane**

DR EOIN GALAVAN AND TOM MILLANE ARE PSYCHOLOGISTS AND DIRECTORS OF PSYCHOLOGY AT WORK

PIC: SHUTTERSTOCK

As a group, legal professionals are often perceived as powerful, impervious to stress and strain, and financially protected. The social image, however, is perhaps too often far from the truth when it comes to mental health. A growing social movement recognising the importance of workplace well-being, and the serious potential consequences for our mental health resulting from workplace stress, has prompted further reflection. Specifically, are those practising law in Ireland suffering as a result of workplace stress? What impact might this have on their mental health and ability to work effectively?

Mental-health concerns rank among the most frequent reasons for work-related illness and absence, with, for example, 91 million workdays being lost in Britain due to symptoms of mental illness. The cost to society is significant, with a recent OECD report estimating the cost of mental ill-health to the Irish economy as €8 billion annually.

It has also been increasingly recognised, both nationally and internationally, that stress and other mental-health issues are an area of central importance within the legal profession. A recently published US survey noted that mental-health problems among attorneys were significant, with 28%, 19%, and 23% experiencing symptoms of depression, anxiety, and stress, respectively (Krill *et al*, 2016).

These findings are not unique to the US. The 2018 *Resilience and Well-being Survey Report* by the Junior Lawyer Division of the Law Society of England and Wales notes that "more than 90% of respondents had experienced stress in their role, with 26% of those respondents experiencing severe/extreme levels of stress … More than 38% of respondents stated they had experienced a mental-health problem in the last month".

The US National Task Force on Lawyer Well-being, in its 2017 report *The Path to Lawyer Well-being*, highlighted the issues and outlined a strategy for addressing mental-health concerns. Similar activity has been undertaken in England, Scotland, Australia and Canada.

AT A GLANCE

- The OECD says that the estimated cost of mental ill-health to the Irish economy is €8 billion annually
- A Law Society report shows that solicitors have a lower well-being score than the lowest average population score in the EU
- Women reported statistically higher levels of stress than men
- The current level of demand and workplace stress is likely making ordinary well-being and mental health unsustainable
- Stigma is a major barrier to seeking help for mental-health problems

The view from Ireland

In early 2018, then Law Society President Michael Quinlan led the charge to determine the picture of mental health among lawyers in Ireland. As a starting point, the Society's Council agreed to conduct research into the role of the mental-health supports that were being offered by the Society to its members, and to ascertain their levels of stress and well-being.

Psychology at Work (CLG) was tasked by the Law Society with the initial research, which was completed in late 2018. The research comprised focus groups with Law Society members from around the country, interviews with individual members, and a 38-item online survey, with approximately 5% of the total membership taking part.

The findings may contain 'selection bias' – perhaps only those who were very stressed at work responded, or perhaps many who were very stressed didn't have the time to respond? As such, the findings are considered a likely but not definitive, representation of the membership as a whole.

Key findings

Overall, the results suggest that members frequently experience high levels of stress that negatively impact on their mental health and well-being, with 57% describing very high or extreme levels of stress.

There are many elements of working life that might be causing high levels of stress. Participants were asked about the causes of their stress. The largest categories included 'workload is too big' (16%), 'clients expectations are too high' (15%), and 'insufficient time' (12%). Other categories included 'impacts on personal life', 'toxic workplace', 'bullying', and 'anxiety and fear'.

Approximately half the respondents indicated that their mental health had been affected to a significant degree by the

FOCAL POINT

PEER SUPPORT

The Law Society has a key role in both providing supports and supplying information about external supports to its members. There is a perceived need among survey respondents for increased training, support, crisis-management skills, and information regarding stress, trauma, and mental health and well-being. Peer support appears to be a valued and somewhat untapped channel of support.

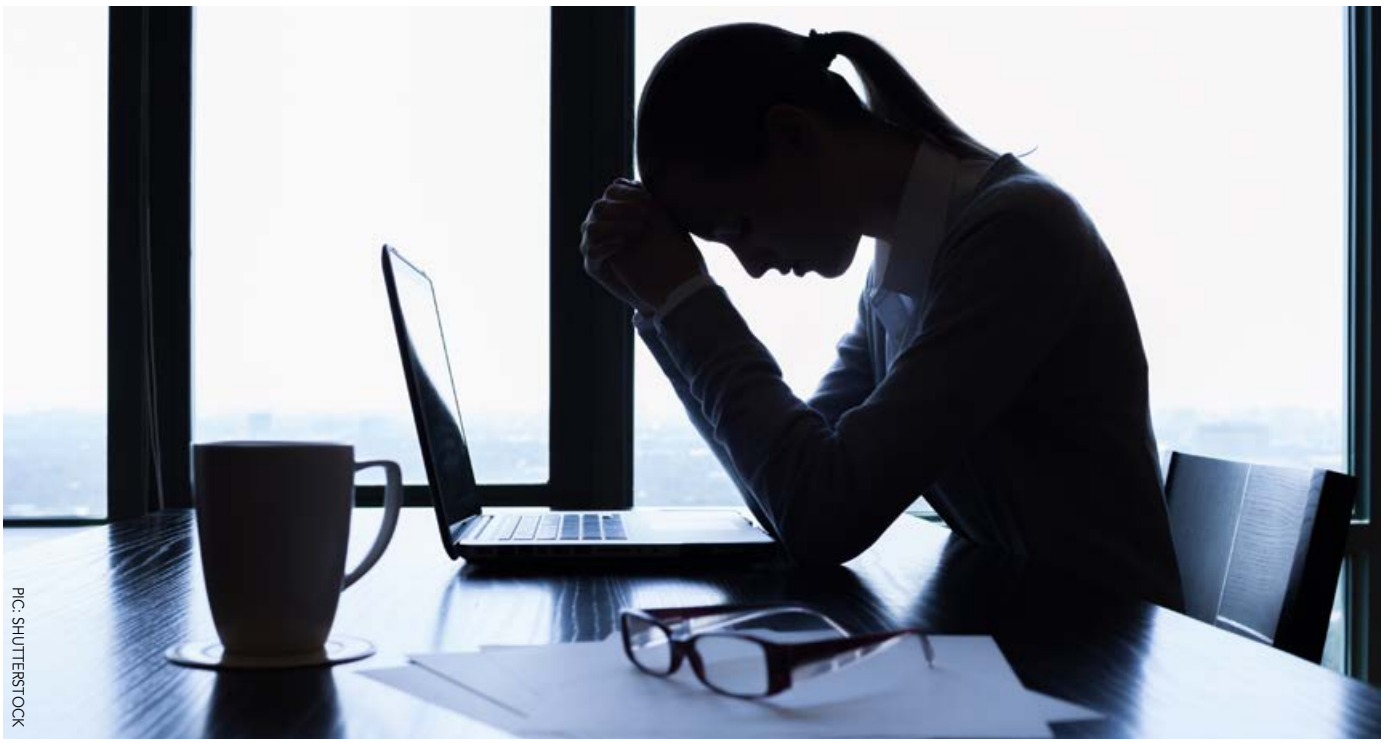
We asked members whether they would like to be given information about accessing psychological and emotional supports outside the Law Society. In all, 78% answered 'yes'.

We asked members whether they believed the Law Society should be actively engaged in professional well-being activities and suicide-prevention measures. In response, 94% said 'yes'.

Based on these findings, a steering group was convened, which is currently tasked with delivering the recommendations of this research (see p18). These include:

- Developing support networks,
- Exploring employee assistance programmes (EAP) and other organisational structures relevant to well-being and mental health,
- Improvements in education, and
- Training.

> ONE OF THE TELLING MOMENTS WAS WHEN SEVERAL INDIVIDUALS SPONTANEOUSLY OFFERED, "I WOULDN'T RECOMMEND THE LAW TO MY CHILDREN", AS AN INDICATOR OF HOW DIFFICULT AND CHALLENGING THEIR CAREER PATH HAD BECOME



PIC: SHUTTERSTOCK

stress in their working lives. The negative impacts of workplace stress on mental health, according to respondents, included insomnia, anxiety, depression, as well as physical-health problems. Around two-thirds of respondents noted that stress was a negative factor on their ability to do their work.

Well-being index

The survey also included the WHO-5 Well-being Index. This is a widely used five-item questionnaire designed to assess subjective psychological well-being. Individuals' responses are combined into a single score out of 100, with '100' representing the best imaginable and '0' representing the worst imaginable well-being. The average score for respondents was calculated and suggested a relatively low level of well-being among those who responded.

In a 2012 European Quality of Life Survey, people in Britain scored an average of 59 out of 100 on the WHO-5 index. This was the same score as Slovakia and Poland, and was lower than the EU-28 average of 63. Denmark had the highest mean score (70), while Latvia had the lowest (56).

The average for the Law Society's group of respondents was 51. As such, solicitors who took part in the survey had a lower well-being score than the lowest average population score in the EU. This suggests a profession-based problem contributing to a lower level of well-being.

It also appears from the survey data that, as member stress increases, well-being decreases, further suggesting a corrosive relationship between stress and overall well-being.

High levels of stress

There were some differences in self-reported levels of stress across types of work environments and gender. Stress levels were highest among sole practitioners and lowest among in-house/public-sector environments. It should be borne in mind, however, that all groups reported high levels of stress.

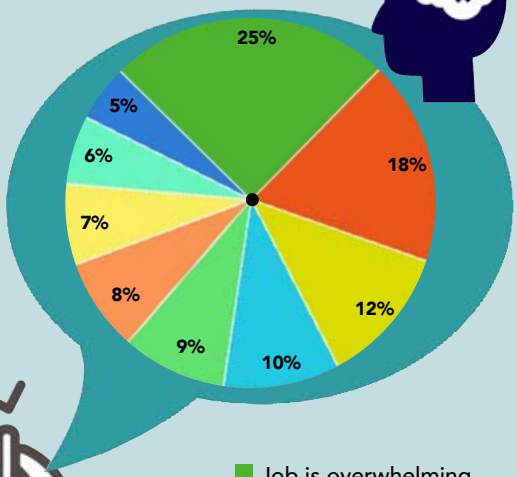
There was a significant difference in the levels of self-reported stress depending on years of experience, with those in the first five years post-qualification and those with 16-20 years since qualification having significantly higher levels than others. It is possible that early career challenges and mid-life challenges

SURVEY RESULTS: **STRESS AT WORK**

Psychology at Work carried out a study for the Law Society towards year-end 2018 to gain information on stress and well-being in the profession. Approximately 5% of the total membership (557 individuals) of the Law Society responded to the survey. Consultation with key Society staff, lawyers, and focus groups from around the country also took place.

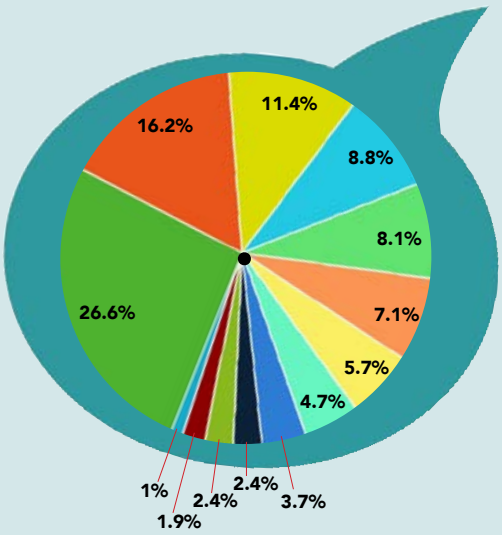
Nearly half of respondents indicated that their mental health had been affected to a significant degree by the stress in their working life.

REASONS GIVEN FOR EXPERIENCING STRESS

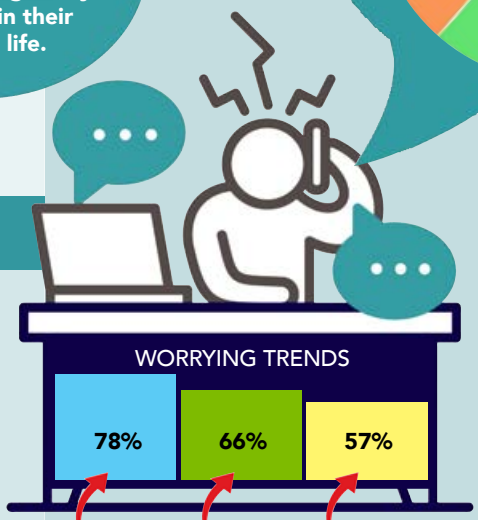


- Job is overwhelming
- Client expectations
- Toxic workplace
- Fear of not meeting deadlines
- Family life affected
- Decrease in self-confidence
- Negative culture
- Expectations too high
- No support

NEGATIVE IMPACTS OF WORKPLACE STRESS ON MENTAL HEALTH



- Insomnia
- Anxiety
- Physical problems
- Irritability
- Depression
- Family life affected
- Tiredness
- Self-doubt
- Panic attacks
- Worry
- Medication
- Burn-out
- Seeking professional help



Regularly experience significant stress at work

Stress negatively impacts on ability to work

Very high or extreme levels of work-related stress

WHERE SHOULD THE HELP COME FROM?

PSYCHOLOGICAL AND EMOTIONAL SUPPORTS:

78% said from outside the Law Society

LAW SOCIETY OF IRELAND

PROFESSIONAL WELL-BEING ACTIVITY:

94% said from within the Law Society

with work and family-life balance, coupled with increasing responsibility, account for these 'stress spikes'.

Women reported statistically higher levels of stress than men. It is unclear if this reflects a 'willingness to report' bias, the psychometric properties of the scales used, or a real level of stress that is different between men and women. It is possible that women are subject to different or more stressors in the workplace, experience stress differently, or have other extraneous variables that influence how stress in the workplace is experienced, for example, child care.

As such, while the statistical levels are significantly higher, it is unclear without further study what might account for this higher level of stress among women. Regardless, both

> OUR RESEARCH WOULD SUGGEST THAT, FOR MANY, THE CURRENT LEVEL OF DEMAND AND WORKPLACE STRESS IS LIKELY MAKING ORDINARY WELL-BEING AND MENTAL HEALTH UNSUSTAINABLE

FOCAL POINT

INTERESTING OBSERVATIONS

- Stress levels were highest among sole practitioners, and lowest for in-house and public-sector practitioners,
- Stress levels were highest for members starting out in their legal careers (one to five years post qualification) and in the mid-career stage (between 16-20 years post qualification),
- Women reported statistically higher levels of stress than men. (It is unclear if this reflects a 'willingness to report' bias, the psychometric properties of the scales used, or a real level of stress that is different between men and women),
- There is a perceived need for increased training, support and information regarding stress, trauma, mental health and well-being in the profession.
- Peer support appears to be a valued and somewhat untapped channel in the profession.

women and men are reporting 'moderate' to 'high' levels of stress that appear to be of significant concern to many.

The current supports (LawCare and Consult a Colleague) are known about, but very rarely used, including by those who report being most stressed and whose work is suffering as a result of stress. Feedback of the usefulness of these services, when used, was mixed.

There is no joy, no satisfaction, no 'good' in anything when well-being or mental health deteriorates. The quality of work-related performance suffers, quality of life suffers, and people suffer. The workplace can be an environment that brings great benefits, including a sense of accomplishment, meaningful contribution, valued relationships, and financial security – but only if the stress and demands of the workplace are manageable and not permitted to become deleterious to mental health.

FOCAL POINT

VICARIOUS TRAUMA

Recent research has focused on the potential impact of vicarious trauma (VT) on lawyers who are exposed to particularly difficult cases. US lawyers may experience significantly higher levels of VT and burn-out than US mental-health clinicians and social-service workers.

The Diagnostic and Statistical Manual (fifth edition) includes vicarious trauma in its classification of post-traumatic stress disorder. Among its impacts are:

- Psychological distress, emotional difficulties, and sleep disturbances,
- Cognitive changes in the ability to trust others, and
- Relational disturbances like challenges with intimacy, detachment, and a loss of the sense of safety and trust.

Our research would suggest that, for many, the current level of demand and workplace stress is likely making ordinary well-being and mental health unsustainable. One of the telling moments for us as researchers was when several individuals spontaneously offered "I wouldn't recommend the law to my children" as an indicator of how difficult and challenging their career path had become.

The need for change

Reflections of, at times, cynical, 'old school', hostile and somewhat tokenistic attitudes towards mental health and well-being in the workplace were noted. Individual testimonies to the challenges and distress experienced have left no doubt that members perceive a need for change.

What seemed clear to us as we spoke to members was that many people are suffering, often privately, with the stigma and fear of being judged critically in the workplace – very real barriers to seeking help. Stigma is a major barrier to seeking help for mental-health problems, and some workplaces, through ultra-competitive culture or normalising the overloading of staff, can become inadvertently, but actively, hostile towards those who may need help.

No group is impervious to developing mental-health problems – about one in four adults will experience a mental-health problem at some point in life. Ironically, while the public persona of the legal profession may seem to represent a group of people impervious to mental-health issues, the lived reality may be very different.

It is greatly encouraging that the Law Society is championing the importance of mental health in the workplace. And it is worth noting that IBEC's KeepWell Mark was awarded for the first time to a law firm, William Fry, in 2018 – hopefully a sign of things to come. g

Moore's Almanac

Corkman Geoff Moore will be installed as managing partner of Arthur Cox in November. **Mary Hallissey** meets the man who is set to lead the country's biggest law firm during a time of massive flux in the Irish legal market

MARY HALLISSEY IS A JOURNALIST WITH GAZETTE.IE

The man who will lead Ireland's top law firm for the next four years believes that part of his job is to remain "slightly paranoid" on behalf of the business. Corkman Geoff Moore will be installed in November as managing partner at Arthur Cox, at a time of massive flux and challenge for the Irish legal market.

He is watchful on behalf of the Arthur Cox brand and business, as it gears up for its centenary year in 2020: "Any law firm is only as good as its next set of instructions," he points out, as he takes the helm at the firm that has the highest number of practising solicitors in the country. "I am never complacent about any of our competitors. I take nothing for granted," he says.

Moore also increasingly sees the big consulting firms, such as Deloitte and KPMG, expanding their legal offerings. He is determined that his firm will stay nimble.

"If we continue to do things the way we've done them historically, that's not necessarily going to wash any more. Our clients' demands and environments are changing."

The business has invested heavily in digital transformation. Technology can be of huge assistance in data interrogation or regulatory investigation projects.

"There are tools that can do this stuff far quicker and far cheaper and, frankly, it means we can give more interesting work to our junior lawyers," says Geoff.

AT A GLANCE

- Guarding against complacency
- Meeting clients' demands
- Emotional intelligence and communicating with clients
- Hiring the best talent
- Being culturally different
- Healthy rivalry and the drive for excellence

Best decision ever made

Soon to be leading a team of around 300 lawyers at the swish Arthur Cox HQ in Earlsfort Terrace, Cork-born Moore reflects that moving to Dublin was the best decision he ever made. Despite being equipped with an excellent UCC law degree, opportunities were thin on the ground in Ireland's second city during the mid-1990s.

Moore proceeded to do a two-year research-based MLitt at Trinity College on the law of fundraising – a hot topic in an area largely unregulated at the time.

He was subsequently hired as a research assistant at the Law Reform Commission, clerking for retired Supreme Court judge, the late Mr Justice Anthony Hederman.

He then joined Arthur Cox as an apprentice in October 1998 but, having

ALL PICS: CIAN REDMOND

secured a green card, took off for New York following qualification and a stint in a "very intense" environment at a New York law firm, where he was also admitted to the bar.

"I learned so much. The work practices and standards of a leading international law firm were very exciting to me back then," he says.

> THE FIRM PUSHES AGAINST A CULTURE OF 'PRESENTEE-ISM', AND WANTS ITS STAFF TO 'WORK SMART' – PUTTING IN THE HOURS WHEN IT'S NEEDED, BUT LOGGING OFF WHEN IT'S NOT

He brought this international dimension back to Arthur Cox in 2003. He was made partner within four years, and has held a host of management roles in recent years. Many others at the firm have similar international legal experience.

Global network

Arthur Cox has a blue-chip list of domestic clients, but has been enjoying increasing growth in international work, often acting for Irish corporates expanding abroad or foreign ones coming here. In this, it has the benefit of close ties to leading firms in other jurisdictions.

"To the extent that our domestic clients are doing significant work abroad, we seek to work with them there … with our network of friendly law firms around the globe."

Where significant Irish corporates seek to acquire assets abroad, Arthur Cox will run the deal, "rather than thrusting the client straight into a culture with which they may not be familiar. That's a differentiator, frankly," he says.

Moore is obsessive about attracting, developing and retaining the best talent. The firm takes in about 45 trainees each year.

"At our core, we're a people business," he says, observing that good judgement can never be outsourced to robots or technology.

"Fundamentally, clients look for judgement and expertise for their most critical mandates and their most significant deals," he says. "We can't provide the service we need to provide unless we have the talent."

He is keen to continue to cast the recruitment net beyond the traditional sources, pointing out that Arthur Cox sponsors a range of initiatives at most universities.

"We don't pin ourselves too much to one particular university," he says, pointing to the growing need for broader life experience and a diverse workforce, and the avoidance of homogeneity and groupthink.

"In any walk of life, you don't want people who are all thinking the same way."

I've got the music in me

He freely admits that, in the past, Arthur Cox was less open to recruiting non-law graduates. The vast majority of hires

> I'D FAR PREFER, IF SOMEONE IS LEAVING, THAT THEY COME AND TALK TO US, RATHER THAN RELYING ON RECRUITERS. WE MAY KNOW OF POSITIONS THAT RECRUITERS WON'T KNOW ABOUT

used to be law grads, but now the firm is interested in recruiting those with diverse degrees, such as music, history, computer science and tech.

"We've got to keep an open mind about getting the best talent," he says. He wants to nurture, train, and hold onto incoming trainees.

The key source of talent is the firm's graduate recruitment programme, and a significant amount of resources and partner time is spent on carefully reviewing 800-900 applications each year.

"We are looking for a bit of drive, someone who has travelled, worked at home or abroad, where you can see the ambition coming off the page. This is a demanding career. We don't sugar-coat it, but it's definitely not 'one-size-fits-all'."

The legal market has evolved, with many summer interns getting traineeships on the back of four weeks in the office.

"Sometimes, hiring decisions are being made very early in a person's college career," he observes, adding that maturity and intelligence tend to increase exponentially as time goes on.

On legal education, Moore comments that law graduates are often struck by how vastly different their daily work is from the modules they learned at college. "It is practical application and dealing with people and with problems – rather than necessarily poring over black-letter law all day long."

He acknowledges that the practice of law in an 800-person firm is vastly different from the work of a small, sole practitioner, so Blackhall Place and other law schools have to cover all bases.

People skills and emotional intelligence are absolutely essential in lawyers, he believes, and while a decent percentage of this may be an innate skill, people can always get better.

"You can talk about tech and artificial intelligence all day long, but you've got to relate to your clients. If you don't, things become a challenge."

Emotional intelligence

"And it's not just on the client side either. Emotional intelligence is really critical in terms of managing your team.

"You can have all the initiatives in the world, in terms of agile working, sabbaticals and diversity programmes, but, ultimately, if you can't relate to your team and your team can't relate to you, that's a challenge for holding onto people.

"If I don't bring through people for the next generation to continue in this place, then I have failed in my role, frankly. That's the reality of life. I would strongly say that I am a fiduciary of this firm, and I have to do all I can to put it in a better place for the next generation."

The firm makes strenuous efforts to stay in touch with all its alumni, though over 90% of trainees will typically stay at the firm after qualification.

Geoff hates the thought of a staff member walking out the door with no further contact, seeing it as utterly wasteful of all the time and energy devoted to their training.

If an employee wants to leave and do something else, the firm will use its network to try to place them in a suitable role.

"I'd far prefer, if someone is leaving, that they come and talk to us, rather than relying on recruiters," he says. "We may

SLICE OF LIFE

■ Apple TV, Netflix or terrestrial TV?
Netflix.

■ What is your golf handicap and what's the lowest it's ever been?
I'm an eight handicap, but really struggle to play to it these days. Six was my lowest, but that was many moons ago.

■ How many miles do you cycle each week?
Anywhere between zero and 100+ miles – weekly variances can be very significant depending on my weekends! I tend to cycle with colleagues and friends.

■ Favourite holiday destination?
Arizona. Great weather (except for high summer, when it's excessively hot), stunning desert, and mountain scenery.

■ What is your favourite film?
The Departed.

■ What are your favourite news sources?
The Irish Times and *New York Times.*

■ Headphone favourites?
Marcus Mumford.

■ Vinyl, CD or Spotify?
Tidal – a streaming service similar to Spotify.

■ Must-have gadget in your life?
iPad.

■ Favourite dish?
Fresh crab and a pint in O'Sullivan's of Crookhaven, Co Cork – it takes some beating!

■ Are you a cook?
No, I'm embarrassed to admit I'm not.

■ Favourite sports person?
I idolised Jimmy Barry Murphy (Cork's hurling and football legend) growing up.

gazette
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*(IRISH MAGAZINE AWARDS 2018)

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Gazette.ie now delivers a weekly briefing of the top legal news stories, as published on Gazette.ie, to Law Society members and subscribers via email.

> LAW GRADUATES ARE OFTEN STRUCK BY HOW VASTLY DIFFERENT THEIR DAILY WORK IS FROM THE MODULES THEY LEARNED AT COLLEGE. IT IS PRACTICAL APPLICATION AND DEALING WITH PEOPLE AND WITH PROBLEMS – RATHER THAN NECESSARILY PORING OVER BLACK-LETTER LAW ALL DAY LONG

know of positions that recruiters won't know about.

"Our business model won't work if everyone is here for life," he says, and some lawyers will always want to take their excellent training elsewhere. A close eye is kept on the turnover rate."

Moore plans to work to improve communication at the firm: "People love information, in every walk of life," he observes. "The more information you can give about plans and strategy, the more people are empowered, invested and loyal.

"We are transparent, but we can be more transparent, and I hope that we will become so."

The firm pushes against a culture of 'presentee-ism', and wants its staff to 'work smart' – putting in the hours when it's needed, but logging off when it's not.

'Mobile kits' are supplied to all staff to allow for flexible working, and sabbaticals are also on offer, again with the goal of retaining staff in a competitive market.

He observes that young solicitors often have different life-goals to the traditional 'one-track-minded' partner.

Cox's Earlsfort Terrace office was specifically designed to limit ego battles, with sit-stand desks, windows and views meted out with strict equality. Moore describes the over-riding Arthur Cox value as 'humility'.

The firm has loosened its dress code in recent years, with a successful summer 2016 experiment with 'business casual' now extended to all-year around. Within reason, people should wear what they feel comfortable in, the incoming managing partner says: "My job [as a lawyer] is to connect with people and apply my brain to solve their problems as best I can. How formally I'm dressed has no bearing on that."

He welcomes the increased informality of the modern world, as long as his staff bring their best self to work.

Moore says that the market regards the firm highly for its entrepreneurial nature and commercial approach. He describes Arthur Cox as "culturally different" from many of its competitors.

Of their closest rival in terms of size – A&L Goodbody – Moore welcomes the healthy rivalry that results from having two stellar law firms across the river from each other in the capital. He says that Ireland, as well as domestic and international clients, need this level of excellence – matching anything that's available on Wall Street or in London.

He welcomes the increased investment in technology at the courts, and is in awe of the "outrageous brain" of Chief Justice Frank Clarke. "He's a breath of fresh air," he says, referring admiringly to Clarke's modernising influence and general legal brilliance.

"He is very willing to get on a plane and market the Irish judicial system, and that's a sea change from the stuffy, dusty courtrooms of 20 years ago." g

Under the radar

While headlines in Ireland are dominated by Brexit, the setting up of the European Public Prosecutor's Office at the end of next year may have slipped under your radar. **Joseph Maguire** checks the scope

JOSEPH MAGUIRE IS ON SECONDMENT FROM THE CHIEF STATE SOLICITOR'S OFFICE TO DG JUSTICE AND CONSUMERS IN THE EUROPEAN COMMISSION

Article 86 of the *Treaty on the Functioning of the European Union* created the legal basis for establishing the European Public Prosecutor's Office (EPPO).

Vera Jourová, EU Commissioner for Justice and Consumers (2014-2019) has said: "Establishing the European Public Prosecutor's Office will be a real game-changer. Many cases of fraud against the EU budget are transnational. We therefore need an institution that is able, not only to investigate, but also to prosecute across borders."

The *EPPO Regulation* (2017/1939) implements enhanced cooperation by establishing the EPPO to prosecute crimes against the EU's financial interests, such as public procurement fraud, Common Agricultural Policy funds fraud, corruption, money-laundering, and cross-border VAT fraud above €10 million. According to the commission's *Fight Against Fraud Annual Report 2017* (PIF report), detected fraud in EU spending in 2017 amounted to €390.7 million. However, investigating and prosecuting serious fraud and corruption at national level is particularly challenging, never mind across the EU.

Although Ireland is not one of the 22 participating member states, Ireland can join the EPPO at any time. Indeed, Ireland has signed up to the connected *PIF Directive* (2017/1371), which sets out the criminal offences affecting the financial interests of the EU that the EPPO will investigate and prosecute.

AT A GLANCE

- The EPPO is an innovative and indivisible union body operating as one single office at central level in Luxembourg, with a decentralised level consisting of European delegated prosecutors in each participating EU country
- It aims to prosecute crimes against the EU's financial interests, such as public procurement fraud, Common Agricultural Policy funds fraud, corruption, money-laundering, and cross-border VAT fraud above €10 million
- Ultimately, the main prosecutorial work will be conducted by the European delegated prosecutors, of which there must be at least two in each participating country

Hail to the chief

On 25 September 2019, the European Parliament and the Council of the European Union agreed to appoint Laura Codruta Kövesi as the first European Chief Prosecutor. She is a formidable Romanian prosecutor, with an impressive record in cracking down on corruption and fraud in her home country. Undoubtedly, the chief – supported by two deputies – will fulfil a pivotal role in organising the EPPO's work and in liaising with EU institutions, EU

The views expressed are personal and should not be construed as representing either the European Commission or the Chief State Solicitor's Office

> BY ENTERING EARLIER INTO EU CRIMINAL LAW MEASURES, IRELAND CAN BEST SHAPE THE FUTURE DEVELOPMENT OF THE EUROPEAN PUBLIC PROSECUTOR'S OFFICE

PIC: SHUTTERSTOCK

countries, and third parties.

The selection procedure is also underway for choosing one European prosecutor for each participating member state, who (led by the chief), will form the College of Prosecutors, based in Luxembourg. The college shall take decisions on strategic matters to ensure coherence, efficiency, and consistency throughout the EPPO case load. The college shall also adopt internal rules of procedure to assist with many of the practicalities.

Permanent chambers will be chaired by the chief, or one of the deputies, or another European prosecutor. Permanent chambers in Luxembourg shall monitor and direct the investigations and prosecutions conducted by the European delegated prosecutors, who shall be located in the participating member states.

The EPPO is an innovative and indivisible union body operating as one single office at central level in Luxembourg, with a decentralised level consisting of European delegated prosecutors in each participating EU country.

Evoke or not evoke?

In light of the sensitivities associated with criminal law prosecutions, it may seem somewhat alarming to the Irish criminal lawyer that permanent chambers in Luxembourg shall be issuing all kinds of operational decisions. These include bringing a case to judgment, dismissing a case, applying simplified procedures, referring a case to national authorities, and instructing European delegated prosecutors to initiate an investigation or exercise the right of evocation. Since even the word 'evocation' is foreign to Irish lawyers – it essentially concerns whether the EPPO 'evokes' to take over a file or leave it to the national authorities – it is perhaps not surprising that Ireland adopted a 'wait-and-see' approach to the EPPO.

However, such concerns are alleviated by the fact that the European prosecutor who supervises the European delegated prosecutor in the particular case, on behalf of the permanent chamber, will be from the same country, so that linguistic and legal nuances are properly understood. Interestingly, in article 37 of the *EPPO Regulation*, the common law system has been accommodated on the rules of evidence by not altering the power of the trial court to freely assess the evidence wherever it has been gathered. Indeed, recital 80 of the regulation specifically references fairness of procedures in common law systems, and defence rights under the *Charter of Fundamental Rights*.

Delegated prosecutors

Ultimately, the main prosecutorial work will be conducted by the European delegated prosecutors, of which there must be at least two in each participating country.

> IN RECENT YEARS, THE EU HAS DEVELOPED AN IMPRESSIVE BODY OF PROCEDURAL RIGHTS AND SAFEGUARDS FOR SUSPECTS AND ACCUSED PERSONS (THOUGH IRELAND TENDS TO OPT OUT)

The delegated prosecutors shall be responsible for prosecuting and bringing to judgment cases falling within the EPPO's competence. They shall have the same powers as national prosecutors, along with specific powers conferred by the *EPPO Regulation*. Therefore, the EPPO prosecutions will take place in national courts in accordance with national law and procedures, but with the benefit of a centralised set of directions emanating from Luxembourg.

While the delegated prosecutor from the EU country where the main offence was committed will generally handle the case, because EU fraud often has a cross-border dimension, assistance may be sought from a European delegated prosecutor in another EU country, thereby strengthening the EPPO's effectiveness.

Safeguards for defence

In recent years, the EU has developed an impressive body of procedural rights and safeguards for suspects and accused persons (though Ireland tends to opt out) such as the rights to:

- Interpretation and translation (Directive (EU) 2010/64),
- Information and access to the case materials (Directive (EU) 2012/13),
- Access to a lawyer and the right to communicate with and have third persons informed in the event of detention (Directive (EU) 2013/48),
- Remain silent and the right to be presumed innocent (Directive (EU) 2016/343), and
- Legal aid (Directive (EU) 2016/1919).

Anyone subject to criminal proceedings of the EPPO shall have these rights, as a minimum, along with the panoply of fair trial rights of the defence contained in the *Charter of Fundamental Rights*. The EPPO will also be subject to judicial review in the national courts, and the Court of Justice of the European Union will be able to give preliminary rulings. Combined with the independence and impartiality of the EPPO, defence rights are well protected.

Data protection regime

While practitioners may now feel reasonably confident in navigating their way around the *General Data Protection Regulation*, and those working in criminal law may have knowledge of the *Law Enforcement Directive* (2016/680), this is only useful background information for the EPPO's bespoke comprehensive data protection regime.

While the *EPPO Regulation* stretches to 120 articles, more than one-third are devoted to data protection (see articles 47-89). In truth, the data protection provisions do not radically depart from the GDPR and, in fact, the *EPPO Regulation* is stricter than the *Law Enforcement Directive* on sensitive data and profiling. In this regard, the *EPPO Regulation* only allows data processing when strictly necessary for EPPO investigations, and only if it supplements other operational personal data with no profiling. Monitoring and advising the EPPO in data protection will be undertaken by the European Data Protection Supervisor.

The EPPO will be assisted by existing EU bodies like Eurojust, OLAF (the European Anti-Fraud Office) and Europol on the exchange of information and mutual cooperation. Non-participating member states like Ireland and so called third countries (which it appears Britain will soon be) may cooperate with the EPPO through working arrangements and judicial cooperation on relevant international agreements, such as Council of Europe conventions on mutual assistance in criminal matters. Ireland may, for example, exchange strategic information and second liaison officers to the EPPO.

Daring leap

With Brexit imminent, Ireland will effectively be the only common law member state (though Cyprus and Malta share some common law features). While a perusal of the Irish case law on the European Arrest Warrant demonstrates that the principles of mutual trust and confidence in the criminal law systems throughout the EU are now well established in Irish law, it may, at first glance, seem a daring leap to opt in to the EPPO and so follow directions emanating from Luxembourg on not only prosecutions, but investigations also.

However, there is no compelling legal reason why Ireland should not join the EPPO and, indeed, the intricate architecture of the EPPO contains significant safeguards, both for the rights of the defence, as well as for the constitutional and common law features of Irish criminal law.

By entering earlier into EU criminal law measures, Ireland can best shape the future development of the EPPO – and where better to start with enhanced EU cooperation in the complex area of fraud on EU funds? g

LOOK IT UP

LEGISLATION:

- Directive (EU) 2010/64 (interpretation and translation)
- Directive (EU) 2012/13 (information and access to the case materials)
- Directive (EU) 2013/48 (access to a lawyer and the right to communicate with and have third persons informed in the event of detention)
- Directive (EU) 2016/1919 (legal aid)
- Directive (EU) 2016/343 (remain silent and the right to be presumed innocent)
- *EPPO Regulation* (2017/1939)
- *PIF Directive* (2017/1371)

LITERATURE:

- EU Commission, *Fight Against Fraud Annual Report 2017* (PIF report)

A second bite at the cherry

All modern economies have 'second chance' insolvency solutions for businesses and individuals that include bankruptcy and debt modification of some, or all, secured and unsecured debt. **Cormac Keating** looks at the Irish case

DR CORMAC KEATING IS HEAD OF POLICY, REGULATION AND CORPORATE AFFAIRS AT THE INSOLVENCY SERVICE OF IRELAND

In Ireland, the legacy of unsustainable personal debt led to the introduction of the *Personal Insolvency Act 2012* (amended in 2015) and the establishment of the Insolvency Service of Ireland (ISI) in 2013.

This realignment of policy has brought about a radical and innovatory approach to the treatment of personal debt, insolvency, and bankruptcy in Ireland. The act created a number of debt solutions for personal insolvency, in addition to the option that already existed – bankruptcy – and merged the Office of the Official Assignee, which dealt with bankruptcy, into the newly formed ISI.

Impact

Despite the initial slow take-up, the ISI has, to date, returned nearly 8,000 debtors to solvency, accounting for almost €10 billion of debt. Figure 2 shows that, since its inception, the number of people availing of the debt solutions available through the ISI has grown significantly. Furthermore, the very existence of prescribed legislative solutions for personal insolvency has acted as a catalyst for credit institutions to directly enter into over 120,000 informal alternative repayment arrangements with debtors. Personal Insolvency Arrangements (PIAs), the solution that deals with mortgage debt and that aims to keep the debtor in their family home, is by far the most-used solution, accounting for 40% of the total solutions sought.

More specifically, with regard to mortgage debt, research undertaken by the ISI found that the three most popular restructures put in place by practitioners as part of a PIA are split mortgage, term extension, and principal reduction. The average principal reduction per family home is approximately €120,000 and 95% of those entering a PIA remained in their home (based on a representative sample from Q3 2017).

A key aspect of the act is that a debtor is afforded the same protections and opportunity to avail of an insolvency solution, irrespective of the type of creditor to whom they owe moneys (whether the creditor is a main pillar bank, investment fund, credit union, utility company, etc.). This is a key benefit of the new regime for debtors and for any third party advising them in the context of ongoing loan sales to investment funds, or so-called 'vulture funds'.

AT A GLANCE

- A realignment of policy has brought about a radical and innovatory approach to the treatment of personal debt, insolvency, and bankruptcy in Ireland
- Personal Insolvency Arrangements are by far the most-used solution, accounting for 40% of the total solutions sought
- The three most popular restructures put in place by practitioners as part of a PIA are split mortgage, term extension, and principal reduction

Settling in

The initial slow take-up reflected the simple reality that the introduction of such a radical new regime takes time to settle. Debtors were unaware of the extent of the help that was available.

PIC: SHUTTERSTOCK

> THE REAPPEARANCE OF MORE NORMAL ECONOMIC CONDITIONS WILL ALSO MEAN INCREASING INTEREST RATES IN THE MEDIUM TERM, AND THIS IS LIKELY TO HAVE A SIGNIFICANT EFFECT ON DEBTORS JUST ON THE MARGIN OF MEETING THEIR FINANCIAL COMMITMENTS

The main credit institutions were initially worried about moral hazard and strategic default, and were slow to engage with the new regime.

As a result, the ISI has been busy working with stakeholders to clear any blockages. Information events and advertising campaigns have been organised to increase debtor awareness. The ISI has worked closely with credit institutions to emphasise the benefits and financial returns that can be realised from dealing with personal debt in a structured way using the arrangements outlined above.

The credit institutions, their representative bodies, along with debtor advocates, personal insolvency practitioners (PIPs), and the Courts Service are now working together under the chairmanship of the ISI on the Consultative Forum, the Protocol Oversight Committee, and the Protective Certificate (PC) Target Timeline Group.

The shared aim is to develop a more effective, timely and legally certain personal insolvency process for the benefit of all

> THE ISI HAS WORKED CLOSELY WITH CREDIT INSTITUTIONS TO EMPHASISE THE BENEFITS AND FINANCIAL RETURNS THAT CAN BE REALISED FROM DEALING WITH PERSONAL DEBT IN A STRUCTURED WAY

FIGURE 1 **The four solutions offered by the ISI**

Solution	Level/type of debt	Income	Assets	Required intermediary
DRN	Under €35,000	Under €60 per month	Max €400	Approved intermediaries
DSA	Unsecured only	No max	No max	Personal insolvency practitioner
PIA	Secured and unsecured	No max	No max	Personal insolvency practitioner
Bankruptcy	Over €20,000/ secured and unsecured	No max	No max	None

stakeholders. An example of this common endeavour is the support of all stakeholders with the ISI's proposal to Government that Debt Relief Notices (DRNs), Debt Settlement Arrangements (DSAs), PIAs and PCs should be approved by the ISI rather than requiring a court to make an order for their approval. This would lead to an increase in the accessibility to the personal insolvency system, time and cost savings, and a greater consistency of approach.

Policy developments

Since 2012, the personal insolvency regime has continued to develop and evolve, with a particular emphasis on ensuring that debtors are given every chance to remain in possession of their family home. The more important developments include:

- The introduction of ISI guidelines on reasonable living expenses (a debtor who enters an insolvency solution is entitled to a reasonable standard of living that meets their physical, psychological and social needs),
- The agreement of DSA and PIA protocols with all relevant stakeholders that make it easier for a debtor to reach agreement with his or her creditors through a DSA or PIA (a protocol-compliant arrangement uses agreed documentation, standard terms and conditions, and adheres to high-level principles set out within it),
- Amendments to the legislation reducing the bankruptcy term to one year, and
- Amendments permitting a debtor to seek a court review, in certain circumstances, where creditors reject a PIA – the removal of the so called 'bank veto'.

The latter are commonly referred to as 'section 115A reviews'. The ability to seek a 115A review negates the option of the creditor simply vetoing the proposed PIA and increases the likelihood of a PIA proposal being accepted. A large number of 115A cases are now progressing through the courts, with the outcomes leading to improved understanding of the obligations and requirements for both debtors and creditors. Over 1,100 section 115A cases have been initiated in either the Circuit or High Court since 2015 – 400 of these cases have been decided with a 60/40 split in terms of those reviews that have been dismissed (that is, decided in favour of the creditor), and those that have been approved (in favour of the debtor).

Abhaile

The introduction of the Abhaile Mortgage Arrears Resolution Service in 2016 means that a debtor can secure the services of a PIP for free. A number of government agencies are involved, including MABS, the Legal Aid Board, the ISI, and the Citizens' Information Board. The scheme is coordinated by the Department of Justice and the Department of Social Protection.

Furthermore Abhaile, with the assistance of the Legal Aid Board, is funding a solicitors' panel that has been created to provide legal aid to debtors, to allow them bring section 115A cases to court.

The evolution of the personal insolvency process continues and, in 2017, the department issued a consultation process under section 141 of the act asking for suggestions on how to improve the legislation. The ISI made a comprehensive submission (available on www.isi.gov.ie) and is awaiting the outcome of the department's deliberative process.

Future challenges

Economic circumstances have changed dramatically in recent years. The prolonged recession has been replaced by a domestic economy that has returned to growth, with increasing employment opportunities, growing income levels, and rising property prices.

While welcome, these favourable economic conditions pose a number of important challenges for the personal insolvency

regime and, more importantly, for the return to solvency for those tens of thousands of households that continue to find themselves in deep mortgage arrears. The emergent return to positive equity of the family homes for this cohort is of particular concern, as it may reduce the restructuring options available, including debt write-down, while masking the underlying issue of affordability.

The reappearance of more normal economic conditions will also mean increasing interest rates in the medium term from historic lows, and this is likely to have a significant effect on those debtors just on the margin of meeting their financial commitments. Improving conditions will, in turn, perhaps reduce the focus on the difficulties faced by those who remain indebted and may make it increasingly difficult for those debtors to remain in their family homes as creditors seek to recover a more valuable security.

Arguably, the need for the ISI and the suite of insolvency solutions it provides are more important in these circumstances, where debt restructuring will lead to a second chance with greater opportunities for debtors. g

The ISI would encourage you to direct any debtor who might come to you with debt problems to make contact with the ISI, either through the website www.backontrack.ie or through the information line at 076 106 4200, or to direct them to a PIP (their contact numbers are on the ISI and BackOnTrack websites). Representatives of the ISI are happy to provide information booklets on the statutory solutions available. The ISI is happy to address your staff and colleagues, through information sessions, either locally or regionally.

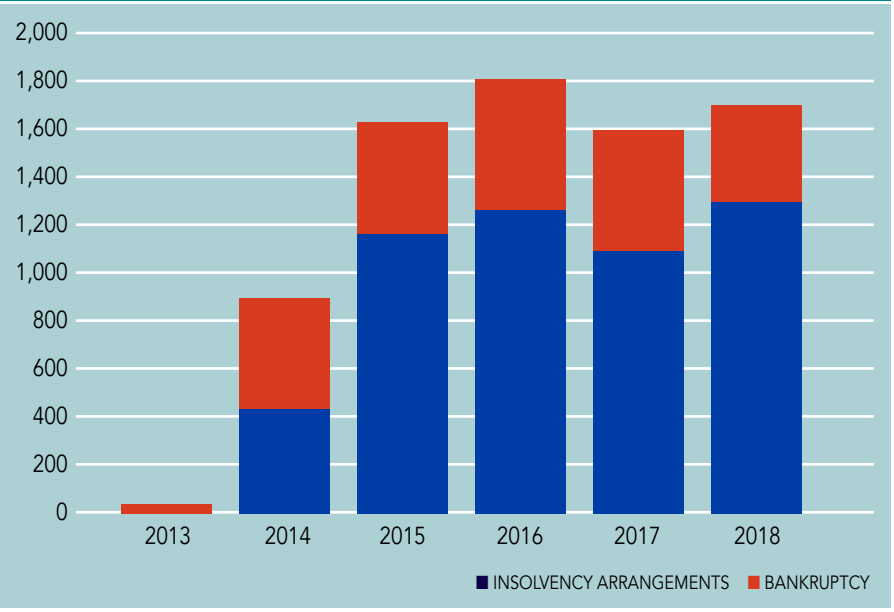
FOCAL POINT

HOLISTIC SOLUTIONS

Personal insolvency and bankruptcy legislation offers a holistic range of insolvency solutions available for your clients in financial difficulty, which provide the following benefits:

- Debtors are afforded the same protections and opportunity to avail of an insolvency solution, irrespective of creditor type,
- Debtors are entitled to a reasonable standard of living during the term of the insolvency solution,
- Debtors get a holistic solution dealing with all their debts
- Over 90% of debtors who avail of an insolvency solution remain in their family homes,
- The financial returns for creditors from dealing with personal debt in a structured way, using the arrangements, are greater than those that can be realised using alternative approaches,
- After successful completion of an insolvency solution, debtors will have addressed their financial difficulties and be solvent again.

FIGURE 2 **Approved insolvency and bankruptcy arrangements, 2013-2018**



The prediction predilection

Predictive analytics (PA) is part of the inexorable move towards the commoditisation of the 'business' of law. **David Cowan** lays out the significant cost benefits, while analysing the potential threat that PA poses to access to justice

DR DAVID COWAN IS AN AUTHOR, JOURNALIST AND TRAINER

In the film *Minority Report*, a machine is used to foretell all crimes so that potential criminals can be arrested before they are able to commit a crime. This sci-fi scenario may well be on the way to becoming reality – at least for lawyers. A growing number of legal and technology experts are developing 'predictive analytics' (PA) tools aimed at giving lawyers a similar edge in lawsuits.

Simply put, PA provides users with various scenarios by using algorithms and machine-learning to interpret data in order to provide a comprehensive picture of a situation, and predict logical outcomes. As analytical tools develop, more companies are pushing out product (see the 'Know your provider' panel), but it raises questions, not just for law firms, but also for society.

The PA push is being driven by 'big data', which in turn is driven by lower costs in artificial intelligence (AI) and computing power that can run algorithms to get real-time solutions in ways that could not be achieved until relatively recently. This holds an obvious appeal for lawyers, though arguably provides more benefits in some areas rather than others. In case-law research and e-discovery, for instance, considerable benefits can be seen. Brian McElligott (partner, Mason Hayes & Curran) says: "The best application is in niche-driven, repetitive tasks – for example, insurance."

AT A GLANCE

- 'Big data' is driving the push for predictive analytics (PA), which is benefiting from lower costs in artificial intelligence
- Law firms can use PA to identify new business, cross-sell and upsell to existing clients, and bring new clients on board
- PA also offers threats, since clients can do the work instead of law firms
- When the legal system is automated, whose interests are being served?

However, it also offers threats, because clients can do the work instead of law firms. Certainly, we will see more cases like JPMorgan Chase, which reduced some 360,000 billable hours at an average of $200 an hour, resulting in $72 million of legal fees evaporating.

Opportunity

Equally, there are opportunities for firms to use PA to identify new business, to cross-sell and upsell to existing clients, and to be more effective in bringing new clients on board. Currently, firms in Ireland are making limited use of PA. McElligott says: "Predictive analytics are used in Ireland, but I think it is a little more basic at the moment. One major use in firms is to increase their ability to reach out to lukewarm contacts, rather than cold contacts."

Creating better metrics, enhancing partner profitability, matching lawyers to client need, using 'gig lawyers' or other consultants, and more creative fee structures are all ways we can expect to see PA growing in use. What may be happening is an evolution of lawyers – raising them to new levels of service – with the expensive labour-intensive tasks for firm and client alike drastically reduced.

Providers are also pioneering PA to help provide robustness in creating legal strategy. PA can help lawyers assess the merits of a client's case, and provide analysis for offering sound legal

PIC: WIKIMEDIA COMMONS

> CREATING BETTER METRICS, ENHANCING PARTNER PROFITABILITY, MATCHING LAWYERS TO CLIENT NEED, USING 'GIG LAWYERS' OR OTHER CONSULTANTS, AND MORE CREATIVE FEE STRUCTURES, ARE ALL WAYS WE CAN EXPECT TO SEE PA GROWING IN USE

advice. Unique and proprietary data – such as case notes, records, models, resources, and expert profiles – can be leveraged to create an effective team, with the right data collated to tackle the workload.

Just as important as detecting trends and highlighting data patterns is the choice of who can best represent a client. PA can be used to decide the optimal composition of teams and ensure that all needs are covered by relevant expertise. This can include deciding on what outside counsel, consulting, strategic partnership, or individual best fits the client's needs. PA in the hiring process can help match the right candidates to the firm, as well as selecting individuals both for *ad hoc* projects and long-term relationships. The emergence of 'gig lawyers' will also expedite new ways of building teams.

Threat

There are, however, certainly three areas of concern, which also relate to broader social concerns. A fundamental – but long-term – concern relates to training. PA is taking over some of the tasks traditionally undertaken by juniors to hone their craft. Opinion is divided on the issue, with PA proponents saying that the training benefits of such tasks are overstated.

Dr Jennifer Cobbe, coordinator of the British-based Trust & Technology Initiative, and a researcher in the Compliant and Accountable Systems Group in the Department of Computer Science and Technology, University of Cambridge, disagrees: "There is an impact on the training of young lawyers."

> CERTAINLY, WE WILL SEE MORE CASES LIKE JPMORGAN CHASE, WHICH REDUCED SOME 360,000 BILLABLE HOURS AT AN AVERAGE OF $200 AN HOUR, RESULTING IN $72 MILLION OF LEGAL FEES EVAPORATING

Dr Cobbe says: "A good analogy is banking, where, as banks moved into automation, basic functions like cashiers were phased out, but this was the route for many to get into the industry, and this has been shut down."

Cobbe also sees the impact as an access-to-justice issue: "This is a fundamental concern that is not much discussed." For markets like Ireland, where there are many sole practitioners and small firms, "this creates a talent-feed issue", she says. "It is not discussed as much as should be, but it is an access-to-justice issue."

Judicial analysis

A second area of concern is judicial research. At the forefront of PA are products that track the litigation history of judges, lawyers, and law firms, including their win/loss rates for trials benchmarked against competitors.

PA can be used to track the success rates of different types of motion in individual courts and keep a database of who sues and gets sued most frequently. The products offer analyses of similar briefs filed by other firms, relevant case history, and judges' citations, often down to the most cited paragraph.

A possible crucible for social debate comes, surprisingly, from France, where PA has been banned. The country recently enacted a law that bans legaltech companies from identifying judges or magistrates

FOCAL POINT

KNOW YOUR PROVIDER

- *Brainspace* – uses machine-learning and intuitive semantic technology to automate workflows and tackle discovery documents, and is integrated with other e-discovery platforms and management software.
- *Casetext* – offers an artificial intelligence search called CARA, which finds cases on the same facts, legal issues, and jurisdiction as your matter.
- *Conduent* – has an analytics hub that gives insight and real-time visibility across the range of legal and compliance matters.
- *ContraxSuite* – is an open-source contract-analytics and legal-document platform, that uses the user's experience in document research.
- *CourtQuant* – is an AI platform that predicts the outcome of legal cases, selects the best lawyers for your case, and analyses your data to predict results.
- *Docket Alarm* – has long helped lawyers by replacing manual checks for updates on a case's docket, linked to a database of court filings, enabling users to track and analyse full court records, large volumes of cases, and provide judicial profiles.
- *DISCO* – another provider using PA to support ediscovery, with more than 200 AmLaw firms currently using their tool to automate tasks and conduct large-volume document review, with the help of AI software.
- *Everlaw* – provides control over the end-product in discovery and sifts documents in readiness for lawyer review as a second step.
- *Gavelytics* – offers judicial analytics to litigators and corporations, giving them actionable knowledge to help win more motions, more cases and more business.
- *Intraspexion* – uses deep-learning and PA to predict and prevent potential litigation based on their patented software. An early-warning system, it analyses company emails to identify risk factors.
- *Judicata* – says it is ushering in a new era of legal search that is "unprecedented" in its precision, relevancy, and simplicity.
- *Lex Machina* – mines and analyses data from past lawsuits, revealing connections and making predictions about outcomes, assisting legal departments to select and manage outside counsel.
- *Litigation Analytics* – a Thomson Reuters product delivering the context needed to build a strategy, mining court and docket data to provide data-driven insights on judges, courts, attorneys, law firms, and case types.
- *Premonition* – gives users "an unfair advantage" in sifting through big court data and analyses the best lawyers against the judges of the courts.
- *Proofpoint* – tackles the data growth in the legal field, and the bottlenecks experienced by firms, seeking to reduce the financial and time costs associated with e-discovery, while keeping processes in the control of lawyers instead of third parties.
- *Ravel Law* – part of LexisNexis, helps lawyers to be data scientists through user-friendly data-mining (which can uncover patterns in a range of outcomes) and to find out whether a judge is sympathetic towards an argument by analysing past decisions.
- *Solomonic* – uses publicly available data to understand the courtroom and judges, with analysis of hundreds of thousands of data points, with separate modules for commercial and Chancery courts.

in connection with statistical analyses or predictions about their future actions. The law stipulates a maximum penalty of five years in prison for those who breach the rule.

In addition, a 15 June 2019 resolution has been issued by the Conseil National des Barreaux (CNB), the domestic bar council, calling for an extension of the ban to include lawyers, so that they would also be excluded from the statistical analysis of their actions in court. In addition to guaranteeing lawyers the same access to the flow of legal decisions that judges have, the bar opined that "identical treatment" protecting the personal identifying data of lawyers in such decisions, released for open data, is "the only way to guarantee the equality of arms under the *European Convention on Human Rights*".

Such a ban would essentially make it a crime to interpret lawyers' patterns of behaviour in court. If successful, this would mean that France would be the first country in the world where litigation analysis and predictive modelling falls under a comprehensive ban.

What would still be permitted in France is a more limited analysis of how certain legal arguments played out in court, what claimants could expect to be paid, and how many claims of a certain type usually win – but without inclusion of the names of the professional parties or judges involved.

Experts in France have said that they are surprised by the move, given that the CNB held a very different view just three years ago, when France first moved ahead with its 'Open Data' project to make all public data available online for all to see, including court data. A recent IFOP poll commissioned by Doctrine, an AI-based legal research and litigation analytics company, revealed that 87% of French lawyers were against anonymisation of judges' names and that 63% of young lawyers wanted to increase their online visibility. Looking at the French tradition, this should, perhaps, not completely surprise, since secrecy has been something of a trademark of French law.

Filtering out bias

A third danger in PA is one of bias. 'Big data' applications do not usually revolve around individual profiles, but around group profiles. Nor does it revolve around retrospective analyses, but around

probability and predictive applications, with a margin of error.

Even with its celebrated objectivity, elements of potential bias remain in PA, and a good strategy needs to excise such bias to avoid incompetence and error being built into the strategy. The data we choose to use or exclude is critical, and data-mining in law firms requires interrogating big data-sets such as docket data, legislation, case law, client contracts, and property titles. Making simple correlations, or assessing averages thrown up by the data, still requires lawyers to interpret the meaning of such correlations, causal relationships, context and human behaviour.

PA research is a rationalising process that puts technology and people into a dynamic relationship, underpinned by clean and enriched data. PA supports quantitative research, making sense of big data and unwieldy data-sets, which can then support qualitative data using statistics, algorithms, and heuristics to predict outcomes.

But the courts will take into account more than the rational, as they also include human behaviour and emotion. In case management, lawyers often seek to second-guess the best time to file a case, which jurisdiction to use, or which judge might be more sympathetic – but also to understand the human task of legal reasoning by judges. The problem is that people do not behave optimally and, indeed, often behave irrationally, emotionally and against their interests – one of the primary reasons we need lawyers!

Second-guessing PA

Second-guessing the future of PA, in light of the French experience, is not straightforward. PA is part of the commoditisation, increased offshoring, or 'Amazonification' of the business of law. PA tools may form part of the transformation, reducing costs by replacing mundane tasks, but not necessarily lawyers' skills.

Dr Cobbe warns: "We need to ask, what is the goal of automating law? Is it efficiency and costs? Competitive advantage? Something else? I would be worried about going too far into the market without these questions being answered."

How can the profession in Ireland make use of PA? McElligott says: "There are a few issues. First, the conservatism of Irish firms. They will ask what is required? What are the benefits? Second, no-one wants to be first. The product exists, but lawyers like to use something when it has become a standard."

Once it is seen to work, McElligott says that "firms will adopt quickly, because once there are a few products out there being used, there will be a cascade effect, and people will get on board. The bigger firms, those with the resources, will do it first".

However, Cobbe cautions that big data and PA throw up broader issues for law and society: "If we look at law as a societal construct, it not only reflects theory, what is decided, but has an impact on society. Social values are reflected in the legal system, what it should be about, how it should work. When this is automated, we can ask whose interests are being served? The big law firms? A middle class, white, narrow section of society? What about those who don't have access to big law firms?"

There are many applications, and the future offers expanding opportunities. However, the critical step is to develop a successful strategy for predictive analytics, which means, it seems, finding a balance between big data and people, for the sake of both firms and society. g

Mind the GAP

A review of the cases of the thousands of incapacitated people living in residential care is essential to ensure that those who lack the capacity to consent to their stay in institutional care are not being deprived of their liberty, writes **Stephen Walsh**

STEPHEN M WALSH IS PRINCIPAL OF STEPHEN WALSH & CO, SOLICITORS, NAAS, CO KILDARE

It is estimated that as many as 25,000 people currently live in some kind of residential care. It is hoped that their cases will be reviewed by the newly created Decision Support Service, once the *Assisted Decision-Making Capacity Act 2015* is fully commenced.

The Constitution provides that no citizen shall be deprived of his liberty, save in accordance with law.

The *European Convention on Human Rights* provides that everyone has the right to liberty and security of person, and that no one shall be deprived of his liberty save in accordance with a procedure prescribed by law. It also provides that everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court.

Particular circumstances

In establishing if deprivation of liberty (DOL) exists, it is necessary to examine the particular circumstances in each case and the "starting point must be his concrete situation and account must be taken of a whole range of criteria, such as the type, duration, effects and manner of implementation of the measure in question." In the *Guzzardi* case, the court held that "the difference between deprivation of and restriction upon liberty is nonetheless merely one of degree or intensity, and not one of nature and substance."

DOL is not just a matter of law, but is a matter of fact, and the circumstances of each individual case must be examined on their own merits. Issues of DOL have a much wider scope than physical confinement and, therefore, it is necessary to examine the measures taken in a particular case, its implementation, and the effect on the individual.

Restriction upon liberty may be permissible, but the line may not be crossed to deprive someone of their liberty – and this may be difficult to identify. People who lack capacity have the same rights to 'physical liberty' as everyone else, and this can only be curtailed with proper safeguards.

Any preventative, diagnostic, or therapeutic medical intervention can

AT A GLANCE

- The protection (or lack thereof) afforded to people who stay in residential care, but do not have the mental capacity to consent to their stay, is topical at the moment
- The *Assisted Decision-Making Capacity Act* gives statutory force to the common law presumption of capacity and provides that it shall be presumed that a person has capacity unless the contrary is shown in accordance with the provisions of the act
- In light of recent jurisprudence, however, does it go far enough to protect those who are incapacitated but compliant?

> THERE IS BOTH AN OBJECTIVE AND SUBJECTIVE CONDITION TO BE DETERMINED IN ESTABLISHING IF DEPRIVATION OF LIBERTY EXISTS

PIC: SHUTTERSTOCK

only be carried out with prior, free, and informed consent of a person, and may be withdrawn by a person at any time for any reason. Restriction of a person's liberty also includes chemical restraint, which is the intentional use of medication to control or modify a person's behaviour or to ensure that they are compliant. Clearly, the informed consent of a patient is required for the administration of medication.

Indefensible gap

The European Court of Human Rights in *HL v United Kingdom* (commonly known as 'the *Bournewood* case') highlighted a large legislative gap in Britain, referred to as 'an indefensible gap' by Lord Steyn in the House of Lords. In the *Bournewood* case, a DOL was found to exist, even though HL was compliant, expressed no objection, and had never attempted to leave the hospital where he was an in-patient. Following *Bournewood*, Britain introduced legislation to plug the gap, and developed DOL safeguards for persons who are considered "incapacitated but compliant".

Since *Bournewood*, the DOL jurisprudence in Britain has developed. In the decision of *P v Cheshire West and Chester Council and Another*, the Supreme Court makes it clear that the starting point in considering the convention rights of an adult with disabilities must be the same as the starting point for any other adult. The court also reasoned that the person's compliance or lack of objection, or the relative normality of the placement, is not relevant in deciding if there has been a deprivation of liberty.

There are many people whose mental impairment is so profound that they can neither understand nor, therefore, object to any placement, supervision or control. It avoids, therefore, the legal consequence that such people are not deprived of their liberty simply because of the absence of any objection to confinement.

Incapacitated but compliant

This gap remains in Ireland at present, and the State unfortunately has failed to address the status of those who might be

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> PEOPLE WHO LACK CAPACITY HAVE THE SAME RIGHTS TO 'PHYSICAL LIBERTY' AS EVERYONE ELSE, AND THIS CAN ONLY BE CURTAILED WITH PROPER SAFEGUARDS

considered incapacitated but compliant.

In *EH v Clinical Director of St Vincent's Hospital*, the Supreme Court considered the *HL* decision, but it was distinguished on the basis that *EH* was subject to an admission order at the time of commencement of the article 40 application.

The *Mental Health Act 2001* takes great care in authorising the detention of a patient as an involuntary patient, and significant protections and safeguards for involuntary patients exist. However, there is a complete lack of any such legislative protection for a voluntary patient, who is defined as "a person receiving care and treatment in an approved centre who is not the subject of an admission order of renewal order". There is no reference to consent or capacity or to those who have or have not the capacity to consent to their admission.

Two decisions of the High Court are problematic for incapacitated but compliant patients.

The first is *McN(M) & C(L) v HSE* (2009), where Peart J held that the applicants were voluntary patients as defined in the act, despite the fact that neither could give their consent to that status.

In the second, *L(P) v Clinical Director of St Patrick's Hospital & O'Ceallaigh* (2012), the court refused to make declarations of unlawful detention and distinguished the facts of the case from those in *HL*. This decision (*PL*) was overturned on appeal, and in a detailed judgment delivered by Hogan J, the Court of Appeal, in allowing the appeal, held that a voluntary patient who expresses a desire to leave a secure unit at an approved centre remains free in principle to do so at any convenient time, and may not be restrained by the hospital from leaving, save in accordance with the provisions of section 23 of the *Mental Health Act 2001*.

However, in a significant judgment in *AC v Cork University Hospital, AC v Clare* (2018), the Court of Appeal – in a case where the hospital maintained that it was entitled to determine when and whether it was in the best interest of AC to leave the hospital – held that the hospital acted unlawfully in restraining and detaining AC. At the time of writing, this matter is under appeal to the Supreme Court.

Great leap forward

The introduction of the 2015 act is a leap forward in the protection of vulnerable adults who are experiencing difficulties with decision-making. It repeals the outdated *Lunacy Regulation (Ireland) Act 1871*, which heretofore governed the law in relation to one's capacity to make decisions. It also repeals the outdated wards-of-court system and implements a modern framework of supported decision-making that seeks to give effect to the 'functional approach' to capacity.

The act gives effect to a number of international conventions to make it possible for Ireland to meet its international obligations. However, in light of recent jurisprudence, one wonders whether it goes far enough to protect those who are incapacitated but compliant.

The act gives statutory force to the common law presumption of capacity, and provides that it shall be presumed that a person has capacity unless the contrary is shown in accordance with the provisions of the act.

The functional approach is time-specific and issue-specific and, therefore, the assessment of capacity is narrowed to the particular decision that needs to be made.

It could be said that all incapacitated older people in residential care for illnesses such as severe dementia are confined, insofar as they are under the continuous supervision and control of staff and are not free to leave.

According to jurisprudence from the ECJ, what is relevant is the significance one attaches to whether a person who lacks legal capacity to 'validly consent' to care arrangement that involve confinement is able to 'understand their situation' and agrees with, or at least does not object to, the arrangements.

There is both an objective and subjective condition to be determined in establishing if DOL exists.

A tension exists between not imposing restrictive legal procedures on incapacitated people who can express their wishes and are content with their care arrangements, and ensuring that the law protects the liberty of all incapacitated persons who are not permitted to leave their place of residence. g

LOOK IT UP

CASES:

- *AB v Clinical Director of St Loman's Hospital* [2018] IECA123; [2018] 2 ILRM 242
- *AC v Cork University Hospital, AC v Clare* [2018] IECA 217
- *EH v Clinical Director of St Vincent's Hospital* [2009] IESC 46
- *Guzzardi v Italy* [1980] ECHR 5
- *HL v United Kingdom* [2004] ECHR 471
- *IF v Mental Health Tribunal* [2018] IECA 101
- *L(P) v Clinical Director of St Patrick's Hospital & O'Ceallaigh* [2012] IEHC 15, [2014] 4 IR 385; *PL v Clinical Director of St Patrick's University Hospital* [2018] IECA 29
- *McN(M) & C(L) v HSE* [2009] IEHC 236
- *P v Cheshire West and Chester Council and another* [2014] UKSC; 19 [2014] AC 896

LEGISLATION:

- *Assisted Decision-Making Capacity Act 2015*
- *Mental Health Act 2001*

NEW DIRECTIVE UPS PROTECTION FOR WHISTLEBLOWERS

The new *Whistleblower Directive* should be transposed into Irish law within two years, and will apply to the private sector for the first time. **Judy O'Loan** explains

JUDY O'LOAN IS MANAGING SOLICITOR OF THE TRANSPARENCY LEGAL ADVICE CENTRE

THE DIRECTIVE WILL CREATE NEW LEGAL SAFEGUARDS FOR VOLUNTEERS, SHAREHOLDERS, OR NON-EXECUTIVE MEMBERS, WHO WILL BE ABLE TO MAKE A REPORT UNDER THE PROTECTIONS OF THE LEGISLATION

News from the EU and International Affairs Committee. Edited by TP Kennedy, director of education, Law Society of Ireland

Ireland's *Protected Disclosures Act 2014* (PDA) will undergo some major changes two years from now to comply with a new EU directive on the protection of persons reporting on breaches of European Union law, also referred to as the *Whistleblower Directive*.

While the preamble encourages EU member states to extend the application of this new law to other areas, the directive lays down minimum standards for the protection of persons reporting breaches of union law in:

- Public procurement,
- Financial services, products and markets, and prevention of money-laundering and terrorist financing,
- Product safety and compliance,
- Transport safety,
- Protection of the environment,
- Radiation protection and nuclear safety,
- Food and feed safety, animal health and welfare,
- Public health,
- Consumer protection,
- Protection of privacy and personal data, and security of network and information systems,
- Breaches affecting the financial interests of the union, and
- Breaches affecting the single market.

The amendment to the current legislation comes at a time when a British all-party parliamentary group on whistleblowing gathered evidence from more than 300 whistleblowers on Britain's *Public Interest Disclosure Act 1998* and concluded that, due to cover-ups and penalisation of whistleblowers, Britain "needs a comprehensive, transparent and accessible framework and an organisation that will support whistleblowers and whistleblowing". (The report can be found at www.appgwhistleblowing.co.uk.)

Private sector extension

The most notable change will be the extension of protected disclosures law to the private sector. Currently, section 21 of the Irish PDA 2014 makes the establishment and maintenance of procedures for making protected disclosures mandatory for public bodies only.

Under the directive, it will be mandatory for companies with over 50 employees to establish internal channels and procedures for reporting, and following-up on, reports of breaches of EU law. However, entities of any size falling under EU law relating to financial services, products, markets, prevention of money-laundering and terrorist financing, transport safety, and protection of the environment will have to comply.

Member states may undertake risk assessments on companies with less than 50 employees and, if necessary, require these companies to comply, particularly those operating in the areas of environment and health. The directive allows that companies with between 50 and 249 employees share resources for the receipt and investigation of reports of wrongdoing.

Tighter timeframes

The directive will impose a much tighter timeframe on recipients for processing protected disclosures. The recipient will have to acknowledge receipt within seven days and to "diligently follow-up on disclosures". Feedback, which may not necessarily be the outcome of an investigation, will be required within three months (with a possible extension to six months).

Internal disclosures

The new directive seeks to encourage disclosers to report a disclosure internally in the first instance: "Member states shall encourage the use of internal channels before external reporting, where the breach can be effectively addressed internally and where the reporting person considers that there is no risk of retaliation." The PDA also adopts this approach.

This may pose challenges for a worker who chooses to report externally in the first instance. If the worker is subsequently penalised in the workplace, it may be harder to establish the causal link between the disclosure and the penalisation, as the employer may argue that they did not know of the disclosure. Further, under the current legislation, if a worker

PIC: SHUTTERSTOCK

Ice T's suggestion that it be called the *Snitches Get Stitches Directive* was rejected

reports externally, the reasonableness of the workers' actions in so doing are taken into consideration and, if good internal processes have not been used, this may go against the worker.

The directive will also create new legal safeguards for volunteers, shareholders, or non-executive members, who will be able to make a report under the protections of the legislation. Similarly, those not yet recruited can make a report where the information on a breach has been acquired during the recruitment process or other pre-contractual negotiation.

The PDA currently stipulates that the information disclosed must have come to the worker's attention "in the connection with the worker's employment," while the directive talks about 'information acquired' and, as such, appears to offer a wider scope on the source of the information being disclosed.

Prescribed persons

To date, there has been relatively little guidance for prescribed persons in Ireland on their responsibilities and their powers to investigate. The new directive includes a range of specific provisions for 'competent authorities'. In the Irish context, competent authorities will likely include prescribed persons and any other relevant bodies to whom disclosures can be made. A further disclosure to the regulator is not uncommon in the process of a protected disclosure.

The new requirements include:

- Maintaining secure systems for the receipt and recording of reports that ensure the confidentiality of the discloser. Reports should be stored for no longer than is proportionate and necessary.
- Establishing a variety of reporting channels that allow for oral and written reports and/or meetings with the discloser, where requested.
- Providing dedicated staff to handle reports and maintaining contact with the reporting person. These staff members must have received specific training.
- Acknowledging receipt of a report within seven days, unless the discloser has explicitly requested otherwise or the competent authority believes that acknowledging the report would jeopardise the discloser's confidentiality.
- Following up diligently on reports and providing feedback on the response to the report within three months (or six months in duly justified cases).
- Informing the discloser of a decision not to pursue a report in instances where the matter is judged by the competent authority to be minor and not requiring any follow-up on their part, or where there are repetitive reports that do not include any new or meaningful information.
- Transferring the report/case to another competent authority where it is deemed that the receiving body does not have the competence to deal with a report within a reasonable timeframe or in a secure manner, and informing the discloser without delay.
- Communicating the final outcome of an investigation to the discloser in accordance with national law, as well as to other relevant authorities and institutions.

Competent authorities must also publish the following information on their website in an easily accessible section and review and update it every three years:

- The conditions under which reporting persons qualify for protection,

- Information regarding the types of reports that can be made and measures for protecting the discloser from retaliation,
- A clear statement explaining when the discloser will not be liable for a breach of confidentiality relating to the acquisition of or access to the relevant information,
- Details of how to make a report to the authority,
- Details on how the report will be processed, including the timeframes and format for feedback,
- The confidentiality regime for reports and how personal data will be processed,
- The nature of the follow-up that will be given to reports,
- Remedies and procedures available against retaliation and details of where persons contemplating making a report can access confidential advice, and
- Contact information for any other relevant bodies providing independent information and advice to the discloser.

This more prescriptive approach chimes with demands from the British all-party parliamentary group, which called for "an urgent review of the prescribed persons list, a more comprehensive guide to their role, and measures put in place to ensure that they fulfil their responsibilities".

Definition of penalisation

Under section 12 of the PDA, if an employee is penalised by their employer, or where their employer causes or permits another person to penalise them, they have a right to pursue damages in the Workplace Relations Commission (WRC). The current definition of penalisation is "any act or omission that affects a worker to the worker's detriment and, in particular, includes:

a) Suspension, lay-off or dismissal,
b) Demotion or loss of opportunity for promotion,
c) Transfer of duties, change of location of place of work, reduction in wages or change in working hours,
d) The imposition or administering of any discipline, reprimand or other penalty (including a financial penalty),
e) Unfair treatment,
f) Coercion, intimidation or harassment,
g) Discrimination, disadvantage or unfair treatment,
h) Injury, damage or loss, and
i) Threat of reprisal."

Under section 13 of the PDA, workers are also afforded a remedy in the civil courts for 'detriment'. The current definition of detriment includes "(a) coercion, intimidation or harassment, (b) discrimination, disadvantage or adverse treatment in relation to employment (or prospective employment), (c) injury, damage or loss, and (d) threat of reprisal".

The definitions of penalisation/retaliation are being extended in the new directive to include:

- Withholding of training,
- Negative performance assessment or employment references,
- Ostracism,
- Failure to convert a temporary employment contract into a permanent one, where the worker had legitimate expectations that he or she would be offered permanent employment,
- Failure to renew or early termination of the temporary employment contract,
- Damage to a person's reputation, particularly in social media, or financial loss, including loss of business and loss of income,
- Blacklisting,
- Early termination or cancellation of a contract for goods and services,
- Cancellation of a licence or permit,
- Psychiatric or medical referral.

While some of these categories may have previously fallen within the 'injury, damage or loss' or 'unfair treatment' category, this clearer delineation will assist those whistleblowers contemplating legal action. The burden of proof will rest with the employer to prove that any alleged detrimental measure was based on 'duly justified grounds'.

More support

Under article 14 of the new directive, member states will have to ensure that whistleblowers have access to free comprehensive and independent information on their rights, as well as advice on procedures and remedies available on protection against retaliation.

Significantly, the directive also says that member states shall ensure that whistleblowers have access to legal aid, legal counselling, or other legal assistance in accordance with national law. This potentially has implications for the legal aid regime in Ireland in respect of WRC and Labour Court claims, for which there is currently no legal aid for representation.

The British all-party parliamentary group found that expensive legal disputes were one of the devastating impacts on whistleblowers. It called for "an urgent review of the barriers to justice, including access to legal aid and an introduction of measures to tackle inequality of arms, including protection against costs".

Defamation proceedings

Under the PDA, disclosers were only offered a 'qualified privilege' exemption in defamation proceedings, despite full immunity in other proceedings. The new directive, under article 21, will oblige member states to offer full immunity: "In judicial proceedings, including for defamation, breach of copyright, breach of secrecy, data protection rules, disclosure of trade secrets, or for compensation requests based on private, public, or on collective labour law, reporting persons shall not incur liability of any kind for having made a report or public disclosure in accordance with this directive and shall have the right to rely on that reporting or disclosure to seek dismissal of the case, provided they had reasonable grounds to believe that the reporting or disclosure was necessary for revealing a breach pursuant to this directive."

However, if the acquisition of, or access to, the relevant information constitutes a self-standing criminal offence, criminal liability will remain.

Trade secrets

The PDA was amended on 9 June 2018 to incorporate provisions of the EU *Protection of Trade Secrets Directive* (2016/943). The effect of the amendment was to require whistleblowers to show they were motivated by the 'general public interest' when disclosing 'commercially sensitive information', even if they reported a crime to the relevant authorities and their allegations were true.

The directive states under article 21(7) that no liability on the discloser shall be incurred if a trade secret is reported and the discloser can show that they had 'reasonable grounds' to believe that the reporting or public disclosure was necessary for revealing a breach in accordance with the directive. 'Reasonable grounds' should represent a narrower burden of proof for whistleblowers than 'general public interest'. g

PROBATE OFFICE

MAJOR PROCEDURAL CHANGES INTRODUCED BY PROBATE OFFICE

The purpose of this article is to inform members of the profession of changes taking place in the internal practices and processes of the Probate Office from 1 November 2019. These changes do not require ministerial approval and are therefore under the control of the Probate Office.

Please note this date carefully, as this is the 'go live' date for the changes outlined below. Please bring this to the attention of anyone involved with doing probate in your office.

Over the past year or so, the Probate Office has undergone some major internal changes, including the installation of a new management team. Practitioners will have noticed a significant reduction in waiting times over the past year.

The office is keen to build on this progress and is currently driving a wide agenda of reform of probate practices and processes within the Principal Probate Office.

As part of this agenda, the Probate Office is acutely aware of the error rate on probate papers lodged by solicitors and the impact this has on the Probate Office, solicitors, and their clients. The error rate is currently 60%. One of the principal objectives in reforming practices and processes is to reduce the error rate on papers submitted, and to streamline applications.

There has been ongoing engagement between the Probate Office and the Law Society, and it is intended that this engagement will continue to the mutual benefit of all the participants in the probate process.

In addition, there have been significant changes in society since the enactment of the *Succession Act*, and probate practices and processes need to be updated to reflect these societal changes.

The programme of reform includes:

- Changes to procedures and practice,
- The simplification of fees,
- Revamped web pages,
- A redesigned oath and bond, and
- Electronic probate.

Some of the changes (such as the fees and new oath and bond) are dependent on ministerial approval, and the Courts Service will be pressing the Minister for Justice to approve these changes as soon as possible.

The Law Society will be updated on progress, and it is hoped to have a short interim period after approval before these changes take effect.

Once approved, the changes will be notified to all parties to the probate process.

SUMMARY OF CHANGES

1) The original death cert is required in all cases. Copies will not be accepted. The original will be retained by the Probate Office.
2) One original and one copy of the Revenue Affidavit must be lodged. There cannot be two originals. The copy must be certified by the solicitor to be a true copy of the original.
3) A notice of application must be lodged in all cases. This is instead of copy oaths. No copies of oaths are to be lodged in any case, and they will not be accepted. The notice of application is available on the Courts Service website.
4) In all cases with wills, where the oath currently states that the deceased did not intermarry with any person after making the will, it must now also state that they did not enter into a civil partnership (CP).
5) In intestate cases, civil partners must be cleared-off in the same way as spouses.
6) In intestate cases, where someone has never married (or entered into a CP), it will no longer be assumed that they had no issue. Issue must be cleared-off as if the person was widowed.
7) Affidavits of market value will not be required in the future. If a current valuation is needed, a letter from an auctioneer will suffice in all circumstances.
8) If the papers are lodged within 12 months of the date of death, no proof of current market value will be needed.
9) In applications for second or subsequent grants, it will no longer be necessary to put the word 'unadministered' before the word 'estate.'
10) Postal applications must be accompanied by a stamped, addressed envelope to the value of the papers. Otherwise, they will not be assessed.

The changes to the oath and bond will form part of a specific information campaign, which will begin in advance of approval of the changes. That information campaign is effectively starting with this article.

The E-Probate Project is up and running, and there is a project board in place. While progress will be dependent on funding and other resources being available, it is hoped that the ultimate shape of the e-probate solution will become clear later this year. The Law Society has been briefed on the project, and further meetings are due to be held shortly.

The Courts Service is in the process of updating its website and, as part of this project, the Probate Office pages are being completely revamped. The new pages will be more user-friendly and will assist solicitors in completing probate papers.

In time, the revamped web pages will become a valuable resource and will become the main conduit for communications between the Principal Probate Office and all parties to the probate process.

The changes are designed to:

- Bring a degree of clarity to probate procedures for practitioners,
- Increase the efficiency of the Probate Office,
- Reduce the likelihood of papers being queried, and
- Make the system more legally robust and relevant. g

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Diploma in Criminal Law and Practice **(new)**	11 October 2019	€2,500
Diploma in Construction Law	12 October 2019	€2,500
Diploma in Judicial Skills and Decision-Making	16 October 2019	€2,800
Diploma in Technology and Intellectual Property Law	16 October 2019	€2,800
Diploma in Arts, Entertainment and Media Law **(new)**	17 October 2019	€2,500
Diploma in Education Law	01 November 2019	€2,500
Diploma in Mediator Training	01 November 2019	€3,250
Diploma in Advocacy Skills	14 November 2019	€2,500
Certificate in Aviation Leasing and Finance	26 September 2019	€1,550
Certificate in Data Protection Practice	03 October 2019	€1,550
Certificate in Juvenile Justice, Litigation and Advocacy	05 October 2019	€1,550
Certificate in Property Law and Conveyancing for Legal Executives **(new)**	05 October 2019	€1,550
Certificate in Conveyancing	15 October 2019	€1,550
Certificate in Agribusiness and Food Law	19 October 2019	€1,550
Certificate in Immigration Law and Practice	07 November 2019	€1,550
Certificate in Strategic Leadership for the In-House Lawyer	17 January 2020	€1,550
LLM in Experiential Learning and Teaching	13 January 2020	€5,400
LLM Employment Law in Practice	25 January 2020	€3,400
Diploma in Aviation Leasing and Finance	30 January 2020	€2,800
Certificate in Company Secretarial Law and Practice	04 February 2020	€1,550

CONTACT DETAILS

E: diplomateam@lawsociety.ie T: 01 672 4802 W: www.lawsociety.ie/diplomacentre

All lectures are webcast, allowing participants to catch up on course work at a time suitable to their own needs. Please note that the Law Society of Ireland's Diploma Centre reserves the right to change the courses that may be offered and course prices may be subject to change.

WILLS

Blake, Mona (deceased), late of 16 Broadfield Drive, Rathcoole, Co Dublin, and formerly of Apt 125 Carrigmore Crescent, Saggart, Co Dublin, who died in or around 25 July 2019. Would any person having knowledge of a will made by the above-named deceased please contact Gemma Stack, P&G Stack, Solicitors, Main Street, Maynooth, Co Kildare; DX 98008; tel: 01 629 0900, email: gstack@stack.ie

Brennan, Patricia Ann (Trish) (deceased), late of 6 Belmont Park, Donnybrook, Dublin 4, who died on 12 July 2019. Would any person having knowledge of the whereabouts of any will made by the above-named deceased, or if any firm is holding same, please contact Marcus Lynch, Solicitors, 12 Lower Ormond Quay, Dublin 1; DX 200 335; tel: 01 873 2134, email: brendan.mcardle@lynchlaw.ie

Carter, Thomas (deceased), late of Craffield, Aughrim, Co Wicklow. Would any person having knowledge of a will made by the above-named deceased, who died on 9 October 2019, please contact Deirdre Fox & Associates, Solicitors, Market Square House, Aughrim, Co Wicklow; tel: 0402 36955, email: info@foxsolicitors.ie

Connors, Edward (Ned) (deceased), late of 4 Burton Hall, Leopardstown, Dublin 18. Would any person having knowledge of a will executed by the above-named deceased, who died on 25 February 2019, please contact Mary R O'Shea, O'Shea Russell, Solicitors, Main Street, Graignamanagh, Co Kilkenny; tel: 059 972 4106, email: nicholas@oshearussell.ie

Doyle, Matthew (deceased), late of Garrymore, Rathdrum, Co Wicklow, who died on 5 April 2019. Would any person having knowledge of a will made by the above-named deceased, or of its whereabouts, please contact David Lavelle, Augustus Cullen Law, Solicitors, 7 Wentworth Place, Wicklow; tel: 0404 67412, email: david.lavelle@aclsolicitors.ie

French-Kilroy, Valerie (deceased), late of Kilbree Lower, Westport. Co Mayo, and formerly of Leap, Co Cork. 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 Kevin Houlihan, Kevin Houlihan & Company, Solicitors, Main Street, Blessington, Co Wicklow; DX 178 002 Blessington; tel: 045 865 569, email: office@kmhoulihan.com

Higgins, Jeremiah (otherwise Jerry) (deceased), late of 120 Uam Var Drive, Bishopstown, Cork, formerly of 10 West Bourne Park, Magazine Road, Glasheen, Cork, who died on 10 August 2019. Would any person having knowledge of a will made or purported to have been made by the above-named deceased, or if any firm is holding same, please contact Niamh O'Connor, JW O'Donovan, Solicitors, 53 South Mall, Cork; tel: 021 730 0200, email: info@jwod.ie

Kelly, Manus (deceased), late of Drumacanoo, Churchill, Letterkenny, Co Donegal, who died on 23 June 2019. Would any solicitor or person having knowledge of the whereabouts of any will made or purported to have been made by the above-named deceased please contact Crawford Gallagher Solicitors, High Road, Letterkenny, Co Donegal, F92 TW13; tel: 074 916 4906, email: info@crawfordgallaghersolicitors.ie

Lyons, Patrick D (orse Don) (deceased), late of Charlton Villa, Kilmurray, Dungarvan, Co Waterford, who died on 9 February 2010. Would any person having knowledge of the whereabouts of any will executed by the said deceased please contact Niall King, JF Williams & Company, Solicitors, Main Street, Dungarvan, Co Waterford; tel: 058 75024, email: reception@jfwilliams.ie

Nolan, Michael Malachy (deceased), who died on 18 February 2019, and **Nolan, Sarah (otherwise Sadie Nolan) (deceased),** who died on 9 February 2019, both late of School Road, Lugduff, Tinahely, Co Wicklow. Would any person having knowledge of a will executed by the above-named deceased please contact Cooke & Kinsella, Solicitors, Wexford Road, Arklow, Co Wicklow; tel: 0402 32928, 40012, fax: 0402 32272, email: fergus@cookekinsella.ie

RATES

PROFESSIONAL NOTICE RATES

RATES IN THE PROFESSIONAL NOTICES SECTION ARE AS FOLLOWS:

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

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

ALL NOTICES MUST BE PAID FOR PRIOR TO PUBLICATION. CHEQUES SHOULD BE MADE PAYABLE TO **LAW SOCIETY OF IRELAND.** Send your small advert details, with payment, to: *Gazette* Office, Blackhall Place, Dublin 7, tel: 01 672 4828, or email: catherine.kearney@lawsociety.ie. **Deadline for November 2019 *Gazette*: 9 October 2019.** For further information, contact the *Gazette* office on tel: 01 672 4828.

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

O'Hara, Michael (deceased), late of 18 Riverway, Palmers Green, London N13 5LJ; 25 Kenwyn Drive, Neasden, London NW2 7NX; 1 Ashcombe Park, Neasden, London, NW2 7QU; 54 Cairnfield Avenue, Cricklewood, London NW2 7PE; 45 Tanfield Avenue, London; Carra, Bonniconlon, Ballina, Co Mayo; and 37 The Commons, Ballina, Co Mayo, who died on 23 June 2019. Would any person having knowledge of the whereabouts of any will made or purported to have been made by the above-named deceased, or if any firm is holding same, please contact P O'Connor & Son, Swinford, Co Mayo; tel: 094 925 1333, email: law@poconsol.ie

O'Sullivan, Denis (deceased), late of 67 Rathvilly Park, Finglas, Dublin 11, who died on 9 January 1999. 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/11601

Weldon, Tony Anthony (deceased), late of 24 Crannagh Castle Apartments, Crannagh Road, Rathfarnham, Dublin 14, formerly of 406 Clonard Road, Dublin 12, who died on 10 August 2019. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Tom Collins & Company, Solicitors, 132 Terenure Road North, Dublin 6W; tel: 01 490 0121, email: tom@tomcollins.ie

MISCELLANEOUS

TITLE DEEDS

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of certain premises situate in Selskar Street, Wexford, and in the matter of an application by Advance Tyre Company Limited

Take notice any person having a freehold interest or any intermediate interest in all that and those such portion of the lands, hereditaments, and premises comprised in and demised by a lease dated 8 May 1920 between (1) Laurence Stafford and (2) Laurence McCarthy and Robert Joseph Godd for the term of 99 years from 10 April 1920, subject to the yearly rent of £60 and the covenants and conditions therein contained (the 'lease'), as are more particularly delineated and described on the map annexed to a deed of assignment dated 28 April 1986 between (1) Margaret Mary Wilson and (2) Advance Tyre Company Limited and thereon coloured yellow and lettered 'B', which hereditaments and premises comprised in and demised by the lease are therein in their entirety described as "all that and those the yard, two dwellinghouses, harness room, stables, coach houses, sheds, offices and other buildings thereon situate in Selskar Street, bounded on the north partly by a yard and premises in the occupation of Owen Kehoe and partly by a house in the occupation of Matthew Doyle and

partly by a yard and premises in the occupation of said Laurence McCarthy, on the south partly by the house in the occupation of Daniel O'Keeffe, the property of the lessor, and premises known as 'The Imperial Hotel', on the east by the road leading from the quay to the bridge known as 'the New Bridge' and premises in the occupation of said Laurence McCarthy, on the west by Selskar Street and the said premises in the occupation of Daniel O'Keefe and other premises the property of the lessor in the occupation of Daniel O'Sullivan, all of which said premises are more particularly delineated on the map or plan endorsed hereon and bounded by a red line and are situate in the parish of Saint Selskar, barony of Forth, and town and county of Wexford".

Take notice that Advance Tyre Company Limited intends to submit an application to the county registrar for the county of Wexford for the acquisition of the freehold interest and any intermediate interest in the aforesaid property, and any party asserting that they hold a superior interest(s) in the aforesaid property are called upon to furnish evidence of the title to the aforementioned property to the below named within 21 days from the date of this notice.

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

Date: 4 October 2019

Signed: A&L Goodbody (solicitors for the applicant), International Financial Services Centre, North Wall Quay, Dublin 1

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of an application by Bill McCormack (Naas) Limited

Any person having a freehold estate or any intermediate interest in all that and those the premises situate at no 37 South Main Street, in the town and barony of Naas, in the county of Kildare, held by the applicant Bill McCormack (Naas) Limited as lessees under a lease dated 22 March 1961 between Martha K Cowl and Thomas Barnardo of the one part and Thomas A McCormack of the other part, for a term of 99 years from 29 September 1960 at the rent of £75 (Irish pounds) per annum.

Take notice that Bill McCormack (Naas) Limited intends to apply to the county registrar of the county of Kildare to vest in them the fee simple and any intermediate interest in the said property, and any party asserting that they hold a superior interest in the aforesaid property is called upon to furnish evidence of title to same to the below named within 21 days from the date of this notice.

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

Date: 4 October 2019

Signed: Wilkinson & Price (solicitors for the applicant), Main Street, Naas, Co Kildare

DE MINIMIS NON CURAT LEX

WE NEED TO TALK ABOUT 'IT'

An Auckland advertising copywriter brought a clown to his redundancy meeting, the *New Zealand Herald* reports.

New Zealand law allows workers the option of bringing a support person to serious disciplinary meetings, usually relating to an employee's prospective dismissal.

After FCB New Zealand lost a significant client and began layoffs, Josh Thompson, who had reportedly been with the company for five months, received an ominous email from his bosses that read: "Bad news. We're having a meeting to discuss your role."

Faced with the task of securing an appropriate support person for the potentially tense meeting, Thompson, said: "I thought it's best to bring in a professional, and so I paid $200 and hired a clown."

The clown noisily crafted balloon animals at the meeting, and Thompson's bosses had to request he quieten down several times. Reportedly, the clown mimed crying when the redundancy paperwork was handed over.

Said Thompson: "I mean, I did get fired, but apart from that, it was all smooth running."

'JE SUIS MAURICE!'

A rooster called 'Maurice' can carry on with his dawn chorus, a French court has ruled.

The Guardian reports that the tribunal rejected a retired couple's complaint about the bird's early morning crowing on the Île d'Oléron in western France, and ordered them to pay €1,000 in damages to Maurice's owner. The couple had argued that the 6.30am cock-crow was abnormal and disturbed the peace during their holidays.

They sought the removal of the bird or that it be silenced, which triggered a '*Je suis Maurice!*' campaign on social media.

The defence lawyer said they had won because, "under French law, you have to prove there is a nuisance, and this was not done".

"Do you swear to crow the truth, the whole truth and nothing but the truth?"

IF YOU GO DOWN TO THE WOODS TODAY

A bear fell onto a cop car in California, causing the vehicle to crash and explode, the *LA Times* reports.

The sheriff's deputy was answering a call-out near Orleans, when the bear fell or jumped onto the car, apparently from a steep embankment.

The bear smashed the bonnet and windscreen, before the car hit the embankment, rolled over, and burst into flames.

The deputy managed to escape without serious injury. The bear fled the scene.

GIANT SEAL OF APPROVAL

A giant seal foiled drug smugglers in Australia, after blocking their escape, *Time* magazine reports.

Five men were charged over a A$1 billion drug haul found on a tiny island off Western Australia after their yacht ran aground and was abandoned, sparking a search for its occupants.

As planes searched the area, a fisherman witnessed suspicious activity on nearby Burton Island as an aircraft flew overhead. Police launched a raid on the island, finding the smugglers with a tonne of drugs they had attempted to hide under seaweed. When the police arrived, the 'shore party' made a run for their dinghy, but were thwarted by the huge sleeping seal.

"The guys basically had the choice of going through the seal or getting arrested, and they ended up choosing getting arrested," the police commissioner for Western Australia said. g

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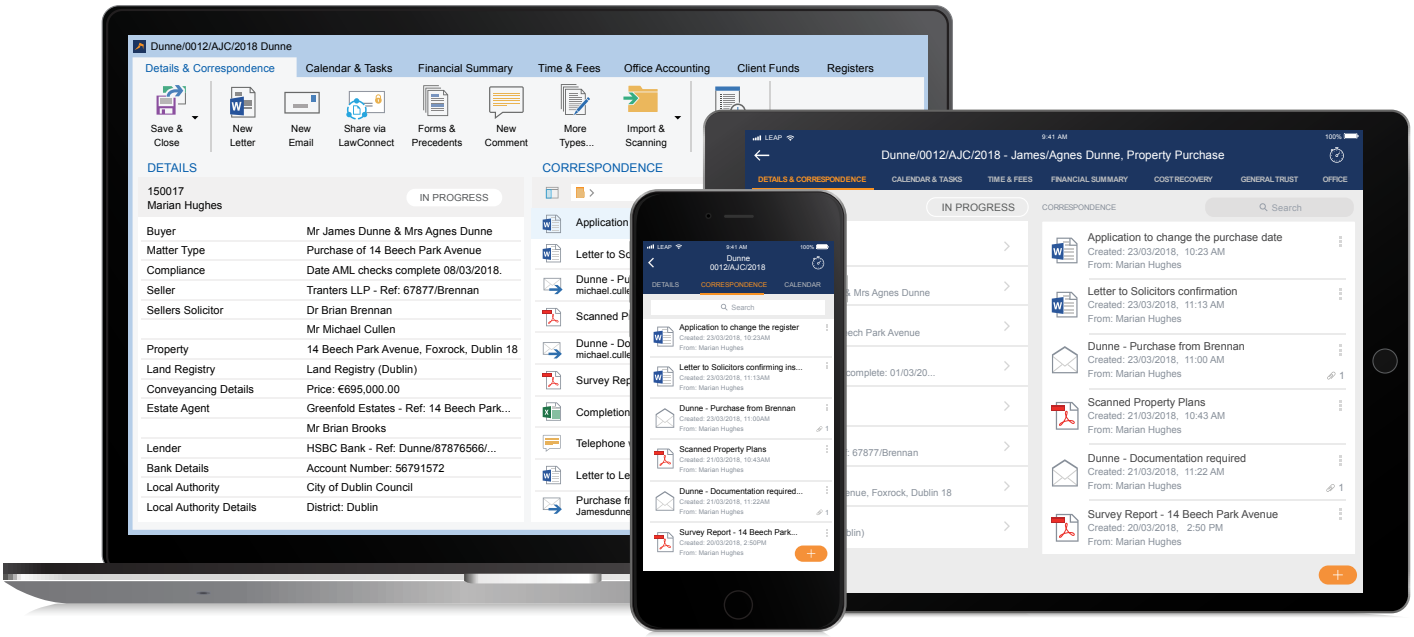

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