



Time to pay the piper
DLA Piper's David Carthy says that the Irish legal scene is set for major change



Ride like the wind
Procuring power with the new Renewable Electricity Support Scheme



Frankly speaking
Irish law's centre of gravity is moving online, says Frank Clarke

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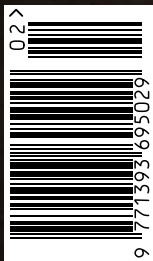
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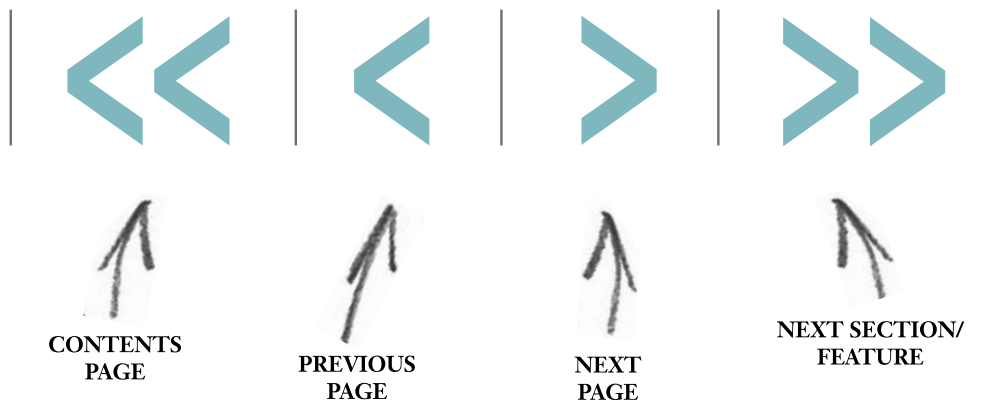
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PRESIDENT'S MESSAGE

NO GLASS CEILING FOR JUSTICE

This year marks the centenary of women entering the legal profession. That was the glass ceiling of its day, and we should be rightly proud of those English and Irish women pioneers who fought for women's rights to become members of this virtuous profession.

I am delighted to see that this *Gazette* pays tribute to the first 100 women solicitors in Ireland (see p18). It's an article of historical significance, beginning with Mary Dorothea Heron, who was Ireland's first woman to be admitted to the Roll of Solicitors, followed by Helena Mary Early – the first woman to apply for a practising certificate in the newly formed Saorstát Éireann.

In a similar vein, after 16 years of serving on the Council, I never anticipated or expected to have the honour of leading the profession in Ireland. This honour has been bestowed on only three female lawyers before me during the past 150 years – and is particularly special for me, being the first female president to come from a practice outside of Dublin.

Common purpose

In common with all of my 148 predecessors, I share a the purpose, of representing the entire profession without fear or favour, and with honesty and integrity. I intend to do just that.

I come from a two-solicitor practice and, therefore, recognise the particular challenges that come with running a small firm. I also appreciate that there is a common set of challenges that all practices must address – whether large or small, rural or urban. These include cash flow, insurance, PC fees, as well as managing and meeting client expectations, among others.

Shortly, the Law Society will be rolling out a pilot project in Sligo for smaller practices and sole practitioners. This project will involve the input of local solicitors, and will be expanded across the country for the benefit of smaller practices. I look forward to doing all I can to make this project a success.

Along with my colleagues, director general Ken Murphy and personal injuries solicitor and former president Stuart Gilhooly, we addressed the Oireachtas Justice Committee on the topic of access to justice and legal costs, on 27 November.

On behalf of our members, we informed the committee that solicitors play an essential role in ensuring that the rights of citizens are protected and defended, often against the might of the State.

However, solicitors are facing increasing cost pressures as consumers shop around. The model of the 'one-stop-shop' family solicitor taking care of all business is increasingly being challenged. And as businesses throughout the State employ solicitors to handle legal work internally, legal services are more intensely tendered for, resulting in better pricing and delivery for clients. I pointed out to the committee that most solicitors live in the communities we serve, and build practices based on the quality and integrity of our service (see p13 of this *Gazette*).

During the course of the year, I look forward to visiting as many bar associations as I can. I very much enjoyed my recent visits to the



SOLICITORS PLAY AN ESSENTIAL ROLE IN ENSURING THAT THE RIGHTS OF CITIZENS ARE PROTECTED AND DEFENDED

Southern Law Association's AGM and the Meath Solicitors' Bar Association. I intend to host a meeting of presidents and secretaries of bar associations at the Law Society on 29 May, followed by a social event. In the meantime, I look forward to meeting up with many more of you as the year progresses, and would encourage you to contact me about the issues that matter to you, at president@lawsociety.ie.

MICHELE O'BOYLE,
PRESIDENT

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g Volume 114, number 1

Subscriptions: €65 (€95 overseas)
Blackhall Place, Dublin 7
tel: 01 672 4828
fax: 01 672 4801
email: gazette@lawsociety.ie

PROFESSIONAL NOTICES: see the 'Rates' panel in the professional notices section of this *Gazette*


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Printing: Turner's Printing Company Ltd, Longford

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The enactment of the *Sex Disqualification (Removal) Act 1919* was the catalyst for the admission of women to the legal profession. Mary Gaynor and Mairead O’Sullivan open the book on Ireland’s first 100 women solicitors

24 Allow me to be Frank

Irish law’s centre of gravity is moving online, says Chief Justice Frank Clarke. Mary Hallissey reports

30 The winds of change

The procurement of power has entered a new era, due to the introduction of the new Renewable Electricity Support Scheme. What does it mean for the Irish renewable energy sector? Ronan O’Grady powers up the grid

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The Society’s *Conditions of Sale 2019* came into effect on 1 January 2019. These provide that title is now investigated before the contract is entered into. Joe Thomas just dropped in to see what condition his condition was in

40 CPD doo dah, CPD day

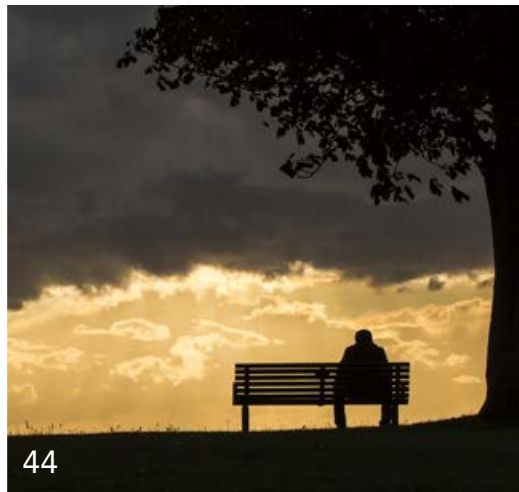
Why not make a new-year resolution to reflect on your training needs and plan your professional development for the coming months? Anthea Coll rings the changes

44 Only the lonely

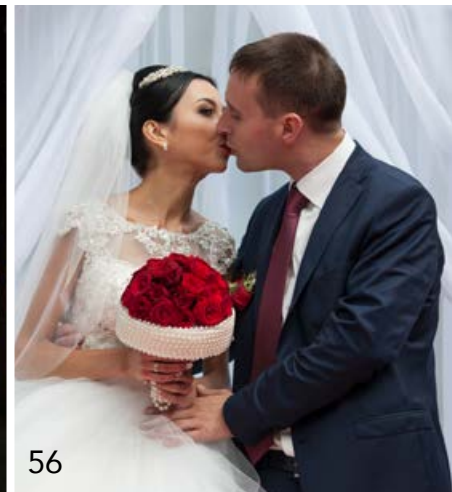
There is a great deal to be gained from a variety of peer-support structures that can help reduce professional loneliness and isolation, writes Dr Grania Clarke



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THE BIG PICTURE





FULL METAL JACKET

An Iraqi protester displays used bullet cartridges fired by Iraqi security forces during anti-government demonstrations in Baghdad, Iraq, on 19 January 2020. Reports stated that dozens of protesters were wounded in clashes with anti-riot police. Thousands of Iraqi university students took part in a strike, while hundreds of protesters closed the roads in the city as part of a wave of demonstrations against Iraqi Government corruption

AN INVITATION TO THE CASTLE



ALL PICS: GARRETT FITZGERALD PHOTOGRAPHY

At Waterford Law Society's (WLS) annual dinner in Waterford Castle on 6 December 2019 were (front, l to r): Tony O'Sullivan (president, Dublin Solicitors' Bar Association), Judge Alice Doyle, Ken Murphy (director general, Law Society), Michele O'Boyle (president, Law Society), Frank Halley (president, WLS) and Liz Pope (CEO, Property Registration Authority); (back, l to r): Bryan Leonard (office manager, Waterford Court Office), Robert Baker (president, Southern Law Association), Judge Kevin Staunton, Judge Terrance Finn and Superintendent Chris Delaney (Waterford Garda)



Paul Murrin, Orna Middleton and Tom Murrin



Graham Farrell, Robert Baker and Paul Murrin



Debbie Halley, Frank Halley (president, WLS) and Gerry Halley



Jodie Gilhooly, Judge Alice Doyle and Niall King



Yvonne Chapman and Ken Murphy



Anna Purcell, Ellen Hegarty, Leona McDonald, Sonya Fox and Rosa Eivers



Joyce Good Hammond, Morette Kinsella, Deirdre Walsh, Tony O'Sullivan and David Smyth



Donal O'Connell and Judge Terrance Finn



Brendan Pope, Liz Pope, Bernadette Cahill and Supt Chris Delaney



Eoin O'Herlihy, Anna Purcell, Ellen Hegarty and Keith McGroty

SLA WELCOMES NEW PRESIDENT



The Southern Law Association (SLA) held its AGM on 19 November 2019 at the Clayton Hotel, Cork. The large attendance welcomed the Law Society's new president Michele O'Boyle, immediate past-president Patrick Dorgan, and director general Ken Murphy. Richard Hammond (SLA president) presented his report before handing over the presidency to Robert Baker. Richard presented a newly commissioned 'travel' chain of office to Robert Baker, consisting of a replica pendant of the SLA logo suspended on a red ribbon. Robert will serve a one-year term as SLA president. (Front, l to r): Elaine O'Sullivan, Sean Durcan (treasurer), Emma Meagher Neville (PRO), Catherine O'Callaghan (honorary secretary), Richard Hammond (immediate past-president, SLA), Robert Baker (president, SLA), Juli Rea (vice-president, SLA), Gerry O'Flynn and Joan Byrne; (back, l to r): Dermot Kelly, John Fuller, William Harvey, Kieran Moran, Fiona Twomey, Barry Kelleher, Don Murphy, Brendan Cunningham and Bill Holohan



Richard Hammond hands over the chain of office to the SLA's new president, Robert Baker

RETIREMENT OF PAUL CALLAN SC



The County Louth Solicitors' Bar Association, along with the North East Bar, made a presentation to Paul Callan SC on 11 December 2019 at Dundalk Courthouse. Paul has retired after 62 years serving at the Bar. Ms Justice Bronagh O'Hanlon made the presentation. Paul received a print commemorating a famous speech made by the legendary lawyer John Philpot Curran MR, which will hang in Dundalk Courthouse. (From l to r): Ms Justice Bronagh O'Hanlon, Catherine MacGinley (president, County Louth Solicitors' Bar Association), Paul Callan SC and Turlough O'Donnell SC

SOLICITORS ON THE SUPERIOR COURTS



PICTURE: LENS MEN

Although it is now hard to believe, until 1995 solicitors were eligible for judicial appointment only to the District Court. Among those first appointed, in 1996, as a judge of the Circuit Court was Mr Justice Michael White who is now, following further legislative reform, the senior High Court judge in the Central Criminal Court. In 2002, Mr Justice Michael Peart made history as the first solicitor appointed to the High Court. He was followed by Mr Justice Garrett Sheehan – and both, in 2014, were among the first group of judges appointed to serve on the new Court of Appeal. Since then, many (although proportionately far too few) solicitors have been appointed to serve as judges of the High Court, and all have done so with great distinction. In November 2019, solicitor Mark Heslin was appointed a judge of the High Court and, the following month, Mr Justice Donald Binchy was elevated from that court to the Court of Appeal. On 22 January 2020, President of the Law Society Michele O’Boyle hosted a dinner to celebrate those two new appointments, to which all solicitors now serving as judges of the High Court were invited. (Front, l to r): Mr Justice Michael Peart (retired, Court of Appeal), Mr Justice Mark Heslin (High Court), President Michele O’Boyle, Mr Justice Donald Binchy (Court of Appeal) and Mr Justice Garrett Sheehan (retired, Court of Appeal); (back, l to r): Ken Murphy (director general), Mr Justice Michael Twomey (High Court), Maura Derivan (junior vice-president), Mr Justice Robert Eagar (High Court), Mary Keane (deputy director general), Mr Justice Michael White (High Court), Ms Justice Eileen Creedon (High Court), Imelda Reynolds (Council member), and Mr Justice Michael Quinn (High Court)

BLACKHALL PLACE HONOURS FIRST-TIME COUNCIL MEMBERS



PICTURE: LENS MEN

A celebratory dinner was held on 23 January 2020 at Blackhall Place in honour of the Law Society’s first-time elected Council members. (Front, l to r): Helen Coughlan, Bill Holohan, Michele O’Boyle (President of the Law Society), Gary Lee, and Susan Martin; (back, l to r): Ken Murphy (director general), Maura Derivan (junior vice-president), James Cahill (senior vice-president), Patrick Dorgan (immediate past-president), Daniel O’Connor, and Michelle Ní Longáin

PRESIDENTIAL PRIMARIES

PIC: LENS MEN



■ Sligo solicitor Michele O'Boyle started her term as President of the Law Society of Ireland (2019/20) on 8 November 2019. Michele is a partner in the family law firm O'Boyle Solicitors in Sligo. She is the Law Society's 149th president and its fourth female president.

Joining her on the officer team

are senior vice-president James Cahill (principal with Castlebar-based firm Cahill & Cahill), who has served as a member of the Law Society's Council for 17 years. The junior vice-president is Maura Derivan (of Carrick-on-Suir firm Derivan Sexton & Co). Maura has served on the Council for the past 14 years.

DENTONS EYES UP DUBLIN OFFICE

■ The world's largest law firm, Dentons, is to open an Irish office during the second quarter of 2020.

Irish lawyers Eavan Saunders and Peter O'Brien will be founders of the Dublin office. Saunders becomes managing partner with immediate effect, while O'Brien is to be the firm's chairman.

As part of its expansion plans, Dentons will be fully operational in Dublin from Q2 and intends to grow the office quickly.

Respected corporate lawyer Eavan Saunders was previously a senior partner at William Fry and at global law firm Ashurst.

New chairman Peter O'Brien has been a senior finance and capital markets partner at Matheson. He has acted for a range of domestic and international financial institutions and has over 20 years' experience advising on all aspects of banking and finance-related transactions.

Dentons' Dublin office will initially focus on transactional



Dentons managing partner Eavan Saunders

work for clients, particularly in the financial services, real-estate, energy, infrastructure, and technology sectors – areas where Dentons has market-leading expertise globally.

The international firm is one of the leading law firms in Britain and is a top-ten international law firm on the European continent. It has offices in 33 US cities, including nine of the ten largest markets in the US. It is also the largest law firm in China and has a wide international footprint across Asia and Australia. (See full story at Gazette.ie.)

UKRAINIAN JUDGES VISIT BLACKHALL PLACE



PIC: GIAN REDMOND

The Law Society's EU and International Affairs Committee recently hosted a delegation of judges from Ukraine. The visit was held in cooperation with the Department of Foreign Affairs and Trade as part of an ongoing initiative to develop and enhance links between the Irish and Ukrainian judiciaries, which began in September 2017. Among those present were Ken Murphy (director general, Law Society), Lynn Sheehan (deputy head of operations, EUAM Ukraine), Cormac Little (vice-chair, EU and International Affairs Committee), TP Kennedy (director of education, Law Society), Sorcha Hayes (head of practice regulation), Duncan Grehan (committee member), and Deirdre Flynn (committee secretary)

TOGETHER IN ELECTRIC DREAMS

■ The Law Society is continuing to roll out its Blackhall Place eco-friendly strategy. The latest development has seen the installation of four electric-car charging points in the rear car park at Blackhall Place. These came into operation on 7 January for use by Law Society members and staff.

The units have a 22kWh capability. Once users have registered on the ‘EO’ app and had their details authenticated on the Law Society EO software, users can charge their electric vehicle for a rate of 4c an hour, with the rate rising to €5 an hour after two hours (that is, after 121 minutes).



PIC: CIAN REDMOND

SHOCK AT PASSING OF PAUL ANTHONY MCDERMOTT SC

■ The Law Society was shocked and deeply saddened to hear of the passing of Paul Anthony McDermott SC on 10 December 2019. He was aged just 47.

The Law Society’s director general Ken Murphy described him as “one of the legal profession’s great communicators”, adding that the Society had held Paul Anthony and his advice in the highest regard.

Mr McDermott was an evidence teacher in the Law School and, for a great many years, was one of the main external legal advisors to the Society on regulatory legal cases before the Solicitors Disciplinary Tribunal and the High Court.

The Law Society expressed its condolences to his wife Annick, sons Harry and Andrew, his mother Margaret, brother James, extended family members, relatives, colleagues and friends.

Paul Anthony McDermott, BCL, LL.M (Cantab), PhD (NUI) was educated at St Paul’s



College in Raheny, Dublin. He qualified as a junior counsel in 1996 and as senior counsel in 2015. He was a devoted follower of Liverpool FC.

Micheál P O’Higgins SC (Chair of the Bar Council) said: “Paul Anthony was a skilled and knowledgeable advocate who represented his many clients with distinction.”

Ar dbeis Dé go raibh a anam dílis.

EXCLUSIVE EAP OFFER FOR SOCIETY MEMBERS

■ The Law Society has negotiated an exclusive ‘Employee Assistance Programme’ (EAP) offer for law firms with Laya Healthcare. The offer is completely independent of the Law Society. Laya Healthcare deals directly with the individual firms, with invoicing managed directly by Laya Healthcare.

The offer is open to firms of all sizes at a rate exclusive to Society members only. For firms of up to 30 employees, a flat fee of €400 covers the annual term, with each subsequent employee charged at €7.50 per employee per year after that.

Typically, the annual fee from Laya Healthcare per firm would be €750 and €14.71 per employee thereafter. This offer gives a 47% reduction in price, with 30 employees costing just €1.11 per employee per month to the firm.

The Laya Healthcare EAP service provides unlimited access for a firm’s employees and select family members to a freephone EAP service 24/7, 365 days a year. It is a first-line response providing prevention, triage and short-term mental-health difficulty support

and resolution services.

Employees can also access supports using an EAP portal, app, or live chat. EAP supports include up to six complimentary sessions of face-to-face counselling (six per issue), video or telephone counselling, financial assistance, legal assistance, mediation, coaching, and other supports, such as cancer and autism support.

Benefits of an EAP

An EAP enables employees to address areas of distress in their lives. A recent report commissioned by Spectrum Life reveals that employees are 20 times more likely to report as healthy after receiving EAP support. Please fill out a form on the Law Society’s Professional Wellbeing Hub, available at www.lawsociety.ie/eapformembers to receive a bespoke proposal from Laya Healthcare for your firm. You are also welcome to speak with one of Laya’s EAP consultants about how your firm can benefit from an EAP. All of the information submitted is confidential and received directly by Laya Healthcare.

THE POWER OF PROPER PERSUASION

■ The Law Society will continue to regulate solicitors' advertising until this responsibility passes to the Legal Services Regulatory Authority, expected later this year.

In June 2019, the Society introduced the *Solicitors Advertising Regulations 2019*. Solicitors are assured that any advertisement that was fully compliant with the previous regulations will also be compliant with the 2019 regulations, with no further action necessary.

The final quarter of 2019 saw the authority engage in a public consultation process to assist in the making and issuing of its own advertising regulations. The Law Society made detailed submissions, identifying the various and sophisticated technological advancements in digital marketing and the challenges these create in terms of regulatory enforcement. In addition, rec-



ommendations were made in the areas of personal-injury advertising, communications intended to provide information on the law, and the more general prohibi-

tions on advertisements that (a) are likely to bring the profession into disrepute, (b) are in bad taste, and (c) reflect unfavourably on other solicitors.

The Law Society remains committed, where possible, to shutting down illegally operated 'claims harvesting' websites. In all, 29 such websites have been removed from the internet since 2014, with six of these websites removed since June 2019. In the same period, a further seven solicitor-owned websites were brought into compliance with the advertising regulations, and an additional two websites were identified as belonging to a company that had gone into liquidation.

For further information on solicitors' advertising, two practice notes appear in this *Gazette*, starting on p60. The first relates to the restriction on express or implied inducements to making claims for damages for personal injury, while the second refers to the prohibition on solicitors paying a third party for referrals for work of a legal nature.

2020 MARKS ACCELERATED ACCESS TO THE FE1

■ Encouraging greater access to the profession for trainees across diverse educational, professional and socio-economic backgrounds is a key commitment for the Law Society's Law School, writes Carol Plunkett (*Education Committee chair*).

New Year's Day marked an important step in the continuing development and modernisation of solicitor training in Ireland, with the *Solicitors Acts 1954 to 2011 (Apprenticeship and Education) (Amendment) Regulations 2019* coming into operation.

Plunkett explains: "These new regulations will improve access, drive innovation, and streamline solicitor education. The Law School has begun to implement many key initiatives, which include accelerated access to taking the Final Examination First Part (FE1)."

The FE1 is the entrance examination to the Law Society's Professional Practice Course (PPC). It is held in Dublin twice a year, normally in spring and autumn, and consists of eight papers on core legal subjects.

This examination ensures that trainee solicitors, who come from third-level studies of all disciplines, whether in arts, humanities, engineering or science, commence their practical training in the Law Society with an acceptable and consistent standard of knowledge in those eight subjects.

"The introduction of accelerated access will not only facilitate students in taking the FE1 in a more timely and effective manner – it also provides, to an intending trainee solicitor, the potential of foreshortening the time it takes to progress to the PPC," says Plunkett.

"Third-level students will be able to overlap their degree exams with the FE1 exam, and take subjects in the FE1 immediately after studying that subject in university or third-level institution."

Accelerated access at a glance

- 1) Students having completed the first, or any subsequent year of a course leading to a qualification at level seven or higher on the Irish National Framework of Qualifications, or a degree awarded by a university in England, Northern Ireland, Scotland or Wales, are eligible to sit the FE1 examination.
- 2) Students can provisionally pass any one or more of the eight subject examinations of the FE1; with provisional passes becoming absolute passes once the recognised degree is obtained.

- 3) There is no longer a requirement for candidates to sit and pass at least three subject examinations in their first sitting, before being able to proceed further. Candidates can now sit the eight subject examinations, one or more at a time, in one or more sittings.
- 4) The time within which all eight subject examinations should be passed, starting from the time of the candidate first passing one or more of them, is being extended from five to seven years.

Traditionally, the FE1 takes place in Dublin. However, the Law Society is delighted to announce that the examination scheduled for March 2020 will offer an additional sitting in Cork.

Further information on the FE1 is available online at www.lawsociety.ie/becomingasolicitor.

'RESTORE LEGAL-AID FUNDING CUTS', OIREACHTAS COMMITTEE TOLD

■ Access to justice is central to Irish citizens' lives, the Oireachtas Justice Committee heard in Leinster House on 27 November. Law Society President Michele O'Boyle, director general Ken Murphy, and personal injuries solicitor and former president Stuart Gilhooly told the committee that solicitors play an essential role in ensuring that the rights of citizens are protected and defended against the might of the State.

This does not merely apply to access to courts, but also to legal advice and assistance in interacting with Government departments and agencies, as well as non-contentious and transactional work.

Solicitors are facing increasing cost pressures as consumers 'shop around', and often have a number of solicitors looking after a variety of legal matters.

The model of the 'one-stop-shop' family solicitor taking care of all business, is increasingly being challenged, the Law Society trio said.



At the Oireachtas Justice Committee meeting were (l to r): Ken Murphy, Michele O'Boyle and Caoimhghín Ó Caoláin TD (chair, Committee on Justice and Equality)

And, as businesses throughout the State employ solicitors to handle legal work internally, legal services are more intensely tendered for, resulting in better pricing and delivery for clients. The committee heard from the Law Society representatives that the legal market in Ireland has always welcomed competition as being good for the consumer – and for solicitor firms, in finding new and innovative ways to deliver for their clients.

"In pursuing that [obligation], the reasonable solicitor generally shows flexibility in terms of fees. Many solicitors provide access to justice, support their clients on a 'no-foal, no-fee' basis, on a pro-bono basis, or with a pro-bono element," said Michele O'Boyle.

The president pointed out that most solicitors live in the communities they serve, and build practices based on the quality and integrity of their service.

"It is, therefore, in the interests of the reasonable solicitor to charge proportionate and reasonable fees and provide transparency in relation to these," the president said.

Fianna Fáil's justice spokesman Jim O'Callaghan asked if crime victims got effective access and protection in the justice system.

Responding, director general Ken Murphy said that a failure to adequately fund the criminal legal-aid system has had an impact on individuals' access to justice.

He added that there had been no restoration of the cuts that took place during the economic crisis, despite appeals to ministers, and that the cohort of lawyers in this sector was aging. This would play out badly in the future in terms of access to justice, he warned.

FLAC chief executive Eilis Barry told the committee that a crisis is looming if State legal-aid funding is not increased. (Read the full story on Gazette.ie.)

LAW FIRMS MUST REGISTER TO USE CSOL

■ In 2019, the Courts Service successfully piloted an e-licensing system for legal firms that have licensing applications for premises within District Nos 1, 2 and 6 (counties Donegal, Sligo, Leitrim and Louth).

As the Courts Service prepares to implement e-licensing nationwide in mid-2020, it is asking all law firms to register to use the Courts Service Online (CSOL) system before 1 March 2020. From that date, CSOL will be the primary distribution channel for all licensing court orders.

Therefore, it is vitally important that law firms register on CSOL by this date to enable them to collect licensing court

orders online from the new system.

By registering to use CSOL, law firms will gain the following benefits:

- Collect your licensing court orders online,
- Track CSOL cases online,
- Access to CSOL case details,
- Access to historic CSOL cases online, and
- Full use of the Electronic Register.

When e-licensing is fully implemented nationwide later this year, additional benefits for legal firms will include:

- Filing and payment of licensing applications online 24/7,

- e-service on, and advance knowledge of, notice party intentions, and
- Cost and time savings for firms.

Registering on CSOL is a simple, once-off process and is done by creating an account at www.csol.ie. The Google Chrome web browser must be used to access CSOL, while a non-generic email address (for example, h.simpson@simpsonsolicitors.ie) must be used when registering for a user account. (Generic email addresses such as info@simpsonsolicitors.ie are not acceptable.) Download the relevant documentation provided on CSOL

during registration, then sign and return this documentation to the mailing address provided.

Download the relevant documentation provided on CSOL during registration, then print, sign and return it to the postal address provided.

When this manual documentation is received by the Courts Service, an email with an activation link issues to the email address provided. Click the link to activate your account.

Support for registration or for general use of CSOL is available by emailing casu@courts.ie. Further information, including instructional videos and FAQs, is also available at www.courts.ie.



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The Hon. Mr. Justice
John Mac Menamin (Chair)

- o Ben Clarke BL
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'GOLD STAR' FOR COACHING PROGRAMME

■ The Coaching Skills programme operated by Law Society Finuas Skillnet has been recognised by the Association for Coaching International, which has awarded it the 'Leader as Coach' designation.



This is part of a suite of accreditation and recognition schemes designed to continue to drive high standards in coaching. It indicates that the Law Society's coaching skills course meets best practice.

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Bookings are now being

accepted for the 2020 course, which starts on 28 February, and will run over four dates:

- *Workshop 1:* Friday 28 (part 1); and Saturday 29 February 2020 (part 2) – 9:30am to 5pm,
- *Workshop 2:* Friday 20 March 2020 – 9:30am to 5pm, and
- *Workshop 3:* Friday 3 April 2020 – 9:30am to 5pm.

For full details and booking, visit www.lawsociety.ie/coaching.

LAWYERS DISCUSS 'A WOMAN'S PLACE'

■ Members of the Irish Women Lawyers' Association (IWLA) gathered on 14 November to discuss the 'woman's place in the home' provision of article 41.2 the Irish Constitution.

The event, held at the Bar Council of Ireland, was attended by representatives from the National Women's Council of Ireland, the Irish Centre for Human Rights, the Saudi Cultural Bureau in Ireland, and the International Protection Appeals Tribunal, among others.

The IWLA has commissioned research on this topic, and barrister Anne Conlon presented a brief synopsis of her findings (see the [Aug/Sept](#) issue of the *Law Society Gazette*).

The association will podcast the results shortly. Solicitor Rosemarie Hayden provided

the historical context for the provision, while the event was chaired by Cathy Smith BL.

There were lively exchanges from both sides during the discussion, including whether the provision should be repealed or replaced. There was debate, too, on the value that the Constitution places on the role of carers in our society.

To close the event, IWLA chair Maeve Delargy made a presentation to former chair Maura Butler to mark her early retirement from the Law Society of Ireland after 20 years of service.

Maura was presented with a fashionable brooch. (Lady Hale, take note!) In her retirement, she aims to continue her work with the IWLA, the National Women's Council of Ireland, and the Association for Criminal Justice Research and Development.

ENDANGERED LAWYERS QIN (TAN) YONGPEI, CHINA



Based in the southwestern region of Guangxi, Qin Yongpei had been outspoken about misconduct and injustices perpetrated by the police and local judicial officials, leading to his detention in November 2019 in a raid on his Baijuying legal consultancy company, then formal arrest on a charge of subversion.

Qin's licence to practice had already been revoked in 2018. This is a frequently used technique to neutralise lawyers who are causing difficulties to the authorities, without the publicity of arrest and imprisonment.

After his licence was revoked, he set up a China Lawyers' Club in Nanning with a group of other former human-rights lawyers who also had been deprived of their practising licences. The club's objective was to find employment and income for dozens of experienced litigators who had lost their livelihoods. As a practising licence is only required to represent clients, it acted as a legal services company and offered legal consultancy on petitions and complaints. The authorities raided the club in January 2019, saying it was an illegal organisation of banned lawyers.

Qin's wife said that the authorities had denied him the representation of a lawyer hired by his family. "They keep putting conditions on meetings and even phone calls, and they won't let the lawyer meet with him while investigations are still

under way," she said.

The state security police are being thorough: according to his wife, they have required Qin's friends and followers on WeChat to undertake, in writing, that they will not show him any support. "They even seek out the family members of group chat members in the US who are here in China, and threaten them too," she said.

On 6 December, a large group of organisations sent an open letter to the Ministry of Justice of the People's Republic of China and the All China Lawyers' Association detailing the failures in the rule of law in China and mentioning specific cases, including that of Qin. Among the failures listed are control of the courts by the Communist Party, arbitrary arrest, detention and disappearance of perhaps millions of people without access to legal representation or to competent and impartial courts, clampdowns on rights lawyers and secret trials, failure to give access to lawyers in detention, torture, residential surveillance at a designated location after release, prohibition on freedom of movement and travel, revocation of practising licences, and the consequential effects on families and children's education.

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

A FORENSIC APPROACH

The recent British judgment in *Bajaj Healthcare Ltd v Fine Organics Ltd* dealt with the matter of offsetting counterclaim damages against amounts owed to a plaintiff. **Barry Robinson** assesses its impact

BARRY ROBINSON IS A CHARTERED ACCOUNTANT AND DIRECTOR OF FORENSIC SERVICES IN BDO IRELAND



THE DEFENDANT MADE ITS CLAIM ON THE BASIS OF ADDITIONAL COSTS THAT IT INCURRED AS A RESULT OF THE CONTAMINANT IN ITS MANUFACTURING PROCESS

Breaches of contract and resulting losses are commonplace in today's global economy. Disputes for unpaid invoices are also commonplace. In a recent British case, *Bajaj Healthcare Ltd v Fine Organics Ltd* ([2019] EWHC 2316), the Chancery Court was asked to consider both issues in the same case. The case raises some interesting considerations for forensic accountants when asked to act as expert witnesses in such cases.

Bajaj Healthcare Ltd was a chemical manufacturing company based in India. It brought legal proceedings in Britain against Fine Organics Ltd for unpaid invoices totalling \$513,946.23 plus interest. So far, straightforward.

Fine Organics Ltd, the defendant in the main proceedings, refused to pay the invoices and issued a counterclaim for damages, on the basis that a chemical supplied to it in 2014 by the plaintiff was contaminated by an unidentified substance and caused a financial loss.

This is where the case gets interesting from a forensic accountant's perspective. All the elements seem to be present:

outstanding invoices, counterclaim for losses, and quantification of those losses.

Issues to be considered

Michael Green QC, sitting as deputy judge of the Chancery Division, identified three issues for determination in this case, namely:

- The terms of the contract between the parties,
- Whether there was a breach of that contract by the plaintiff supplying a chemical with an unknown substance in it, and
- If there was a breach of contract, what loss, if any, was caused by that breach?

Ultimately, Green found that there had been a breach of contract through the supply of a chemical with an unknown substance in it.

The focal point of the case, from a forensic accountant's perspective, was how to calculate the loss and the judge's determination of that loss?

Heads of loss

This case is very interesting in terms of how the claim for losses was calculated, and the expert evidence accepted by the trial judge.

Firstly, it is important to note that the defendant did not make a claim for loss of profits, which would typically be the starting point of any case involving a claim for breach of contract relating to the supply of goods or defective products. Therefore, there was no claim in relation to lost sales or evidence required in support of any contracts that were unable to be fulfilled.

Instead, the defendant made its claim on the basis of additional costs that it incurred as a result of the contaminant in its manufacturing process. The heads of loss, totalling Stg £671,283 were:

- Loss of yield,
- Increased production costs,
- Extra technical support,
- Extra disposal costs, and
- Additional analyst costs.

Loss of yield: this head of claim was calculated by reference to the average yield of finished goods in the two years prior to the breach, and a cost per kilogram of the reduced yield was applied to the yield in the year following the breach.

The loss was calculated on the basis that the defective material led to 72kg less finished goods per batch – 63 batches were



made. The evidence was not challenged and was accepted by the trial judge as an appropriate measure of the loss suffered under this head of claim.

Increased production costs: the increased production costs were calculated in this case, based on the total fixed costs and depreciation, which was calculated on a ‘vessel’ rate-per-hour basis. The trial judge accepted that the breach of contract meant that the vessels used in the conversion process were used for longer in 2014, compared with 2012 and 2013.

The methodology for calculating the loss was to evaluate the actual hourly ‘vessel’ rate, and apply that to the additional hours incurred due to the breach that should not have been incurred.

The trial judge found this to be a “a reasonable and fair way” to calculate the wasted expenditure as a result of the breach. Given that there was no claim for loss of profits, the trial judge rejected a counter-argument that the claimant was unable to point to a loss of contracts as a basis as to why

they had not suffered a loss.

Other additional costs: the trial judge accepted the other heads of claim for extra technical support, extra disposal costs, and additional analyst costs, and noted that there had been no challenge to the amounts claimed, or to the basis on which they were claimed.

The total award for damages as a result of the breach of contract was Stg£646,883.39, and the trial judge stated that this could be offset in part against the outstanding invoices owed, which totalled \$513,946. The judge awarded interest on the damages.


Accounting principles

This case, albeit a British case, reinforces a number of important accounting principles in the calculation of damages arising from a breach of contract, in circumstances where a claim for loss of profits is not evident, and indeed is not pleaded.

The use of fixed costs, including depreciation, converted to an hourly-rate basis, was accepted as a reasonable and fair way to measure the claimant’s losses.

This judgment also reinforces the principle of being able to offset a claim for damages against outstanding invoices.

In Ireland, under High Court rules, it is necessary for an expert witness to act in an independent and unbiased manner, and to assist the court in their particular area of expertise. Typically, this involves looking objectively at all the evidence to arrive at an independent assessment of the loss, which will then be submitted to court in the form of an expert report. Of note, there was no expert evidence provided, and the trial judge commented that, given that there were no submissions, these heads of loss were not claimable as a matter of principle.

This judgment is a useful guide as to how the judiciary in Ireland may decide on the calculation of damages in similar circumstances. While this was not a conventional loss-of-profits case, it is nonetheless worth noting the approach taken, and the lack of submissions to counter the claim for damages. 

GIVEN THAT THERE WAS NO CLAIM FOR LOSS OF PROFITS, THE TRIAL JUDGE REJECTED A COUNTER-ARGUMENT THAT THE CLAIMANT WAS UNABLE TO POINT TO A LOSS OF CONTRACTS AS A BASIS AS TO WHY THEY HAD NOT SUFFERED A LOSS

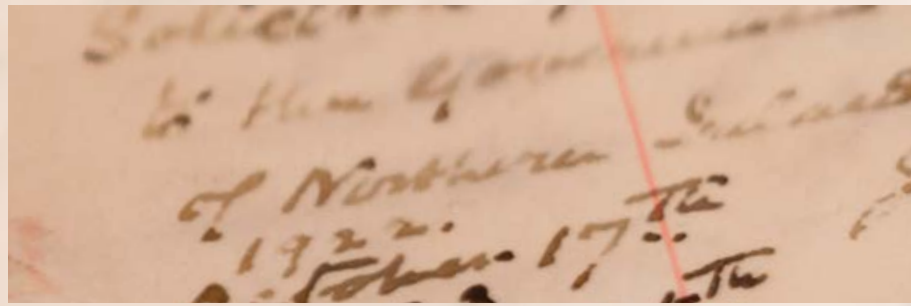


Mary Dorothea Heron – the first woman to be admitted to the Roll of Solicitors

THE FINAL FRONTIER

The enactment of the *Sex Disqualification (Removal) Act 1919* was the catalyst for the admission of women to the legal profession. **Mary Gaynor** and **Mairead O'Sullivan** open the book on Ireland's first 100 women solicitors

MARY GAYNOR IS HEAD OF LIBRARY AND INFORMATION SERVICES, AND MAIREAD O'SULLIVAN IS DEPUTY LIBRARIAN AT THE LAW SOCIETY OF IRELAND



December 1919 was a landmark in the history of the legal profession. The *Sex Disqualification (Removal) Act 1919* was enacted – the culmination of many years of lobbying by women seeking to enter the professions.

The history of attempts by women to enter the legal profession in England is well documented. It culminated in 1913, when Gwyneth Marjorie Bebb, Maud Ingram, Karin Costelloe and Lucy Nettlefold took a case against the Law Society of England and Wales (*Bebb v Law Society of England and Wales*) claiming that they should be allowed to sit its preliminary examination. The case was unsuccessful both in the Chancery Division and the Court of Appeal. The court determined that the appeal should fail and that, if there were to be a change in practice, it would have to be brought about by parliament, which duly happened some years later.

The outcome of the *Bebb* case would have been watched eagerly by a small group of Irish women, some of whom were already working in family law firms, and other younger women students with aspirations to become lawyers.

In particular, Helena Mary Early, a Dublin woman, then in her mid-20s and already working in her brother's firm, must have felt a degree of impatience with the slow progress of change.

In Belfast, Mary Dorothea Heron was embarking on a classics degree at Queen's and, no doubt, had the intention to qualify as a solicitor and join her brother's firm.

In 1919, after the *Sex Disqualification (Removal) Act* became law, both women went on to become 'firsts' – Mary Dorothea Heron, the first woman to be admitted to the Roll of Solicitors, and Helena Mary Early, the first woman to apply for a practising certificate in the then newly formed Saorstát Éireann.

Although they both commenced their apprenticeships within a few months of each other in 1920, they qualified in 1923 into a radically different post-partition landscape, with two legal jurisdictions.

Into the archives

In celebration of the centenary of the *Sex Disqualification (Removal) Act*, a steering group (comprising representatives from the Irish Women Lawyers' Association, the Bar Council, the King's Inns, the Law Society, and other professional bodies) was formed to plan a series of events to mark the anniversary.

A gala dinner in the King's Inns on 30 November 2019 marked the first official event, at which Prof Mary McAleese (former President of Ireland) gave the keynote address. Her speech was a glowing tribute to these innovative lawyers, particularly those who had qualified during the first decade following the enactment of the legislation.

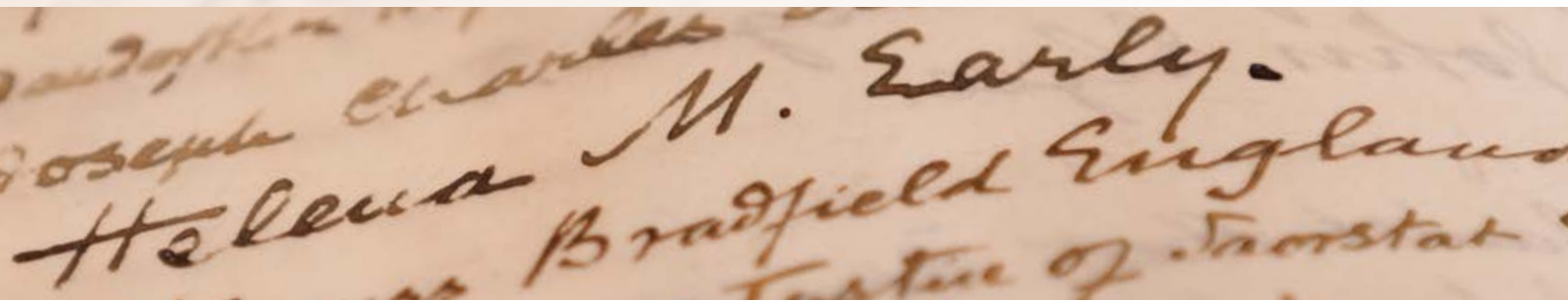
As part of that initiative, the Law Society's library took a look back through the institutional archives in order to identify the first 100 women solicitors to qualify. The Society's hand-written roll-books provided the source for the names of the first 100 women who qualified (between 17 April 1923 and 7 July 1950).

This data was then cross-referenced with the Register of Apprentices to discover whether the solicitors were graduates, the lengths of their apprenticeships, and where they had served. The [list](#) was published in October 2019, with an invitation to solicitors to tell us more about the lives of these pioneering women.

This article can only provide a taster of what we discovered. The digital archive

AT A GLANCE

- Doors opened for Irish women to enter the legal profession in December 1919
- First woman admitted to the Roll of Solicitors
- First woman applies for a practising certificate in Saorstát Éireann
- Women entered the profession in 1923



(www.lawsociety.ie/library/) contains fuller biographies of over 40 women, as well as photographs, where available.

The first ten

We already knew some information about the early women, in particular, the first three women – Mary Dorothea Heron, Helena Mary Early, and Dorothea Mary Browne. These women were admitted to the Roll in 1923. Eight more were admitted in the 1920s. It would appear that most of the women came from family firms based in Dublin, Cork, Monaghan, Mayo, Louth and Sligo. Some of these women continued in practice for long periods, notably Mary Dorothea Heron,

Helena Early, and Dorothea Browne O’Reilly.

Berenice Tarrant qualified in 1929 and practised in the family firm in Sligo before moving to McCann FitzGerald, Roche & Dudley in Dublin – later working with Nathaniel Lacey & Co, and finally PD Gardiner, until she retired.

Others, Eleanor Dulcie Scholefield, Maureen McDowell and Clohra MacBride, left practice after a short period to pursue family and other commitments. Eleanor Dulcie Scholefield was the daughter of Robert Scholfield (solicitor) at Moore, Kiely and Lloyd, who died in 1926, leaving his interest in the firm to his daughter who qualified in 1928. She remained in practice until 1934, before

moving to England where she joined the WRENS after World War 2 broke out.

Adelaide Quin from Dunleer, Co Louth, was the eighth woman to qualify as a solicitor. She took over her father’s practice, T Gerrard & Co, Ardee, after his death in 1938, and continued in practice until 1960.

The final woman to qualify in the 1920s was Irene McInerney from Loughrea, Co Galway, who practised until her marriage in 1932.

Fifty and counting

The 1930s brought a further 41 women solicitors. Mary Ursula Kearns practised for a short period with James O’Connor & Co, Dame Street, Dublin.



Mary Neilan



Clohra MacBride



THE FIRST THREE WOMEN – MARY DOROTHEA HERON, HELENA MARY EARLY AND DOROTHEA MARY BROWNE – WERE ADMITTED TO THE ROLL IN 1923



Finola O'Connor

Catherine Tynan qualified in November 1930 and became a highly respected solicitor in Limerick, who continued to practise right up until the time of her death.

Edith Keller achieved distinguished academic success at TCD, where she was awarded LLB and LLD degrees, after which she qualified as a solicitor in January 1931. She continued to practise in Whitney Moore & Keller until her death in 1948.

Finola Foley (née O'Connor) qualified in January 1931 and was the first female solicitor in Cork City.

Norah O'Shiel was the 17th woman to qualify. She was apprenticed to Vincent P Shields, Loughrea, and practised for many years in Athenry.

Margaret Gibbons was the first woman to qualify in Co Offaly in June 1931, while Mary Neilan became the first female solicitor in Roscommon a couple of months later.

Mary Eugenia Harte from Kilkenny qualified as a solicitor in 1934 and practised with her father James Harte and her brother John A Harte.

The story of Waterford-born Irene Emilie McCoy's short life and legal career is recounted in an article by historian John Lucey in the journal of the Waterford Archaeological Society, *Decies*, and is reprinted in the digital archive.

Bridget Winifred Hannon, the eldest of ten children, qualified in 1935 and worked with

Henry St John Blake, solicitor, in Galway for a number of years until her marriage.

Another west-of-Ireland woman, Kathleen Durcan, was apprenticed to John McHale in Castlebar. She qualified in 1935. Kathleen was a sister of Circuit Court Judge John Durcan, and a sister-in-law of Clohra and Sheila MacBride (see below). She married William Montgomery, solicitor.

Meath got its first female solicitor in 1936, when Marie Reilly, from Effernock, Trim, was the first of three members of the Reilly family of eight children to qualify. She ran the practice for a short period with her younger brother Frank, following the untimely death of their father in 1941.

Stella Marion Barclay Webb qualified in 1936, and practised until the mid-1980s. She was a member of the Religious Society of Friends (Quakers) and was pivotal to the founding of The Haven, a refugee home in Dublin that welcomed WW2 refugees to Ireland. She was also very involved in the Irish Campaign for Nuclear Disarmament.

Sheila MacBride served her apprenticeship with her older sister Clohra, with whom she practised post-qualification in 1937, until her marriage to the then junior barrister, John Durcan, who would later become president of the Circuit Court.

Jane Teresa McGowan was the ninth of 11

children from Balbriggan, Co Dublin. She graduated from UCD in 1936 and qualified as a solicitor in 1939. Jane (Jenny) practised for a short while until the birth of her first child, and resumed practising in 1969 upon the death of her husband.

Elizabeth Kettle was the daughter of Mary Sheehy Kettle and Thomas Michael Kettle, the barrister, economist, writer and Home Rule politician, who was killed at the Somme in 1916. She qualified in February 1939 and was employed as an assistant solicitor in the Finance Solicitor's Office in Dublin.

1940s – hitting 100

By the beginning of 1940, a total of 51 women had qualified as solicitors. Brigid Hogan from Kilricle, Co Galway, was the only woman to qualify in 1940 – she worked with Arthur Cox until her retirement.

Moya O'Connor, Swinford, Co Mayo, qualified the following year, and practised with her father, brother and nephews in the firm of P O'Connor & Son. She was deputy coroner for east Mayo for over 40 years, and was an active member of many clubs and societies throughout the county.

Eithne McMullin had a long career in private practice, working in Donegal, Sligo and Dublin, and as law agent for the Irish Nationwide Building Society until her retirement in 1985.

Lucy Fagan qualified in 1941 and practised for five years before spending a period carrying out refugee work in Germany. In 1950, she emigrated to South Africa where she became the first woman to be admitted as a solicitor/barrister in Northern Rhodesia.

Mary (Maureen) Teresa Corboy, now in her 101st year, qualified in 1942 and was offered a job with the Crown Colonial Legal Service in Hong Kong – until they discovered she was a woman and promptly withdrew their job offer! Undeterred, she continued to practise in Ireland until 1951, when she married Cornelius Sheehan, solicitor. Her friend, Mary Winifred Thornton, now in her 100th year, qualified a few weeks before her, having served her apprenticeship with Alfred G Thornton in Castlebar.

Joan M Smith (née Macaulay) qualified in January 1943 and practised most of her working life in Cavan town. She was one of the longest-serving solicitors in the country (see obituary, *Gazette* May 2016, p55).

Limerick woman Eithne Mary MacInerney qualified as the 69th woman in March 1943. She practised with Dermot G O'Donovan,

solicitors, Limerick, until her retirement in the late 1990s.

Eileen Neilan was the youngest of seven children. Her sister Mary – Roscommon's first female solicitor – had qualified in 1931. She left the family firm of PJ Neilan in Roscommon, to work in Dublin with Arthur O'Hagan, solicitors. She married Eamonn Collins and ceased practising, but returned to practise with Mason Hayes & Curran 16 years later, where she remained until her retirement.

First Jewish female solicitor

Beatrice Mushatt was born in Ireland to Jewish Lithuanian parents, who had fled from the pogroms of the Russian Empire at the end of the 19th century. The youngest of eight children, she qualified in 1944 – the first Jewish woman to qualify as a solicitor in Ireland.

Mary Sweeney studied law in UCG and was admitted to the Roll of Solicitors in September 1944. She practised for six years until her marriage to Paddy Higgins in 1952.

Nuala Early, a niece of Helena Early (the first woman to apply for a practising certificate in Saorstát Éireann), was admitted in 1945 and soon afterwards emigrated to Canada.

Moya Quinlan (née Dixon) was the 81st woman to qualify. Her long and distinguished legal career is well documented – she would become the first female President of the Law Society of Ireland, in 1980/81.

Josephine O'Keefe studied law at UCC, where she was awarded a scholarship. She qualified as a solicitor in 1946 and practised with her father John H O'Keefe in Cork city until 1950, when she married Thomas Joyce and retired from practice.

First district judge

Eileen Kennedy, solicitor, was the first female to be appointed a district judge. She had started her legal career in 1947, practising with her brother James A Kennedy, in Carrickmacross, Co Monaghan.

Annie McGuinness practised for 12 years before emigrating to Tanganyika in 1960, where her husband William L Carroll, solicitor, was the resident magistrate in Dar-es-Salaam.

Bridget Patricia Power was the daughter of John J Power, state solicitor for Co Limerick. She practised with her father and brother Maurice for a number of years before marrying Dr Patrick Fitzgerald.

IT WOULD APPEAR THAT MOST OF THE WOMEN CAME FROM FAMILY FIRMS BASED IN DUBLIN, CORK, MONAGHAN, MAYO, LOUTH AND SLIGO

Mary Agnes Mooney from Cork, who qualified in June 1948, had a long association with Babington Clarke and Mooney, where she practised until the late 1990s.

Caroline Rose Bowen Walsh from Dungarvan, Co Waterford, qualified in 1948 and worked for many years in various law firms in Cork, including Guest, Lane, Williams & Co; Ronan, Daly, Hayes; and O'Keefe Buttimer. Apart from her long and successful legal career, Caroline had a life-long enthusiasm for all things equestrian, and was a chairperson of Ardmore Tidy Towns Committee.


Sarah Carmel Killeen qualified in October 1948 – the 94th woman to do so. Carmel practised with John Foley, solicitor, Bagnelstown, Co Carlow, for a number of years and moved to Dublin, where she practised with Dublin Corporation, McCann, Fitzgerald, Roche & Dudley (as it then was) and, finally, became assistant law agent for Dublin County Council. Carmel was active on various committees of the Law Society, and became vice-president of the Society in 1985/86.

Frances Mary Callan served her apprenticeship with her father Christopher E Callan, solicitor, Boyle, Co Roscommon. Her mother, Mollie Dillon-Leetch, had been the third female barrister to qualify in Ireland. She worked in Dublin with Alexis Fitzgerald for a number of years, and then returned to the family practice in Boyle, where she remained until the early 1960s. She subsequently entered the religious order of La Sainte Union des Sacre Coeurs and, as Sr Christopher (Mary) Callan, became mother superior of the order for Ireland and England. She also served as the

principal of the Bower School in Athlone.

The list of 100 women was completed by July 1950, with the admission of Sheila B McCrann and Mary Matthews, who was the 100th woman to qualify. Mary studied science at UCD and was awarded a BSc in 1946. She also studied law at UCD and qualified as a solicitor in 1950. She practised with Brannigan & Matthews, solicitors, in Drogheda, and later established her own practice in Dunfanaghy, Co Donegal. She married Peter McMahan, who later also qualified as a solicitor, and they practised in Donegal. Mary returned to teaching when the family moved to Downpatrick, Co Down. Three of her children qualified as solicitors.

The personal recollections by relatives in the digital archive (www.lawsociety.ie/library/) reflect a diverse group of pioneering women who quietly, and with great determination, established a place for women in the solicitors' profession.

Their stories reflect their strong academic achievement and determination to succeed in their chosen careers. Many of them practised for short periods only, ceasing to practise due to family commitments or to moving to other working roles in society. Others practised for most of their lives and were hugely valued by their firms, clients and communities. 

The digital archive contains material collected to date (January 2020). We are happy to continue to receive new material on the remaining women on the list, which we can add to the online catalogue of the archive during the year. Please contact Mary Gaynor (m.gaynor@lawsociety.ie) or Mairead O'Sullivan (m.osullivan@lawsociety.ie). We wish to thank all who have engaged with us on this project.

Allow me to be FRANK

Irish law's centre of gravity is moving online – slowly but surely – says Chief Justice Frank Clarke. **Mary Hallissey** reports

MARY HALLISSEY IS A JOURNALIST AT THE *LAW SOCIETY GAZETTE*



Chief Justice Frank Clarke says that there's not much he misses from the Ireland of his childhood, but he is thankful for the warmly supportive family life he had, and his close relationship with his mother, who valued education and egged him on in life.

At the pinnacle of his profession, he likes to live in the moment, and has always enjoyed each stage of life for what it offers. He never understood the idea of hankering to be a different age, whether older or younger.

"There were nice things about being a teenager, but I'm not a teenager any more. At this age, I get to do a very interesting job, which I wouldn't have been able to do at 24, but I did other things at 24, and I probably ran around a lot faster!"



PICTURE: CIARAN REDMOND



YOU CAN HAVE GREAT LAWS AND GREAT JUDGES AND FINE LAWYERS, BUT IF THE SYSTEM DOESN'T REASONABLY ALLOW PEOPLE TO ACCESS IT, THEN IT ISN'T REALLY MUCH USE

“I always felt I was lucky. I was a teenager during the 1960s, which was a very optimistic and expansive time, which helped people like me to feel there were wider opportunities than perhaps might have existed in the past. It was a nice time to grow up.”

An only child whose father died when he was 11, he shouldered adult responsibilities at a younger age than most: “My mother would talk to me about things, when I was 15, that the average 15-year-old wouldn’t have to bother about.

“I was good at mathematics, so she would often talk to me about what she was doing with the family finances. She would have very much encouraged me to try and do whatever I wanted to do.”

As a first year maths and economic student at UCD, he ‘fell in’ with debating clubs and other future lawyers – and loved it. He then identified the King’s Inns as his career choice, wondering how this would go down at home, but he received nothing but encouragement.

The Supremes

The chief justice wants the legal profession to not just modernise, but to innovate and embrace the digital era. In fairness, he’s leading by example, scrolling through his smartphone camera roll like a pro.

“I’m not bad for a person of my age,” he concedes, and offers that he is reasonably tech-minded.

He reveals that the Supreme Court has its own WhatsApp messaging group, called ‘The Supremes’.

Modern methods of communication are marvellous, he agrees, once one is not ‘too’ careless about what is said on them. But therein lies a paradox, because expanded means of communication are a trap for the unwary.

The chief justice ponders the blurred lines between what is public and what is private in the digital era. The distinction has not yet been properly drawn, he feels, given the prevalence of public shaming over privately expressed thoughts.

“Because some bits of social media are public, people don’t yet make the distinction between what is public and what is a private conversation. If you say something privately, then it is private.

“In the past, it would have been regarded as unconscionable to go reading your friend’s

private letters in their bedroom because you happened to be there, so why is it any different now?

“If they went on about something in public, down at the local hall, you could tackle them. Opinions that might have been aired late at night in the pub to one person are now being published to everyone in the country.”

Phantom menace

On the growing menace of unguarded online commentary on matters before the courts, sometimes from elected public representatives, the chief justice says he has taken a limited step – but the only one that is within his direct control – which is to ban direct comment from a courtroom.

“If there’s to be any wider control over online commentary, it really would require wider legislation. But I think there are risks, particularly to jury trials. The professional legal media know the rules. The same doesn’t necessarily apply with amateurs, or people with an agenda. It is probably something that may well need legislation. The judiciary can’t do it by themselves.

“It needs legislation, because we can control what happens inside the courtroom; but we can’t control what happens outside, without a law. If someone goes home and tweets at night, there isn’t much we can do about it.”

The chief justice believes that instant takedown orders from a court would be one effective step, with potential penalties for serious breaches. It’s part of a wide-ranging problem though, he says.

Need for more judges

“I think it’s fair to say that we would all feel that there aren’t enough judges in Ireland, certainly in the trial courts.



PICTURE: CIÁN REDMOND

“Happily the Court of Appeal has got six extra judges recently, and that should be enough to solve their problems. And the Supreme Court is fine for numbers. But I think that the three courts that hear substantive cases, I would have thought, are all understaffed.

“If you look at the number of judges per

Q SLICE OF LIFE

Favourite film?

Dr Zhivago

Last memorable book that you read?

The Undoing Project

Favourite dish?

Well-done tuna

The gadget you can’t live without?

Any connection to the internet

Vinyl, CD, or streaming?

Streaming

Most-trusted news sources?

Non-tabloid print

How do you relax?

Sport – watching nowadays – or art galleries

A holiday destination to which you return repeatedly?

La Sovana, Sarteano, Toscana

Most-admired sports person?

Jockey Rachael Blackmore for breaking the glass ceiling

Funniest comedian(s)?

Monty Python

Beatles or Stones?

Cream – Clapton is God!



SLOWLY BUT SURELY, THE CENTRE OF GRAVITY OF EVERYTHING THAT HAPPENS IN THE COURTS IS GOING TO GO ONLINE. PEOPLE ARE GOING TO HAVE TO START USING IT

head of population in Ireland compared with any other country, we're at the very bottom end of the scale.

"I have been trying to persuade Government to set up a working group to take an objective look at the numbers we need, not just now, but into the medium term. I still remain hopeful that that will be done – I think it will be done."

Why such a dearth of judges?
"Maybe for historical reasons – the population fell under three million in the late '50s. It's now nearly five million. Also, we are living in a more complex society, so that tends to generate more litigation. Some of the litigation is, of itself, more complex

and, therefore, will take longer."

While a combination of all of those factors has significantly increased the need for judges, he believes that pay and conditions are adequate to attract the necessary talent.

"There have been a lot of very good appointments to the superior courts in recent times, so I think it's hard to argue too strongly that pay is working as a deterrent," he says.

While he expects a reasonable influx of cases here, post-Brexit, he cautions that Ireland is reasonably small, and London is not

going to stop being a major centre for international litigation just because of Brexit.

"There may be some elements of the business that may want to remain within the EU. A small share of what London has would be significant in Ireland's context."

Deflection tactics

He reckons that Irish people are slightly above average in their appetite for litigation, comparative to other jurisdictions, and muses that this could be partly the result of a historic feeling of being left on the outside of the State and institutions.

HERE'S TO THOSE WHO CHANGED THE WORLD



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“We need creative ideas for discouraging people who don’t really need to go to a court to find a solution to their issues.” This will give the courts more time to deal with their core business, he believes. “We would need fewer judges if we had more ways of diverting people away from unnecessarily going to court.”

Access to justice

As part of his vision for the next century for Ireland’s courts, the theme of improving access to justice is particularly close to Frank Clarke’s heart.

“You can have great laws and great judges and fine lawyers, but if the system doesn’t reasonably allow people to access it, then it isn’t really much use,” he says. “There are a number of strands, and not all of them are within the control of the judiciary.”

“The Courts Service has adopted a major vision, which will involve a significantly increased use of IT, both in administering the courts, filling documents, and in presenting evidence. We would like to think that that will make courts a lot more efficient and easier to use, both for practitioners and their clients – and therefore cheaper.

“Slowly but surely, the centre of gravity of everything that happens in the courts is going to go online,” he predicts. “People are going to have to start using it.”

Courts’ information technology is quite ancient, because recession cutbacks meant



MY MOTHER WOULD TALK TO ME ABOUT THINGS, WHEN I WAS 15, THAT THE AVERAGE 15-YEAR-OLD WOULDN’T HAVE TO BOTHER ABOUT

the tech budget more than halved in the deepest recession from 2009-12.

“It became a sticking plaster job, to keep the show on the road,” he says.

But the hiatus may have yielded some advantages, he concedes. “We are a long way behind, but we can also see what works – and what hasn’t worked – in other countries.

“Some of the Australian states have gone almost totally digital, in a fairly quick period of time. And it seems to have worked, so we’ve been taking advice from them.

“It’s not rocket science, but you need systems that are secure and can be worked easily by the people interacting with them –

that give added value,” he says. “The only point in doing this is if it creates efficiencies for everyone concerned,” he adds.


Legal developments

As regards the new Personal Injuries Committee, he comments: “I have emphasised how it is independent of everyone, including me, and I think, because of that, it should be allowed to go about its work, and not be interfered with or ‘strong-armed’ by anyone – even me!”

And in relation to the need for more civil legal aid, he says: “Every year in the budget, there are many mouths wishing to be fed. When you’re competing with people on trollies in hospitals or schools, or even with more policemen on the beat, it’s sometimes hard to win the argument, but I do believe there’s a strong case for an increase in civil legal aid. Criminal legal aid is fine, it works well, but civil legal aid is the poor relation, and it deserves better.

“Obviously people with plenty of money can go to court – and sometimes people with no money, where there’s no risk of a practical costs order being of any relevance, and who can persuade lawyers to take their case, either on a *pro bono* or no-foal, no-fee basis, and have, perhaps, greater access than people who have something to lose.

“But it’s the people in the middle who don’t have enough money to pay [for court], but who have a lot to lose...

“I don’t think you’re ever going to have a perfect system, but it’s allowing people who may well have rights that could be enforced in court to have a reasonable chance of doing that – that has to be the aim of everything.” 



A pure-bred Dub, Frank Clarke can find his four grandparents living in Dublin in the 1901 census – all from the South Circular Road area and the Liberties. A study of the archives at Guinness’s unearthed a HR file on his 6ft 2in maternal grandfather George Bailey, who rose from a messenger boy to working as a visitors’ guide at the James’s Street brewery (seen here in uniform, in the background image)

≡ AT A GLANCE

- Ireland's first Renewable Electricity Support Scheme (RESS) auction received Government approval in December 2019
- It moves Ireland to a competitive auction approach for renewable energy generators
- The scheme is critical to achieving a goal of 70% of Irish electricity from renewables by 2030

The procurement of power has entered a brand new era, due to the introduction of the new Renewable Electricity Support Scheme (RESS). What does it mean for the Irish renewable energy sector? **Ronan O'Grady** powers up the grid

RONAN O'GRADY IS HEAD OF LEGAL AT SOLAR 21, RATHCOOLE, CO DUBLIN



On 2 December 2019, the Minister for Communications, Climate Action and Environment Richard Bruton announced details of the legal process for the first Renewable Electricity Support Scheme (RESS) auction, which is a critical step in the renewable project delivery process and brings greater certainty for a 'bankable' route to market for the sector.

The RESS brings Ireland into line with other countries by moving away from a fixed subsidy (as was the case under the previous [REFIT scheme](#)) for renewable energy generators to a competitive auction approach.

The RESS scheme is ultimately underpinned by agreement between the EU Commission, EU Parliament and EU Council by the revised (RED II) clean energy package ([Renewable Energy Directive 2018/2001/EU](#)), which came into force in December 2018) to set a binding energy target of 32%, a target that Ireland will need



THE WINDS OF CHANGE



PICT: SHUTTERSTOCK

Q FOCAL POINT

RESS-1 INDICATIVE TIMELINE

December 2019	Detailed design consultation – auction timetable/process briefing
January 2020	Operational procedures, registration and training, consultation review
February 2020	Qualification information pack, final terms and conditions, State-aid approval
March 2020	Accept qualification submissions
April 2020	Qualification result/decision on eligibility
May 2020	Final qualification decisions, auction information pack published
June 2020	RESS-1 auction

to contribute to in the form of a national renewable share of circa 24-26% by 2030.

The scheme is critical to achieving the (70x30) goal of 70% of Irish electricity from renewables (RES-E) by 2030 (currently at circa 35%), a key element of the Government’s climate action plan.

In order to hit our 2030 targets, it is estimated that a 2030 RES-E generation (total) range of between 5,660MW to 12,140MW is required (currently circa 4,300MW), depending on a number of demand/output assumptions.

Q FOCAL POINT

PLUG INTO THE KEY ELEMENTS

- 1) *Increasing technology diversity*: the scheme will be open to a range of technologies that will broaden the renewable energy mix and enhance security of supply.
- 2) *Solar*: the Government has approved the inclusion of a solar category, which would represent approximately 10% (up to 300GW/h) of the overall auction.
- 3) *Community-led category*: the Government has approved the inclusion of a community category within the auction of up to 30 GWh.
- 4) *Community participation*: an obligatory community benefit fund will require developers to pay €2 for every MWh of electricity produced into a community fund. This would amount to an annual payment of about €6 million to rural communities living near wind and solar farms for the first auction alone.

RESS-1 delivery timelines

- RESS-1 will seek to deliver 1,000 GWh/year not exceeding 3,000 GWh/year,
- Projects are eligible for RESS-1 support from 1 July 2021,
- RESS support will continue until 31 December 2037 (16.5 years max), with the possibility of an additional 12 months extension in cases of *force majeure* (excluding any grid delays), and

The first RESS auction is set to open in June, subject to State-aid approval, and will deliver up to a 3,000GWh increase in renewable electricity generation by the end of 2022.

EirGrid has been tasked with implementing and operating the majority of auction processes for RESS-1, which will involve working with the Department of Communications, Climate Action and Environment (DCCA) and the Commission for Regulation of Utilities (CRU) on the detailed design, and terms and conditions for the scheme.

The launch of RESS also ties in with the announcement on 11 December 2019 of the EU's *Green Deal*, a legally binding commitment to achieve net carbon emissions in Europe by 2050. The deal

- Longstop date for commercial operations is 31 December 2023.

Design update

- MWhs of renewable energy to be supported through a two-way contract for difference/Floating Feed-in Premium (payments to generators are a function of output, strike price and the reference price), settled through the PSO process,
- The strike price will not be index-linked,
- Pay as bid: no clearing price applied to offers in order to mitigate any speculation,
- MWh quantity based on capacity and technology-specific capacity factors required for evaluation, but settlement based on metered generation,
- Revenue stacking for ancillary/*DS3* (energy storage) services allowed, but not for capacity market revenues,
- A bid bond of €2,000/MW is required,
- PPA with a PSO eligible supplier (or supplier-lite structure), and
- Winner selection based on ascending price order (subject to certain technical criteria and preference categories).

Eligibility criteria

- New or repowered project (>50% increase in energy and €300,000/MW investment),
- Full planning consent (excluding grid connection assets),
- The requirement to be grid contracted or

includes a 50-55% emissions reduction target for 2030, a very demanding target for Ireland.

RESS auctions frequency

The frequency of future RESS auctions is dependent on the renewable electricity project supply pipeline, which has not yet been baselined. It is envisaged that a minimum of four auctions will occur between 2020 and 2027 to deliver on the 2030 targets.

This will provide pathways for renewable developers, including offshore wind projects, as it sets out the indicative timelines and volumes for auctions over the coming decade, and provides clarity for developers in relation to when they need to have their projects 'auction ready'. It

- an ECP-1 listed project,
- Site control, and
- Director declarations required regarding independence of bids, contingent arrangements, pricing information, and ownership interests.

Awarded projects will be offered an implementation agreement, which states that the project will receive a 'letter of offer' (LoO), which enables it to execute an eligible PPA with a supplier and commit the project to be developed in return for the offer of support.

An on-demand bond will be required as performance security to the value of €25,000/MW. Mitigation is included to encourage the achievement of milestones. The DCCA may charge up to 25% of the project security if milestones are not achieved or retain the right of remedy to rescind the LoO.

Milestones to be achieved

- Signed grid connection by 30 June 2021,
- Financial close by 31 December 2021,
- Second stage payment for grid connection by 30 June 2022,
- Community benefit fund to be established by 30 June 2022, and
- Commercial operation between 90 - 120% of 'Offer Quantity' outlined in the LoO by 31 December 2022.

will also allow Ireland to take advantage of new technologies as they emerge and adapt future RESS auctions to reflect the experience and lessons from RESS-1.

Consumer benefits

Poyry, a consulting and advisory services firm, in a *report* released in October 2019, concluded that building a significant amount of CfD supported renewables in the ISEM could bring significant value to consumers.

If the RESS CfD strike price comes in at 60/MWh over the 15-year period from 2025-2040 (and if sufficient capacity were built to take in renewables penetration to 70% across the electricity market), consumers in both Northern Ireland and the Republic of Ireland could benefit

THE RESS BRINGS IRELAND INTO LINE WITH OTHER COUNTRIES BY MOVING AWAY FROM A FIXED SUBSIDY (AS WAS THE CASE UNDER THE PREVIOUS REFIT SCHEME) FOR RENEWABLE ENERGY GENERATORS TO A COMPETITIVE AUCTION APPROACH

by around €2.5 billion. This is on the basis that the reduced wholesale price of electricity (due to higher levels of near-zero marginal cost renewables on the grid) – the ‘*wholesale price saving*’ – would offset the cost of providing stability to CFD-supported generators – the ‘*stabilisation cost*’.

The corollary of the wholesale price saving is that it might cannibalise the economics of the emerging market for corporate PPAs, as the lower, fixed prices sought by corporates for these electricity ‘hedging’ contracts may not be viable for generators to support.

This may be a headwind for the Corporate Purchase Power Agreement (CPPA) market, making the Government target of 15% renewables from CPPAs (roughly 2,500 MWs) more difficult to achieve without some form of policy incentives, such as: (a) tax credits, (b) an offtaker of last resort (Norwegian-style) guarantee scheme, or (c) obligations on demand customers to purchase electricity contracted under CPPAs.

Corporates are creating a large saving on the wholesale market when they sign a CPPA without getting all of the savings, and there is a strong argument for some new policies to share these savings with the CPPA market.

The rise of corporate PPAs

In the last five years, Europe has seen significant growth in the use of corporate PPAs for renewable energy, with 5.3GW contracted directly. This is largely due to the decreasing costs of renewable-energy generation, phasing out of feed-in tariffs,

as well as growing corporate demand for traceable green energy (or ‘guarantees of origin’ [‘GoO’]).

A CPPA is essentially a long-term contract, under which a large energy user (such as a data centre) agrees to purchase electricity directly from an energy generator. This differs from the traditional approach of generators simply selling electricity into the wholesale market (I-SEM) through a licensed electricity supplier (such as SSE, Energia, ESB, etc).

The generator shares wholesale market values with the supplier, who also crucially takes on the balancing risk (for a fee) if the forecasted power is not delivered. CPPAs offer organisations a hedge against future volatile power prices by securing a fixed-energy cost for a fixed period, and the related green rights.

CPPAs create a different risk allocation profile for participants (usually tri-party) compared with the traditional PPAs, which include the energy volume delivery profile (baseload, fixed annual or quarterly, or ‘as produced’), pricing (fixed €/MWh or under a cap and floor arrangement) and tenor (usually ten-15 years).

Typically, the CPPAs with stricter delivery obligations tend to be balanced with more attractive remuneration for the generator. The key risk for the generator (and their funders) tends to be the credit risk of the offtaker; hence why most CPPAs are currently only bankable with the large US tech giants, such as Microsoft (37MW Tullahennal wind farm in Co Kerry in 2017), and Amazon (91MW

wind farm at Meenbog, Co Donegal, and 23MW wind farm at Esk, North Cork, in 2019).

Types of PPA structures

There are three typical contract structures for the corporate PPA: ‘physical PPAs’, ‘synthetic PPAs’, and ‘private wire PPAs’.

Pursuant to a physical (or sleeved) PPA, the corporate off-taker will enter into a long term PPA (with a renewable energy generator to take some or all of the energy generated by its plant), with a defined amount of power sold at a fixed price per MWh.

The generator can then appoint a utility and enter into PPAs on mirror image commercial terms to buy the power from the generator, and physically transfer it to the corporate off-taker. Typically, the corporate off-taker will pay a margin or a ‘sleeving fee’ to the utility for transacting the power through the pool and the corporate off-taker will also secure the GoOs.

In a synthetic (or virtual) PPA structure, no power is physically traded. The generator and the consumer enter into a direct financial hedging contract, such as a CFD (rather than a PPA). Each party will then enter into separate agreements with their electricity supplier/utility to sell/acquire (as applicable) electricity at the spot price.

Private wire PPAs are concerned with the sale of electricity from a generator to an offtaker. However, unlike the physical PPA, power will normally be sold directly from the generator’s facility (located close by) to the offtaker (such as an industrial factory) rather than being notionally passed through a national power grid.

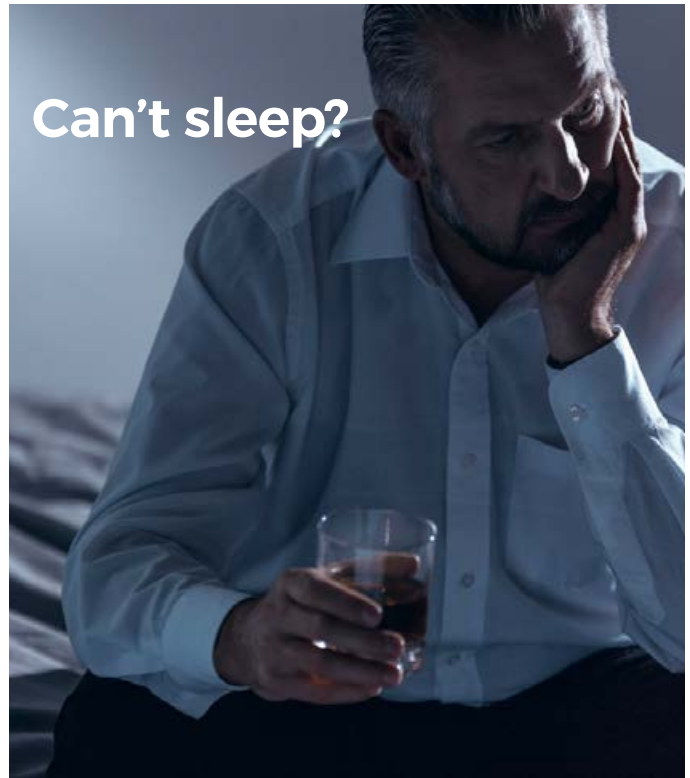


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The two main requirements for a vibrant corporate PPA market are an appetite for green energy from locally based corporates, and a pipeline of fully consented renewables projects. In relation to the former, Ireland is home to more than 60% of the **RE100 signatories**, a climate group initiative under which the world's most influential companies commit to achieving 100% renewable power by a target date.

These companies are under pressure from their shareholders and employees to demonstrate 'additionality' (a measure that can be said to have directly led to the construction of new, renewable generation) in procuring green power, and have the expertise in implementing these deals in other more mature markets.

There is now also a secondary tier of large domestic businesses that are starting to see both the commercial and environmental benefits of a PPA. The **Neo Network**, a community aimed at accelerating renewable-energy procurement, notes a significant increase in membership from companies in the manufacturing sector seeking to satisfy environmental, sustainable and governance (ESG) targets.

On the latter requirement, while there has historically been grid and planning obstacles for renewables projects, these barriers are (slowly) starting to lift, resulting in the emergence of a strong pipeline of consented projects, including wind and solar, all looking for an effective route to market.

Simplifying the risk allocation and streamlining the approach to CPPA deals may be the key obstacle to overcome if greater traction in this market is to be seen over the coming years.

Grid-connection clarity

A further positive development delivered by the CRU on 29 November 2019 was the release of the **ECP-2 proposed decision**, which is hugely significant in determining which renewables projects will be built in Ireland between 2022 and 2030. The key takeaways from this decision are:

- There will be 50 projects (50 per year 2020-22),
- 25 based on the largest renewable projects (GWhrs),
- 25 based on the earliest planning permission date (renewable and non-renewable),
- Planning permission needs to be in place to apply for ECP 2, and
- Community-led projects get prioritised.



PICTURE: SHUTTERSTOCK

EirGrid has recently demonstrated that powering the grid with 70% renewable energy is technically possible, having achieved these record levels on the grid on 8 December 2019 during Storm Atiyah.

The approval of the RESS (together with the publication in June 2019 of the **Climate Action plan**) is welcome news for the Irish renewables sector, coming some 16 months after the Government first approved the high-level design of this new support scheme.

However, there is likely to be a gap of 18 months between the completion of the last wind farms under the old REFIT support scheme, and the connection of new projects under the RESS, which obviously highlights the lost opportunity for developers, funders and stakeholders in Ireland in deploying additional renewable capacity over that period. Such additional capacity would have greatly assisted our chances of achieving our **2020 RES-E targets**, which are now likely to be missed.

While the RESS is an essential part of the policy framework needed to hit our 2030 targets, it is only part of the picture. The planning process in Ireland needs to be streamlined to process applications more quickly and fast-track critical infrastructural projects.

Key challenges

One of the key challenges facing developers is the lack of consistency and transparency around the current timelines for planning decisions (on average, appeals between 2017-19 were under consideration for 66 weeks) which greatly diminishes the ability of developers to provide certainty to

stakeholders and funders on delivery target dates for projects.

Additional industry concerns also remain in relation to important issues, such as the new wind-energy development guidelines (due to be published in December 2019), contestable cabling landownership, curtailment, and uncertainty on local authority rates.

It will prove to be a very challenging task to expand the emergent CPPA market in Ireland, unless the same level of certainty available in other jurisdictions can be provided to large corporates on when these new data centres can expect to receive their power from a project.

Data centres are set to make up 31% of the annual demand for electricity by 2027 if Eirgrid's median demand scenario plays out. Reputation is a fundamental consideration for the big tech giants, and they would rather build their data centres elsewhere in Europe rather than get mired in years of vexatious planning appeals and uncertain delivery dates, notwithstanding all the other obvious benefits of locating in Ireland. This would be a massive lost opportunity for Ireland Inc.

The publication of the scheme's details also begs the question: why such a long delay in finalising the RESS design? The Government has been acutely aware of the impact of missing our 2020 targets, and yet it appears to be sleepwalking into the (very soon to be real) imposition of hundreds of millions of euros of annual fines for its failure to deliver on our legally binding RES commitments.

There does not appear to be any meaningful evidence in the scheme details that supports the argument that such a long period of delay (since July 2018) was necessary for finalising the design. Once again, it is clear that, if Ireland is to achieve its 2030 RES targets, further joined-up thinking is needed between the policy makers, the regulator, the planning authority and the local authorities in order to provide a more coherent environment, where strategic renewable infrastructural investments can be delivered in a timely and transparent manner, so that all stakeholders in a project are provided with certainty around deliverability.

The deadline for final submissions for the consultation process closed on Friday 17 January 2020. The final terms and conditions of the scheme are due to be published in February, and then submitted to the EU Commission for State-aid approval. **E**

≡ AT A GLANCE

- The new *Law Society Conditions of Sale* came into force on 1 January 2019
- It has radically changed the conveyancing process for solicitors and their clients
- The conditions provide that title is investigated before – and not after – the contract is entered into
- A slew of general conditions place new responsibilities on the purchaser

The Law Society's *Conditions of Sale 2019* for conveyancers came into effect on 1 January 2019. They provide that title is now investigated before the contract is entered into. **Joe Thomas** just dropped in to see what condition his condition was in

JOE THOMAS IS A MEMBER OF THE LAW SOCIETY'S CONVEYANCING COMMITTEE

The Law Society's *Standard Conditions of Sale 2019*, which came into effect on 1 January 2019, radically changed the conveyancing process for solicitors and their clients. Up to 1 January 2019, the title to a property being purchased on foot of a standard Law Society contract was investigated after the contract came into force.

The 2019 *Conditions of Sale* provides that title is now investigated before the contract is entered into. This change was made following an extended period of consultation with the profession, which had, by a margin of two to one, endorsed the proposed change. The main arguments advanced to support the change were that such a change would:

- Reflect practice,
- Bring uniformity to pre-contract enquiries,
- Avoid duplication and post contract delays, and
- Assist in the move to e-conveyancing.

The main arguments advanced against the change were that such a move would slow the conveyancing



PICTURE: SHUTTERSTOCK

IN GREAT CONDITION



THE FEARED 'LOST-COSTS' ISSUE DOES NOT APPEAR TO BE A PROBLEM IN PRACTICE, NOR DOES THE CHANGE APPEAR TO HAVE LED TO SIGNIFICANT DELAYS IN THE SALE PROCESS



PIC: SHUTTERSTOCK

THERE IS A SENSE THAT, FOR MANY PRACTITIONERS, THE CHANGE HAS SIMPLY BEEN THAT THEY NOW FURNISH WITH THE CONTRACT A SET OF REQUISITIONS WITH REPLIES. THE CHANGE IS, HOWEVER, FAR MORE SIGNIFICANT THAN THAT

process, and expose solicitors to the possibility of carrying out significant amounts of work – and not recovering the cost or indeed the outlay associated with such work.

Significant changes

So what has been the experience a year after the change? To date, the feedback has been overwhelmingly positive. There is, however, a sense that, for many practitioners, the change has simply been that they now furnish with the contract a set of requisitions with replies. The change is, however, far more significant than that.

General condition 6(b) of the 2019 *Contract for Sale* provides that the purchaser *accepts* that he has received:

- The documents specified in the documents schedule,
- Requisitions on title with replies,
- Replies to such other requisitions and rejoinders as the purchaser may have raised, and
- Purchases with notice of those documents and replies.

‘Accepts’ is a defined term in the contract, and means that the *purchaser* shall be deemed to have acknowledged and satisfied

himself as to the matter concerned, prior to the coming into force of the contract (the ‘date of sale’); and agrees to be bound by it. This is much more than notice – it means, in essence, that the purchaser has considered and accepts the matter.

Radical change

General condition 6(c) encapsulates the most radical change contained in the contract, and provides that the purchaser confirms that:

- He has been afforded the opportunity to make any requisitions and rejoinders prior to the date of sale, and



- He accepts the title offered, and that
- No further or other requisitions shall be made on the title shown by the vendor pursuant to general condition 6(b), and
- Subsequent requisitions may only be raised in the very limited circumstances outlined in general condition 7.

General condition 7 stipulates that requisitions may only be raised after the date of sale on a matter of title that, prior to the date of sale, was not apparent from:

- The particulars, the special conditions, the documents and information provided, pursuant to general condition 6 or otherwise, or
- An inspection of the property, or
- An inspection of the Planning Register, or
- Searchers furnished, or
- Not otherwise known to the purchaser.

Pre-contract planning search

The purchaser is deemed to be on notice of what is apparent from inspection of the Planning Register at the date of sale and, therefore, must obtain a pre-contract planning search.

Whether a requisition is a requisition raised pursuant to general condition 7 is a matter which, in default of agreement, is dealt with under the dispute resolution provisions contained in general condition 47.

That title must be investigated pre-contract is reinforced by the general conditions, for example, general condition 9, which deals with leasehold title, provides that, where the whole or any part of the subject property is held under a lease, the purchaser accepts that the lease was well and validly made, and is a valid and subsisting lease. Thus, in cases where, for example, a lease is less than 15 years old, a purchaser must call for the title to the lessor before entry into the contract.

Absolute title

General condition 10, dealing with registered land, provides that, in cases where the vendor's title is a possessory title, the purchaser accepts that the vendor has, prior to the date of sale, furnished sufficient evidence of the title to enable the purchaser to be registered with an absolute title.

General condition 14 provides that (subject to the vendor's obligations pursuant to general condition 13 to disclose, prior to the date of sale, all easements, rights, and other matters – called 'relevant provisions' – not already known to the purchaser or apparent from inspection affecting the property), that the purchaser:

- *Accepts* that the subject property is sold, and
- The purchaser is deemed to buy subject to (i) all leases (if any) mentioned in the particulars or in the special conditions, and (ii) all relevant provisions "notwithstanding any partial statement or description" of any such lease or relevant provision.

Without this provision, a purchaser could possibly find a way to exit the contract because a disclosure was not entirely complete. In some cases, the vendor may have incomplete information, or the matter may not be capable of better description than as appears in the title or the description offered. The view of the Conveyancing Committee on this issue is that a partial description should put the purchaser on adequate enquiry at the pre-contract stage.


In essence, what the 2019 contract provides is that it is incumbent on the purchaser to raise all and any matters necessary to ensure that a purchaser obtains good title in order to satisfy himself on the issues prior to the date of sale. Unless the matter can be brought within the very narrow parameters of general condition 7, the purchaser has accepted the vendor's title. It is crucial that solicitors acting for purchasers grasp this very much intended fundamental change to the conveyancing process.

Pre-contract enquiries are an important part of the process of a purchaser deciding if he will commit to purchase. In order to assist purchasers, requisitions with replies are part of the documentation submitted with the draft contract to a purchaser's solicitor. The replies to requisitions will deal with many matters that may not be apparent from the documents furnished in the documents schedule of the contract.

In the case of registered land, the requisitions will raise queries in respect of matters that affect registered land without registration pursuant to the provisions of section 72 of the *Registration of Title Act 1964*, for example, easements that affect the subject property other than those created by express grant after first registration.

A further significant change in the *Conditions of Sale 2019* is that an 'error' (as defined in general condition 29) entitling a purchaser to compensation, or possibly a right to rescind the contract, now includes an inaccuracy, mis-statement or misrepresentation in a reply to a requisition or a rejoinder.

The 2019 *Conditions of Sale* are an important reform and simplification of the conveyancing process. This, anecdotally, would appear to be the experience of the profession at large. The feared 'lost-costs' issue does not appear to be a problem in practice, nor does the change appear to have led to significant delays in the sale process.

The aims of standardising pre-contract enquiries and removing duplication has, in the main, been met by the furnishing of requisitions duly replied to with the contract, resulting in more focused and pertinent pre-contract queries/rejoinders being raised by purchasers. 

≡ AT A GLANCE

- The benefits of planning your professional development, and undertaking well-delivered CPD and training, cannot be over-emphasised
- Solicitors should also be mindful of the fact that CPD is not just about learning about new updates or practices in the law; it also provides for personal development, wellness and skills

A new year brings new resolutions. Why not make one of those resolutions to reflect upon your training needs and plan your professional development for the coming months?

Anthea Coll rings the changes

ANTHEA COLL IS THE LAW SOCIETY'S CPD SCHEME EXECUTIVE

It is often asked why CPD is important and why it matters. The reasons for its importance are many and varied but, simply put, it assists in ensuring solicitors remain competent in providing a professional service by ensuring their knowledge and skills are relevant and up-to-date.

It also opens up new knowledge and skills areas, which can assist in career and practice advancement. Additionally, undertaking professional development can also help develop personal qualities to effectively undertake a job or perform a function at a higher standard with enhanced professionalism, capability and skill, which can complement the continuous 'on-the-job' experience gained through day-to-day practice.

CPD should not be seen as merely a 'box-ticking' exercise or something undertaken simply to comply with regulatory obligations. The benefits of planning your professional development and undertaking well-delivered CPD and training cannot be over-emphasised. Solicitors should also be mindful of the fact that CPD is not just about learning about new updates or practices in the law; it also provides for personal development, wellness, and skills that can assist solicitors working in stressful environ-



PICTURE: CIAN REDMOND

CPD DOO DAH, CPD DAY





THE NEW 2020 CPD SCHEME PERMITS POINTS TO BE CLAIMED FOR TRAINING RELATING TO MEDITATION AND MINDFULNESS PRACTICES FOR REDUCING STRESS IN THE WORKPLACE



Zippy: dee-doo-dah

ments and also help to achieve a better work/life balance.

The new CPD Scheme is effective from 1 January 2020 and introduces updates to the existing CPD framework, which reflect an awareness of the high levels of stress the modern-day solicitor is under, and of the various behaviours we can each incorporate into our daily lives to promote a more inclusive, diverse and healthier workplace. The changes include expanding the range of topics that may be claimed as CPD, a recategorising of topics, claiming CPD for 'workplace wellness' programmes, and relevant training undertaken to alleviate work-related stress and anxiety. These updates are set out clearly in the revised CPD Scheme booklet.

Stress, stress everywhere!

It will come as no surprise to hear that work-related stress, anxiety and depression are major causes of illness in the workplace. Stress places immense pressure and strain on physical and mental wellbeing, with a resulting effect on performance, relationships and behaviour. As we are all aware, legal workplaces can be stressful environments, where solicitors are subject to a high-pressure culture involving intense workloads, long hours and lengthy commutes, in addition to family and personal commitments outside of the office. For many, there is a constant need to work

harder and faster, with an 'always on' culture following a solicitor, even when they have left the office.

While stress can be harnessed for a good purpose and be motivating in some instances, excessive stress can be threatening to a person's wellbeing. Prolonged periods of stress can have an obviously detrimental effect on a solicitor's health and wellbeing and, consequently, have a negative impact on the firm or organisation they are employed by, through absenteeism, 'presenteeism', high staff turnover, or a reduced quality or standard of work.

Given the worrying increase in job stress and the negative consequences for both the health of the employee and the

organisation's performance, in addition to also having an impact on solicitors' clients and colleagues, the reasoning for many employers introducing 'stress management' training into the workplace is clear. The effect of stress on an employee's performance and abilities demonstrates an obvious link between wellness and risk management, and it is obvious that there are serious implications and consequences for failing to manage such risks appropriately. Given the serious repercussions, stress management is being considered from a risk-management perspective under the revised CPD Scheme, meaning that training on stress management will now fall under the 'regulatory matters' category of CPD.

Well, hello

Wellbeing can mean different things to different people. Broadly speaking, however, most understand it to mean eating well, sleeping well, exercising, and trying to achieve a healthy work/life balance. Maintaining and improving (when needed) each of these elements is vital for a person's health and wellbeing. In addition, meditation and mindfulness are useful tools to focus 'on the now' to alleviate work stresses, and regular practising of both can help to build resistance to the pressures that both work and personal life brings.

Due to the nature of the job, clients attend solicitors' offices seeking help and assistance, or require us to problem-solve on their behalf. Consequently, solicitors are no strangers to being placed in situations that involve a myriad of emotions, ranging from contentious litigation cases, to adversarial family disputes, to distressing medical malpractice cases. It is assumed that solicitors should not be negatively affected by the range of emotions that situations such as these invoke. However,

Q FOCAL POINT

2020 VISION

The full 2020 CPD requirement (for a solicitor who is not a sole practitioner or a compliance partner and/or an anti-money-laundering compliance partner) is 20 hours (to include a minimum of three hours' management and professional development skills, and a minimum of two hours' regulatory matters).

The full 2020 CPD requirement (for

a solicitor who is a sole practitioner or a compliance partner and/or an anti-money-laundering compliance partner) is 20 hours (to include a minimum of three hours' management and professional development skills, and a minimum of three hours' regulatory matters, of which two hours shall be accounting and anti-money-laundering compliance).

this is not always possible. Consequently, solicitors can tend to ‘carry’ the emotions of a client or case with them. This is where ‘emotional intelligence’ is of particular relevance and importance – it is the ability to recognise, understand, and manage not just your own emotions, but those of others too. It is important to be aware that by working on and improving your own emotional intelligence, it can also benefit by being an effective tool in recognising and managing stress and anxiety in both yourself and others.

Workplace wellness’ programmes and stress management assist in developing and maintaining a healthy and resilient workplace. They incorporate training focused on assisting, educating and promoting a work/life balance, and how to thrive in a high-performing and challenging environment. Given the increasingly relevant and important role this form of training takes, and the ensuing benefits offered to solicitors, the updated CPD Scheme permits the claiming of CPD points for attendance on ‘workplace wellness’ programmes and training on stand-alone topics based around achieving wellness in the workplace.

Mindfulness is a form of meditation in which you pay attention to, and focus on, the present moment and how you are feeling at that time. Practising it involves breathing exercises, imagery and other methods to relax the mind and body. It helps us ‘switch off’ our thoughts and ‘just be’ in the present and focus on the moment, which helps to alleviate stress and anxiety.

Given the effectiveness of mindfulness and meditation practices in aiding the reduction of stress levels, the new 2020 CPD Scheme permits points to be claimed for training relating to meditation and mindfulness practice for reducing stress in the workplace.

Divided, we fall

We have all heard the phrase ‘small changes can make big differences’. Never has this phrase had more relevance than in the modern-day workplace. It is vital then that a culture of inclusivity, diversity and respect is adhered to in the work environment and adopted with everyone we interact with – work colleagues, fellow professionals and clients. Diversity and inclusion are essential components for a healthy and well workforce, and solicitors should be mindful as to how they can build and promote healthy relationships in the workplace. Too often, the importance



WORK-RELATED STRESS, ANXIETY AND DEPRESSION ARE MAJOR CAUSES OF ILLNESS IN THE WORKPLACE

of speaking with colleagues face to face is forgotten, and a quick email is sent off instead. Daily human interactions can make a big difference in fostering and maintaining good working relationships, particularly during stressful periods of time.

The CPD Scheme is cognisant of the importance of diversity, inclusion, and implementing and maintaining good working relationships, behaviours and habits. Consequently, the revised scheme specifically details that training pertaining to this may be claimed under the ‘management and professional development skills’ category of CPD.

What you do is what matters

Solicitors are reminded that the CPD category of ‘regulatory matters’ is not just based on regulatory obligations, but also encompasses matters such as professional conduct and ethics. The importance of this cannot be over-emphasised, and it is vital that all solicitors regularly check to ensure that their ethical behaviour is at the forefront of their considerations when dealing with all work-related and professional matters.

Standards of professional ethics can be strongly encouraged and supported by the work environment and culture in which a solicitor is practising but, similarly, it may not be given the appropriate amount of awareness in some organisations. Given a solicitor’s role, both in private practice and in-house, it is inevitable that every solicitor will be faced with making difficult decisions on occasion – but it is crucial that their professional independence and core values are not compromised.


Maintaining and adhering to a high standard of professional ethics is an inherent and vital

component of what it means to be a solicitor, and ethical integrity and professional conduct must be protected and promoted at every juncture. Solicitors are reminded that training undertaken on professional ethics and standards continues to be claimable under the CPD category of ‘regulatory matters’.

Fail to plan, plan to fail

As we are now at the beginning of a new year, you may think that there is plenty of time to think about CPD training at a later date. However, as the saying goes, there is no time like the present: January is a good time to reflect and plan your professional development for the rest of the year, as training is shown to be of greater benefit when planned. It is important to invest time in considering your CPD needs, and it is best to carefully look at where there may be gaps in your knowledge or skill-set.

Be honest with yourself – do you need to undertake training to update yourself on changes in the law, or learn new skills which would bring new business or clients to your practice or organisation? Consider how these needs may be overcome and addressed by attending and completing relevant CPD training. It is important not to leave matters to the last minute – complete CPD training throughout 2020 and avoid a rush to fulfil your CPD obligations in the last few weeks of the year, which is often the busiest time for a legal practice or organisation.

Further information and clarification on all aspects of the updated CPD Scheme are provided in the revised scheme booklet, which is available in the CPD Scheme section of the ‘Solicitors’ area on the Law Society website. 

ONLY THE LONELY

There is a great deal to be gained from a variety of peer support structures that can help reduce professional loneliness and isolation, writes

Dr Grania Clarke

DR GRANIA CLARKE IS A CLINICAL AND COUNSELLING PSYCHOLOGIST, AND FAMILY SYSTEMIC PSYCHOTHERAPIST AND SUPERVISOR

≡ AT A GLANCE

- 'Professional loneliness' can be a particular issue in the legal profession
- Peer support can take a number of forms and is often used within mental health services
- The Society is organising a pilot professional wellbeing peer support model that, if successful, will be rolled out in different areas across the country

Professional loneliness, as a concept, may be unfamiliar, but it can be a particular issue in the legal profession. Solicitors and barristers are seen by society as intelligent, confident, capable, and logical people. When members of the profession are feeling vulnerable or are concerned about their competence, it can be difficult to talk about because of these societal expectations and the stigma attached. In addition, there may be concerns about confidentiality and the impact of gossip on potential business for the individuals concerned. This can be acutely felt in rural settings. Stressful workplaces and interpersonal environments can further compound the problem. In a survey commissioned in 2018 by the Law Society,



A RECENT STUDY SHOWED LONELINESS AS CONTRIBUTING TO INCREASES IN POOR SLEEPING, ALCOHOL USE AND HIGH BLOOD PRESSURE

26% of respondents described their work environments as having a negative culture or as being toxic.

As you read, I would like to invite you to consider and reflect on your professional relationships – what drains and sustains you in relation to them; the times when you have felt professionally isolated and those times where you felt more of a sense of connection and belonging in your workplace and with your colleagues. Were you dreading returning to work after the Christmas break or were you able to connect to some enthusiasm about your workplace, either the job or the people? Can you begin to think of ways in which you can become more connected to work colleagues and increase your sense of common purpose and belonging in your workplace?

While there seems little controversy about the fact that our need to belong is one of our most basic needs as humans, there still seems to be a great deal of stigma connected to talking about loneliness or professional isolation – the description often conjures up images of someone who is unlikable, boring, or in some other way unappealing. However, loneliness, overall, is on the increase in society, with some media reports suggesting that it has even reached epidemic proportions.

There is an increasing appreciation of the importance of our social contexts in relation to our overall psychological wellbeing. It is from our web of our connections and relationships with other people that we draw our happiness, strength and resilience. Relationships are key to how we feel and how we manage in our lives, but we do not always nurture them in a way that matches their importance for our overall mental health and wellbeing.

Connection

Loneliness is not synonymous with being alone. We have all experienced the worst type of loneliness: feeling isolated and detached when you are with a group of people you know such as friends, family or colleagues. So it is not just individuals who work on their own who are at risk of professional loneliness, it is also easy to feel isolated in a large firm if the environment is not conducive to making meaningful connections to your colleagues or to the work that you are doing.



Professional loneliness is a growing problem in an age where remote working and technology can take the place of human connection. Social media and business magazines are filled with advice about ways in which lone workers can hold onto social connections and social interaction as work environments become more isolating. However, in terms of professional belonging, the research points to our need for a deeper form of engagement than birthday cakes or after-work drinks with colleagues. In fact, a sense of shared meaning and values has been found to be more important than simple social interaction between colleagues. So, although having a coffee or lunch with someone can help tackle professional loneliness, it is also important to connect with the tasks you are involved in, your immediate colleagues, your firm and your profession as a whole. In particular, sharing the same values with them can help you anchor yourself, nourish you and help you feel connected.

Loneliness has also been shown to have a significant impact on physical health. A recent study showed loneliness as contributing to increases in poor sleeping, alcohol use and high blood pressure. From examining 70 experimental studies, the authors concluded that the combined impact of social isolation and loneliness significantly increases the likelihood of dying young.

In the 2018 study commissioned by the Law Society, it was concluded that there is a significant problem in the profession in relation to overall wellbeing. While this survey did not ask specifically about professional loneliness, sole practitioners were found to have particularly high levels of stress, as did women and solicitors in the first five years of their careers. The study also pointed to the very low uptake of the current supports available, with concerns about confidentiality and stigma being cited as potential barriers to seeking help. It concluded that peer support was an untapped resource in the profession and made recommendations that the potential for peer support models be investigated.

Peer support

The underlying principle of any model of peer support is that people who have similar experiences of something come together to support each other. It works through the development of meaningful reciprocal relationships, based on both giving and receiving support. It can take a variety of forms, but is always based on the idea of mutual empathy and the benefit for all parties from the relationship and the exchange.

Peer support can take a number of forms and is often used within mental health services. The Law Society is currently



PROFESSIONAL LONELINESS IS A GROWING PROBLEM IN AN AGE WHERE REMOTE WORKING AND TECHNOLOGY CAN TAKE THE PLACE OF HUMAN CONNECTION

organising a pilot professional wellbeing peer support model that, if successful, will be rolled out in different areas across the country. It aims to help Society members build a sense of community and belonging in the profession.

For the purposes of this brief article, I have distinguished between the different functions that a peer support model could provide for individuals at different points in time. While waiting for the professional wellbeing peer support model to reach your area, this might be useful for you and your peers to reflect on when considering how to support each other in 2020:

- *Every-day peer support*: this involves paying attention to your daily interactions with your peers and colleagues, noticing the impact your interactions have on them and positively connoting them if their interactions towards you feel good.
- *Resilience boosting peer support*: this requires a deeper level of noticing about yourself and others. Are you feeling stressed or more vulnerable than usual? Is the person on the next desk to you quieter or grumpier than usual? You have the opportunity here to model both asking and receiving support from your peers to boost your overall wellbeing. It is not even important to talk in detail about whatever it is that is stressing you or them. This kind of peer support is more about demonstrating collegiality and promoting positive relationships. Although it might feel a bit tokenistic to suggest a coffee or a quick chat, these small acts of kindness really do make a difference and can change culture over time.
- *Restorative peer support*: this type of support is generally offered and received from colleagues who have more of a personal relationship. It might include a team, or part of a team, going out together after work, and generally happens when there is has been a period or event of particular stress or importance in the team. While this type of support is often social, there is also a lot to be said for a more formal processes, for example, facilitated reflective practice groups or conversations. Reflective practice is the process of reflecting on experience in a way that deepens learning and skill development at both a personal and professional level. A reflective practitioner is someone who is self-aware and critically reflects on practice and theory as a self-directed lifelong learner, reflects collectively and in community, and takes action to improve his or her practice.
- *Specific issue peer support*: this type of peer support is most useful when you need to discuss a stressful issue or case in more depth with an experienced peer and expert. It might be to do with a particular case that is weighing heavily on you, either



To view our full programme visit www.lawsociety.ie/CPD

DATE	EVENT	CPD HOURS	DISCOUNTED FEE*	FULL FEE
13 Feb & 27 Feb	Practical Legal Research for the Practitioner	2 General and 4 M & PD Skills (by Group Study) iPad included in fee	€572	€636
14/15 Feb	Property Transactions Masterclass - Commercial Property Transactions	8 General plus 2 M & PD Skills (by Group Study) *iPad included in fee	€570*	€595*
18 Feb	IMRO Law Society of Ireland Copyright Lecture - 'European Copyright Law, from the printing press to the digital age, a journey of constant change'	1 General (by Group Study)	Complimentary	
Starts 19 Feb	Certificate Professional Education 19 Feb, 4 & 14 Mar, 8 & 18 April and 6 & 16 May	Full General plus M & PD Skills CPD requirement for 2020	€1,450	€1,550
Starts 28 Feb	Coaching Skills for Solicitors & Practice Managers 28 & 29 Feb, 20 Mar & 3 Apr	Full General plus M & PD Skills CPD requirement for 2020	€1,200	€1,400
Wed 11 March	Growth Strategy Workshop - A Blueprint to Sustain and Grow your Practice	6 M & PD Skills (by Group Study)	€210	€255
20 March	Employment Law Masterclass: Practical Solutions to Common Problems	6.5 General (by Group Study)	€210	€255
25 March	Healthcare Regulation in Ireland 2020 Complying with Regulation - Where are we now?	3 M & PD Skills (by Group Study)	€160	€186
2 April	Training of Lawyers on EU Asylum and Immigration Law (TRALIM 2). Reception and Integration – Human Trafficking	4.5 hours General (by Group study)	Complimentary	
23 April	The Business of Wellbeing Summit 2020	6 M & PD Skills (by Group Study)	€160	€186
24/25 April	Planning & Environmental Law Masterclass	8 General plus 2 M & PD Skills (by Group Study)	€350	€425
24/25 April	General & Commercial Litigation Masterclass	10 CPD hours incl. 1 Regulatory Matters (by Group Study)	€350	€425
29 April	Acting for the Older Client in collaboration with Solicitors for the Elderly	3 General (by Group Study)	€160	€186
30 April	The Litigator and the Mediation Act, 2017	2 General (by Group Study)	€135	
22/23 May	Fundamentals of Clinical Negligence Radisson Blu, Golden Lane, Dublin 8	10 CPD hours including 1 Hour Regulatory Matters (by Group Study)	€350	€425

Unless otherwise stated, events will run in the Law Society at Blackhall Place, Dublin 7

For a complete listing of upcoming events including online GDPR, Fintech, Regulatory Matters and Social Media Courses, visit www.lawsociety.ie/CPD or contact a member of the Law Society Professional Training team on

PHOTO: SHUTTERSTOCK



because of the content or due to personal resonances. Having someone to talk through the details of such an issue in a confidential setting can be exceptionally helpful. This type of peer support can take place in an individual or group setting and may also be helpful for individuals who have other contributing stressors, such as financial concerns, that would be helpful to talk about within a confidential peer support relationship.

In summary, there is a great deal to be gained from a variety of peer support structures to help to reduce professional loneliness and isolation. It is important to state that such supports do not take away from the requirement for high-quality confidential clinical supports, such as individual psychotherapy, for members of the profession who may well be experiencing high levels of psychological distress and/or mental health difficulties.

‘Under construction’

Finally, it is important to acknowledge that every member of a profession or organisation has a part to play in constructing an inclusive culture through our interactions and conversations over time. Organisations and professions are



NO MAN IS AN ISLAND,
ENTIRE OF ITSELF;
EVERY MAN IS A PIECE
OF THE CONTINENT,
A PART OF THE MAIN

always ‘under construction’ through the interactions that occur between the people within it.

Obviously, some individual members have more power than others, but we all have a potential role in influencing the culture through our actions and interactions. The way we talk to each other, the way we include others in conversations or interactions and the way we offer and ask for support all have an impact on the culture that we create together. To cite a well-known phrase from John Donne: *No man is an island,*

entire of itself; every man is a piece of the continent, a part of the main.

So, be kind to yourselves and to each other.

If you are interested in learning more about wellbeing and mental health for the legal profession, please join us for ‘The Business of Wellbeing Summit’ at the Law Society on 23 April from 9.30am - 4.15pm. Information on speakers, topics and CPD hours can be found at www.lawsociety.ie, or contact a member of the team at FimuasSkillnet@lawsociety.ie.

MAJOR SURGE OF 9% IN PC NUMBERS

An extraordinary swell in the number of solicitors with practising certs in 2019 far exceeds any annual increase seen previously. **Ken Murphy** reports

KEN MURPHY IS DIRECTOR GENERAL OF THE LAW SOCIETY



The number of solicitors with practising certificates (PCs) on 31 December 2019 was a remarkable 9% higher than on 31 December 2018 – almost double the percentage increase of the previous year.

The equivalent year-on-year increase in 2018 was 4.8%. This substantial surge from an annual increase of 4.8%, to one of 9%, far exceeds any annual increase witnessed previously.

The Law Society publishes practising certificate figures every

year for the final date of the practice year, 31 December, so that like can be compared with like.

In total, there were 11,959 solicitors with practising certificates on 31 December 2019. The equivalent figure on 31 December 2018 was 10,972. Accord-

THE ADDITIONAL
FACTOR AT WORK
THAT EXPLAINS
THE OVERALL
INCREASE IS
THE NUMBER
OF PRACTISING
CERTIFICATES
TAKEN OUT BY
SOLICITORS IN
INTERNATIONAL
LAW FIRMS

LAW FIRM PRACTISING SOLICITOR NUMBERS (AS OF 31/12/2019)

2019 ranking	2018 ranking	Firm name	31/12/2019	Diff +/- over 2018	31/12/2018
1	2	A&L Goodbody	313	21	292
2	1	Arthur Cox	299	5	294
3	3	Matheson	285	0	285
4	4	McCann FitzGerald	266	-12	278
5	5	Mason Hayes & Curran	239	12	227
6	6	William Fry	207	-4	211
7	-	Allen & Overy LLP	206	191	15
8	7	ByrneWallace	132	-4	136
9	9	Eversheds Sutherland*	108	4	104
10	10	Ronan Daly Jermyn	107	6	101
11	8	Maples and Calder	105	-8	113
12	13	Freshfields Bruckhaus Deringer LLP	101	23	78
13	11	Beauchamps	92	7	85
14	12	Dillon Eustace	88	5	83
15	17	Walkers Ireland	65	12	53
16	14	Eugene F Collins	64	3	61
16	-	Pinsent Mason	64	32	32
18	14	LK Shields Solicitors	62	1	61
18	-	Eversheds Sutherland LLP**	62	-	-
20	16	Hayes Solicitors	61	6	55
TOTAL			2,926		2,564

These figures represent the total number of solicitors with a practising certificate, advised to the Law Society, up to and including 31/12/2019. The total firm figure comprises a firm's primary and suboffices on the Law Society's database. * In this jurisdiction. ** Outside this jurisdiction.



PC: CIAN REDMOND

ingly the net increase of practising solicitors from one year to the next was 987.

The Brexit factor

Where has this extraordinary expansion in practising solicitors come from? Of course, the primary long-term driver is the ever-increasing number of solicitors qualifying through the Society's Law School in Blackhall Place. A total of 414 trainees qualified as new solicitors in 2019.

But, obviously, there is a major additional factor at work to explain the overall increase. It is a factor that has increasingly had an impact on these numbers in the last few years. It did so again in 2019, to an unprecedented extent.

This additional factor is the number of practising certificates taken out by solicitors in international law firms who have come on the Roll in Ireland since 1 January 2016 (see the 'Brexit Backstop' article, December 2019 *Gazette*, p18), and who choose to take out practising certificates in

this jurisdiction, regardless of the fact that they have no office here.

For example, the spectacular 'new entrant' law firm in this regard in 2019 was Allen & Overy LLP. That international law firm (one of the elite group known as 'the magic circle') did not rank in the 20 largest firms in Ireland (by PC number), published in the *Gazette* in January/February 2019. However, as can be seen from the table (left), on 31 December 2019, the firm had no fewer than 206 solicitors with practising certificates. This ranked it the seventh largest firm – just one PC behind William Fry – even though Allen & Overy LLP has no office in this jurisdiction.

Freshfields Bruckhaus Deringer LLP increased its PC number by 23 to 101; and an additional 'new entrant', in joint 18th place in this table, is Eversheds Sutherland LLP. This is the Eversheds Sutherland firm with solicitors holding Irish PCs *outside* of this jurisdiction. The other Eversheds Sutherland firm, long established

in Dublin and previously named O'Donnell Sweeney, has 108 PCs and is ranked ninth on the table this year – as it was last year.

This year's main movers

Who are the other main movers on the table this year by comparison with last year? A&L Goodbody's return to the top of the table is achieved with an outstanding overall increase of 21 PCs to become – with 313 PCs – the first ever Irish firm to break the '300 barrier'.

A&L Goodbody's PC number increased by an impressive 7.2%, while last year's top-of-the-table firm Arthur Cox increased by 1.7% to 299. As has occurred frequently in the past, A&L Goodbody and Arthur Cox again this year alternate the first and second spots on the table.

Matheson, solidly once again in third place, neither increased nor decreased in PC numbers, but remains at 285. Last year's stellar performer, McCann FitzGerald, who increased their PC number

in 2018 by no less than 31 practitioners, in fact reduced their number by 12 (-4.3%) this year.

Consolidating their position in fifth place, Mason Hayes & Curran again, very impressively, expanded their PC number in 2019 with a 5.2% increase to 239.

Other firms with even larger percentage increases this year were Beauchamps (+7.6%), Hayes Solicitors (+10.9%), and Walkers Ireland, who increased their PC number in 2019 by a whopping 22.6%, from 53 to 65 practitioners.

Fewer 'Brexit PCs' in future?

The Law Society is budgeting on the conservative basis that fewer solicitors based outside this jurisdiction will take out Irish PCs in 2020. The level of general uncertainty in relation to Brexit has somewhat reduced. In addition, the Society's guidance, published in May 2019, entitled *Practising Certificates: Solicitors Outside the Irish Jurisdiction*, has clarified what an Irish practising certificate entitles the holder to do. [E](#)

SHAKE IT UP

DLA Piper's managing partner David Carthy says that the Irish legal scene is set for major change with the arrival of some of the world's largest law firms. **Mary Hallissey** reports

MARY HALLISSEY IS A JOURNALIST WITH THE *LAW SOCIETY GAZETTE*



Global legal colossus DLA Piper has arrived in Dublin, with well laid plans to provide greater choice for businesses in Ireland.

Operating across all time zones, staff growth at the Dublin office has mushroomed since the firm's arrival just over a year ago.

In Christmas 2018, there were just two staff. Now there are 51 – of whom 18 are lawyers at partner or legal director rank, with 20 associates and two trainees.

Managing partner David Carthy, a 48-year-old Dublin native, is clearly quietly satisfied with how things are going. He involves himself deeply in the recruitment process, working out what each applicant wishes to achieve before they are hired.

DLA Piper's culture is "clearly less hierarchical", he says, adding that he gets directly involved when it comes to nurturing those who work in the firm.

"Fewer young lawyers are now willing to put in the slog of the traditional 'partner track'," he notes. He ponders whether some younger practitioners will continue to work as lawyers at all, given some of the historical work practices still evident in the profession.

He is alive to the fact that in-house roles now appear far more attractive to younger solicitors – and working outside the law can also be far more attractive for some, he surmises. These trends shape the different work practices and global careers that DLA Piper offers.

Agile environment

"For the sake of the health of the Irish economy and the profession, things now need to move along," he says. "These are just realities – talent will always go where it most wants to go. People want to be proud

of where they work, and that is the challenge.

"Clearly, people need to work hard in a legal career, but we are interested in people for the long run, and in developing their skills. We want to build a working culture that people are happy in, and, to do that, our practices need to be sustainable. Our lawyers need to be working in a way that is not stretching them to breaking point.

"We work in a very agile environment, so when people need to work at home, for family or other reasons, this is facilitated. That agility is role-modelled right throughout the organisation.

"We intend to be the leading global law firm in Dublin," he says firmly.

Irish talent

The firm already carries deep knowledge of the existing legal market in the capital. David himself worked for William Fry for 19 years.

"We know the domestic law firms very well. I suspect they are finding out about us now!" he smiles.

"Looking at the Irish economy now, the nice thing is that people who do want a global career can have it in Ireland.

"Frankly, from a legal perspective, that was never the case before," he says.

Carthy strongly believes in

WHEN HIRING, CARTHY LOOKS FOR A GLOBAL MINDSET, CURIOSITY ABOUT ALTERNATIVE WAYS OF DOING THINGS, A STRONG COLLABORATIVE ETHOS, OPENNESS TO CHANGE AND ENTREPRENEURIAL ABILITY





PIC: JASON CLARKE

Irish talent, and that Irish people can carry their weight wherever they go and thrive internationally. And he believes that offering a global legal career in Dublin is a key part of the attraction offered by the firm.

He is hiring ten interns this summer, with a view to offering graduate trainee position – and overseas secondments will form part of the package on offer.

Carthy wants to remove the binary choice that existed in the past between a global legal career and the benefits of living in one's home country.

On the topic of the firm's prior hiring patterns, Carthy refers to a strong desire to hire with diver-

sity in mind, including graduates with a non-law or international background. With 99 DLA Piper offices globally, there are significant opportunities for those who wish to travel.

"I'm gratified, and somewhat humbled, by the talent we've managed to assemble," he says, citing the "energy, ambition and entrepreneurial flair" of the existing Dublin team.

When hiring, Carthy looks for a global mindset, curiosity about alternative ways of doing things, a strong collaborative ethos, openness to change and entrepreneurial ability.

The recent arrival of Dentons in Dublin validates the DLA

Piper strategy, Carthy believes. The only surprise for the managing partner is how long the global wave has taken to reach Dublin.

He senses a huge change in the seniority of decision-making now taking place in Dublin. "When multinationals first moved in, they just made things in Ireland. There has been a rapid growth of global decision-making capacity in Ireland in the last five to ten years particularly, including head-of-legal and tax functions.

"This aligns with the sheer global nature of Irish businesses, such as Kerry, Smurfit and Glanbia. Some of those Irish

IN-HOUSE
LAWYERS ARE A
HUGE INFLUENCE
IN DRIVING THE
LEGAL INDUSTRY
FORWARD



EU & INTERNATIONAL AFFAIRS COMMITTEE

STAGE INTERNATIONAL A PARIS 2020

OCTOBER – NOVEMBER 2020



Every year, the Paris Bar organises an International Stage in Paris, and invites a limited number of lawyers from each jurisdiction to participate. The stage is a fantastic opportunity for lawyers to discover and practice French law in the heart of Paris.

The stage takes place during the months of October and November, and entails: one month attending classes at the l'Ecole de Formation du Barreau and one month of work experience in a law firm in Paris. The programme also includes a visit to Brussels to the European institutions.

The Irish participant will be selected by the EU & International Affairs Committee of the Law Society of Ireland.

Candidates must:

- Be qualified in Ireland and registered in the Law Society
- Have a good knowledge of French
- Be under 40 years of age
- Have insurance cover (for accidents and damages).

Tuition is fully covered by the Paris Bar; candidates must be willing to cover other expenses (travel, accommodation, meals)¹

INTERESTED?

To apply, please send your CV and a letter explaining your interest in the stage (in both English and French) to Suzanne Crilly (s.crilly@lawsociety.ie).

APPLICATION DEADLINE: Friday, 13 April 2020.

¹ The EU & IA Committee will sponsor the participant with €3,500.

businesses are in every country in the world, and are still headquartered in Ireland.”

DLA Piper wants to be the trusted business advisor for clients and is offering an integrated global platform. It has conducted more M&A transactions than any other law firm in the past ten years.

“Can you imagine the data and insights that can be brought from those transactions?” Carthy asks. “We’re getting better at analysing that data, and providing those insights. Many of our clients are not just looking for an interpretation of the law as it is now, but for a perspective on what it is likely to be in the future.”

Government lobbying ahead of legislative change in Brussels, London or Washington DC forms part of the DLA Piper offering: “Business works through and around politics at all times,” Carthy comments. “Business needs to understand the regulatory and business horizon. It needs to inform and influence it.”

Global presence

With offices in over 40 countries and a turnover of €3 billion, Ireland’s new global presence is important to the Dublin newcomer.

“Our business model is not dependent on the Irish economy, which, as a small, open economy, is always exposed to peaks and troughs.”

And the sands are shifting in terms of where the power lies, in terms of spending on legal services. Carthy notes that in-house lawyers are now leading the way, and holding the purse-strings in the profession.

“In-house lawyers, for instance in tech companies, are a huge influence in driving the legal industry forward. A client who buys the services calls the shots – not the profession itself.”

The demands on in-house

PICTURE: JASON CLARKE



lawyers in global companies are quite considerable, he maintains. Their role, challenges and skill-sets increasingly diverge from traditional private practice, and many of them are based in Dublin. He comments that DLA Piper is ready to meet their needs.

While Irish business is highly globalised, Carthy questions why so few foreign-born executives are part of the leadership teams at Irish law firms: “It’s striking in the Irish legal industry how few people there are at the top who come from different countries – whereas Irish people are at the top of industries in New York, London – all over the world.”

Rebalancing


“If you look at Amsterdam, Boston, Paris, Berlin – all of them used to look the same as Dublin, led by largely male partners who

were educated in similar schools and universities.

“Some of those firms still thrive independently, but they are in the minority now,” he observes. “That rebalancing is only beginning to happen now in Dublin.”

While there has been an international dimension in the funds and offshore aspects of the legal industry here, he adds, this is only a very small slice of the pie.

“To my mind, if you are a law firm, and you don’t, at a minimum, offer UK and US legal advice, then you are not offering something that meets the needs of Irish businesses.

“That lack of choice for Irish-based clients, and lack of choice for Irish talent, has been evident, in plain sight, for my entire career. We are happy to do something about that now.” 

WE WANT TO BUILD A WORKING CULTURE THAT PEOPLE ARE HAPPY IN, AND, TO DO THAT, OUR PRACTICES NEED TO BE SUSTAINABLE. OUR LAWYERS NEED TO BE WORKING IN A WAY THAT IS NOT STRETCHING THEM TO BREAKING POINT

RED-LINE WARNING

The enforceability of family or matrimonial mediated agreements is dealt with in the *Mediation Act 2017*. **Clodagh Hopkins** warns about the obligations the act imposes

CLODAGH HOPKINS IS A MEMBER OF THE LAW SOCIETY'S FAMILY AND CHILD LAW COMMITTEE AND A CONSULTANT WITH JOHN O'CONNOR, SOLICITORS, BALLSBRIDGE



PRACTITIONERS SHOULD ENSURE THAT MEDIATED AGREEMENTS SHOULD SPECIFICALLY STATE THAT SUCH AGREEMENTS ARE NOT LEGALLY BINDING, UNTIL FURTHER STEPS ARE TAKEN TO GIVE BINDING EFFECT TO THE MEDIATION SETTLEMENT

The *Mediation Act 2017* was commenced on 1 January 2018. The act imposes new obligations on solicitors and:

- Places an obligation on solicitors to provide advice and information prior to the issuing of any proceeding – a statutory declaration is required to be provided to satisfy same,
- The court has the facility to suggest that the parties consider the process of mediation, and
- It allows the court the discretion to take into account, when awarding costs, any unreasonable refusal or failure by a party to the proceedings to consider using mediation.

For those practitioners working in the area of family law, there are red-line points to be considered under the act. Before reviewing the legislation, it is important to remind ourselves about what mediation is, and how it applies to family law.

Mediation is a voluntary process for resolving disputes, where those in dispute meet with a third party who helps them to negotiate an agreed settlement. Family-law mediation provides a mechanism to help separating couples whose relationships have broken down to negotiate their own settlement, in terms of child custody and access, maintenance, and property rights.

Mediation in this forum is a more informal and flexible dispute-resolution process, with the mediator's role being one that guides the parties to achieve their own settlement. This works successfully where you have two interested, engaged, and fully invested parties who wish to work to resolve their issues.

It is important to note that, where there is a legal context, a client should have access to legal advice, assistance or representation. Mediators do not give legal advice and, in essence, the agreement is not legally enforceable unless put into a legal format.

However, as practitioners, we need to be aware of the effect of the act on the enforceability of such mediated agreements:

- Section 11(2) of the *Mediation Act 2017* provides that “a mediation settlement shall have effect as a contract between the parties” unless it expressly states the contrary. It is advisable that mediated settlements or notes of understanding should not be legally binding until they are incorporated into a legally binding agreement, or otherwise. So if you wish the agreement *not* to be legally binding, this must be clearly expressed in the agreement.
- Mediated settlements in family law are required to be ruled in court in either a judicial

separation or divorce. A court will always retain its discretion to determine whether the settlement amounts to proper provision. In addition, the provisions of section 11(3) are important, in that a court will not rule a mediated settlement where it finds that:

- a) It doesn't adequately protect the rights and entitlements of the parties and their dependents,
- b) It is not based on full and mutual disclosure of assets, or
- c) A party to the mediation has been overborne or unduly influenced by any other party in reaching the mediation settlement.

- Where a mediation involves a child or children, a court shall be bound by [section 3](#) (amended by [section 45](#) of the *Children and Family Relationships Act 2015*) of the *Guardianship of Infants Act 1964* regarding the best interest of the child,
- Practitioners, when dealing with real or personal estate, or any legal proceedings, are restricted by [section 58](#) of the *Solicitors Act 1954*, as amended.

Requirements of the act

So what does the legislation require of practitioners when advising a client? Solicitors must inform clients that mediation is



PIC: SHUTTERSTOCK

a voluntary conflict-negotiation and resolution process where they can reach agreement. Clients should also have access to legal advice, be informed about the process by their solicitor, and be apprised of the outcome.

Because mediation settlements are, in general, intended to be binding – unless the parties agree to the contrary, and in circumstances in which best practice in family mediation is that clients should have access to legal advice – it is advisable to ensure that any agreement completed by way of mediation is *not* binding until it has been put into a legal format. It is important to emphasise the importance of seeking legal advice in advance of formal signing and that, if one takes part in the process and does not seek appropriate legal advice, the client is at risk of not obtaining all their family-law rights and entitlements.

If parties do obtain legal advice during the process, all legal practitioners should ensure that their clients furnish them with the most current mediated agreement or up-to-date draft agreement, in order to be properly armed to fully advise on what has been discussed during the mediated process.


A statutory declaration is made by the practising solicitor, evidencing that the solicitor has advised the client about mediation services and its advantages.

Committee view

The Law Society's Child and Family Law Committee is of the view that practitioners should ensure that mediated agreements should specifically state that such agreements are not legally binding, until further steps are taken to give binding effect to the mediation settlement.

It is strongly recommended

that such mediated agreements should contain the following clause: "We are signing the mediation settlement in recognition of completion of our mediation. We understand that, in signing this, we are *not* entering into a legally binding and enforceable agreement, for which more steps must be taken to give binding effect to our mediation settlement."

In summary, practitioners need to be aware of the above obligations that the act imposes on them, and especially the legally binding nature of the mediation settlement document itself – unless otherwise agreed. 

The author acknowledges reference to the Legal Aid Board's practice note on the enforceability of family or matrimonial mediated agreements (dated September 2019), and certain family law mediation articles published by Mason Hayes & Curran at www.mhc.ie.

MEDIATORS DO NOT GIVE LEGAL ADVICE AND, IN ESSENCE, THE AGREEMENT IS NOT LEGALLY ENFORCEABLE UNLESS PUT INTO A LEGAL FORMAT

INDEPENDENCE DAY

The EU's Court of Justice has again highlighted the importance of resisting threats to the rule of law in a judgment that seeks to protect the judicial independence of the Polish Supreme Court. **Cormac Little** reports

CORMAC LITTLE IS A PARTNER IN WILLIAM FRY AND IS VICE-CHAIR OF THE LAW SOCIETY'S EU AND INTERNATIONAL AFFAIRS COMMITTEE



THE CJEU STATED THAT THE REQUIREMENT FOR DOMESTIC COURTS TO BE INDEPENDENT MEANS THAT NATIONAL JUDGES MUST BE PROTECTED AGAINST EXTERNAL PRESSURE CAPABLE OF INFLUENCING THEIR DECISIONS

In again highlighting the importance of resisting threats to the rule of law, the EU's Court of Justice (CJEU) has emphasised that national judges must be protected against external pressure.

In its 24 June 2019 judgment in *Case C-619/18, European Commission v the Republic of Poland*, the CJEU examined whether the lowering of the retirement age of the Sąd Najwyższy (the Polish Supreme Court or PSC), allied to creating a presidential right to extend a PSC judge's term in office infringes the *Treaty on European Union* (TEU) and the *Charter of the Fundamental Rights of the European Union*. More broadly, this case represents yet another milestone in the ongoing efforts by the commission to stymie any undermining by member states of fundamental EU values.

Reform of the Polish Court

Under the Polish Constitution, the Krajowa Rada Sądownictwa (the National Council of the Judiciary or NCJ) is the guardian of the independence of judges. The majority of the NCJ is comprised of judges, including the First President of the PSC. Other members include the Polish Minister for Justice plus nominees of both houses of the Polish Parliament. Under a 2002 statute, the

retirement age of PSC members was 70. Moreover, PSC members could, at their own discretion, work until the age of 72 provided they submitted an appropriate medical certificate.

In late 2017, Poland adopted new legislation providing that PSC members would retire at 65 unless the Polish President granted an extension. This statute was amended on various occasions up to May 2018. (For ease of reference, we collectively refer to this legislation as the 2017 law.) Prior to extending a PSC member's term of office, the 2017 law required the president to consult the NCJ. The president could grant two separate extensions of three years. Importantly, the 2017 law applied to existing PSC members. For example, existing PSC judges aged 65 or over would have to retire three months after the entry into force of this legislation unless the president decided otherwise.

Common values of the EU

Article 2 TEU provides that the EU is founded on various common values, including respect for both democracy and the rule of law. Article 7 TEU aims at ensuring that all member states respect these common values. Specifically, the sanctioning mechanism enshrined in article 7(2) TEU may only be actioned in case of

a "serious and persistent breach" by a member state of one of the EU's common values. Sanctions may only be applied with unanimous support. Broadly speaking, article 19 TEU provides for the establishment of the EU judicial system, including the CJEU and the General Court. Specifically, article 19(1) TEU stipulates that each member state shall provide remedies to ensure effective legal protection in the fields covered by EU law.

Charter of Fundamental Rights

The charter enshrines certain civil, political, social, and economic rights into EU law. The charter is split into various titles containing the main categories of rights, including dignity, freedoms, equality, solidarity, and justice. For example, article 47 of the charter guarantees everyone the right to a fair and public hearing, within a reasonable time, by an independent and impartial tribunal established by law.

Member states must abide by the charter when they are implementing EU law. National legislation that conflicts with the charter is subject to the doctrines of supremacy and direct effect of EU law. The EU and national courts must therefore disapply any national laws that conflict with the charter. However, in purely domestic situations, the



charter is not justiciable – it is only binding on a member state when the latter acts within the scope of EU law.

Pre-litigation

In July 2018, the commission wrote to Poland alleging that the 2017 law infringes the combined provisions of article 19(1) of the TEU and article 47 of the charter. In both its response to this July letter and its reply to the commission's August 2018 reasoned opinion, Poland denied any such infringement. Therefore, the commission, in early October 2018, issued proceedings against Poland for failure to fulfil its obligations under the TEU and the charter.

Under pressure from the EU and other member states, Poland repealed the 2017 law in December 2018. This meant that PSC judges, previously affected by the reform, were retained or reinstated. In addition, the president no longer had the discretion to extend a PSC member's term in office beyond the normal retirement age. Nonetheless, the commission was keen to continue with the proceedings. Relying on the fact that the 2017 law remained in force by the deadline for responding to the commission's reasoned opinion, the CJEU allowed the case to proceed.

EU law and national courts

The commission argued that article 19(1) TEU provides that in order to allow for effective legal protection in the fields covered by EU law, national courts must be independent. If not, the fundamental right to a fair trial would be undermined. In response, Poland, supported by Hungary, claimed that the organisation of the national justice system is a matter for member states only.

Recalling the common values of the EU as listed in article 2 TEU, the CJEU stipulated that

the rule of law (that is, the rule of EU law) must be followed. As recognised by the CJEU in its 27 February 2018 judgment in *Case C-64/16, Associação Sindical dos Juízes Portugueses v Tribunal de Contas*, articles 2 and 19 TEU entrust national courts (and the EU courts) to protect the rights of legal and natural persons.

While the organisation of the domestic justice system of justice falls under national competence, member states must, nevertheless, follow EU law when exercising that right. The CJEU thus stipulated that, since the PSC may clearly be required to adjudicate on matters of EU law, it must comply with the EU principle of effective judicial protection. In order to guarantee the right to a fair trial that is intrinsic to the rule of law, PSC members must be independent. Therefore, the CJEU found that the EU legal order is relevant to the 2017 law and, thus, the relevant legislative provisions must be examined under article 19(1) TEU.

Lowering the retirement age

The commission claimed that by lowering the retirement age of PSC members who were appointed prior to the entry into force of the 2017 law, Poland infringed the principle of the irremovability of judges. The defendant argued that the independence of the PSC was not compromised by the introduction of a common retirement age, since other national measures, such as proper remuneration and the obligation to remain politically neutral, helped achieve that goal.

The CJEU stated that the requirement for domestic courts to be independent meant that national judges must be protected against external pressure capable of influencing their decisions. Therefore, the judiciary should, in general, benefit from guarantees against removal. This means that judges should continue in

office until they have reached the mandatory retirement age or until the expiry of their mandate. Exceptions to this principle are only warranted on legitimate or compelling grounds. (For example, judges may be dismissed on account of incapacity or a serious breach of their obligations, provided the appropriate procedures are followed.)

The CJEU did acknowledge that the lowering of the retirement age may be justified by a legitimate objective, provided it does not raise reasonable doubts regarding the neutrality of the PSC. Poland argued that the goal of the reform was to standardise the retirement age across the public sector, while facilitating access for young lawyers to the judiciary. However, the preparatory texts to the 2017 law instead suggest that this statute's real aim was to sideline certain current PSC members. Moreover, the fact that while lowering the retirement age by five years, the 2017 law also allowed the president to extend a judge's term by six years, tended to contradict the goal of standardising retirement ages. Indeed, the real aim of the legislation was probably to force certain PSC members into retirement, while allowing others to continue in office.

Separately, the CJEU noted that the general Polish public sector retirement age of 65 entails the right of public servants but, crucially, not the obligation to quit their employment. Finally, the court observed that the 2017 law did not contain any transitional arrangements. Therefore, the CJEU found that lowering the retirement age of PSC members to 65 was not justified. This provision thus breached article 19(1) TEU.

Presidential right

The commission argued that the right of the Polish President to extend a PSC member's term in office by up to six years infringed

IN SUM, THE COURT FOUND THAT THE DISCRETION OF THE PRESIDENT TO EXTEND A PSC MEMBER'S TERM IN OFFICE UNDERMINES JUDICIAL IMPERVIOUSNESS. THEREFORE, THE CJEU HELD THAT THIS DISCRETION BREACHES THE PRINCIPLE OF JUDICIAL INDEPENDENCE CONTAINED IN ARTICLE 19(1) TEU



the principle of effective legal protection. Notably, the 2017 law did not contain any criteria that the president must follow, nor was his/her decision challengeable by means of judicial review. In addition, the president was only obliged to consult the NCJ. Poland counter-argued that the power to extend was derived from the president's constitutional prerogative to appoint judges, thus protecting them from interference by both the executive and the legislature.

The CJEU found that, while it is a member state's competence to extend a judge's term in office beyond the normal retirement age, any such grant must not undermine the principle of judicial independence. In other words, judges must be protected from the potential temptation to succumb to external pressure.

The CJEU noted that, in addition to the lack of stated substan-

tive criteria, the president was not required to give any reasons for his decision. Moreover, the role of the NCJ was undermined by the fact it regularly gave no, or merely formal, reasons for its decisions.

In sum, the court found that the discretion of the president to extend a PSC member's term in office undermined judicial imperviousness. Therefore, the CJEU held that this discretion breaches the principle of judicial independence contained in article 19(1) TEU.

Threats to the rule of law

Which member states (if any) exercise their right to intervene in a given case before the EU courts is usually telling as to the legal or, indeed, political context of the relevant litigation. In the PSC case, it is therefore noteworthy that Hungary saw fit to intervene in favour of its north-

ern near neighbour. Both member states have, in recent years, come under sharp criticism for undermining the rule of law and other perceived threats to the EU's common values. Given the difficulty of achieving unanimity under the article 7 TEU procedure, the commission's success in the Polish case shows that article 19 TEU, coupled with the charter, is an alternative and useful legal tool. Indeed, the commission, in October 2019, initiated separate proceedings against Poland regarding the new regime under which certain judges can be subjected to disciplinary investigations and/or sanctions based on the content of their judgments and/or decisions to request preliminary rulings from the CJEU. Given the latter's reasoning in the PSC case, Poland will face a real challenge in mounting a convincing defence. [g](#)

UNDER PRESSURE FROM THE EU AND OTHER MEMBER STATES, POLAND REPEALED THE 2017 LAW IN DECEMBER 2018

CONVEYANCING COMMITTEE and TAXATION COMMITTEE

YOUNG TRAINED FARMER RELIEF AND STATE AID

Section 81AA of the *Stamp Duty Consolidation Act 1999* provides for stamp duty relief for a Young Trained Farmer (YTF) in certain circumstances. It can be claimed whether the land is acquired by way of gift or is purchased.

Practitioners are reminded that, since 1 January 2019, there is a limit of €70,000 in State aid that may be claimed by the applicant for the relief. The relief from stamp duty is deemed to be State aid. Two other reliefs count towards the ceiling, namely stock relief and succession farm

partnership relief. When claiming YTF stamp duty relief through ROS, the return requires the aggregate figure for the amount of the three reliefs claimed since 1 July 2014 to be inserted. Once the ceiling of €70,000 is reached, no further YTF stamp duty relief will be available, and stamp duty will be payable on the balance.

Practitioners should therefore make enquiry at an early stage in the transaction to ascertain whether or not the YTF has claimed relevant State aid since 1 July 2014 and, if so, in what amount, so that they

can deal with the stamping of the deed appropriately.

This relief is available on transfers of agricultural land (not including the value of any farmhouse) from certain relatives and subject to certain conditions and reduces the rate of stamp duty from 7.5% (or 6%) to 1%. It will frequently be available to claim when YTF stamp duty relief applies. Revenue has confirmed that consanguinity relief is applied before YTF relief and therefore reduces the amount of State aid being granted.

Therefore, while a deed might have a nil liability to stamp duty arising from YTF relief, consanguinity relief, if available, should also be claimed (by ticking the relevant box in the ROS return) in order to reduce the amount of State aid that will be counted towards the limit of €70,000.

Further information on YTF relief, the State-aid ceiling, consanguinity relief, including worked examples, is available in part 7 of the Revenue stamp duty manual (July 2019) on www.revenue.ie.

PROHIBITION ON SOLICITORS PAYING FOR CASE REFERRALS FROM 'CLAIMS HARVESTING' WEBSITES

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

The Law Society is aware that the operators of UK-based 'claims harvesting' websites have been making unsolicited approaches to a number of solicitors' firms in Ireland, offering leads regarding potential litigation. The introductory email sent by the company proposes to refer clients, for a fee, to solicitors in pursuit of compensation for motor-vehicle accidents.

There are specific prohibitions

set down by primary legislation that preclude a solicitor from paying a third party for referrals for work of a legal nature. Section 62 of the *Solicitors Act 1954* states that a solicitor shall not reward, or agree to reward, an unqualified person for legal business introduced by such person to the solicitor. Under section 62(2) an agreement in contravention of this section shall be void.

The Law Society intends to take a strict approach against solicitors found to be accepting and paying for such legal referrals, and a breach of section 62 may constitute professional misconduct on the part of the solicitor

and may result in a referral to the Solicitors Disciplinary Tribunal.

In addition, solicitors should also be aware that the Advertising Regulations Division of the Regulation of Practice Committee of the Law Society has the power, where appropriate, to:

- Make an application to the High Court for an order prohibiting a solicitor from contravening the *Solicitors Advertising Regulations 2019* under section 18 of the *Solicitors (Amendment) Act 2002*,
- Issue a reprimand in writing in such terms as the Society deems appropriate and reasonable, under regulation 14(g)(ii),

- Impose conditions on practising certificates that are in force, under section 59 of the *Solicitors (Amendment) Act 1994*.

It should also be noted that the Law Society is entitled to publish the imposition of a penalty by the Law Society under regulation 14(i) of the *Solicitors Advertising Regulations 2019*.

Eamonn Maguire is the Law Society's advertising regulations executive and is contactable at 01 872 4800 or e.maguire@law.society.ie.

John Elliot, Registrar of Solicitors and Director of Regulation

CONVEYANCING COMMITTEE

HELP TO BUY

Where a purchaser is relying on the Help to Buy scheme for the tax relief under the scheme to fund part of the deposit in the transaction, the contract or building agreement (as appropriate) should contain provisions concerning the purchaser's application to Revenue

and it being approved within an agreed period.

The developer should confirm in the contract that it is a qualifying contractor for the purposes of the scheme. If not, the contract should be made subject to the developer becoming reg-

istered under the scheme by a specified date. Correspondingly, the purchaser should confirm in the contract that he/she qualifies under the scheme and that he/she is eligible for a refund of income tax in a sum no less than the sum needed to bring

the deposit paid up to 10% of the purchase price. The purchaser should also agree to provide evidence that the Help to Buy claim has been validly submitted to include the purchaser's claim number, access code, application number and any other informa-

tion required by the qualifying contractor to verify the Help To Buy application.

The committee does not agree with developers seeking a 10% deposit from the purchaser in respect of whom they are also due to obtain up to 5% of the deposit directly from Revenue under the scheme.

The parties may agree in the contract that, if the purchaser's application is unsuccessful, the

contract will remain in being if the purchaser tops up, within a set period of time, the initial deposit to 10% of the purchase price or pays the shortfall on closing. If the parties do not so agree, the contract can provide for termination thereof where the purchaser's application is unsuccessful.

The committee considers that the contract special conditions should reflect that the sum paid by Revenue to the developer (or

the developer's solicitor) under the scheme should be held to the order of Revenue pending completion, and that upon completion, that sum will be payable to the developer.

While it is envisaged that Revenue may only pursue a purchaser in respect of any clawback, the committee considers it appropriate for the contract to contain a provision that seeks to protect the developer (and

the developer's solicitor) from any Revenue action to recover a clawback of the refund for reasons unrelated to the developer's act neglect or default.

A sample special condition is included below. For simplicity, this is drafted as though a combined contract for sale and building agreement is used. It can be adapted easily for use where a separate contract and building agreement is used.

HELP TO BUY SPECIAL CONDITION

1. For the purposes of this special condition, unless the context otherwise admits or requires, the following words and expressions shall have the following meanings:
 - 1.1 HTBS means the Help to Buy Incentive Scheme pursuant to section 477C of the *Taxes Consolidation Act 1997*, inserted by section 9 of the *Finance Act 2016* and any extension, amendment, modification or re-enactment of the said section and any rule, regulation, order or instrument made thereunder and for the time being in force;
 - 1.2 HTB Application means the Employer's application and claim to Revenue under the HTBS; and
 - 1.3 Appropriate payment, first-time purchaser, qualifying residence and qualifying contractor have the meanings assigned to them in the HTBS.
2. The Employer intends to rely on the HTBS for tax relief or for part-funding of the deposit payable under this Agreement.
3. The Employer agrees to make a valid HTBS Application within 28 days from the date of this Agreement for an appropriate payment in a sum which is not less than the balance of the deposit payable and to notify the Contractor once the HTB Application has been made.
4. The Employer confirms and agrees that he (or, where more than one person, each):
 - 4.1 is, and at least until Completion will continue to be, a first-time purchaser; and
 - 4.2 has satisfied, and at least until Completion will continue to satisfy, the conditions specified in the HTBS; and
 - 4.3 has obtained a HTBS Application stage number and access code from Revenue.
5. The Contractor confirms that it is a qualifying contractor and that on Completion the [apartment] to be erected on the [Site] will constitute a qualifying residence. The Contractor does not confirm that the said premises is or will be occupied as the sole or main residence of the Employer as a first-time purchaser, which shall be the responsibility of the Employer.
6. Where the Employer relies on the HTBS to pay the balance of the deposit specified in this Agreement, the Employer shall procure that the proceeds from the HTBS Application (the Proceeds) in the amount of the balance of the deposit payable under this Agreement shall be paid by the Revenue to the Contractor or its nominated solicitor in accordance with the HTBS and the provisions of this special condition. The Proceeds shall be held by the Contractor/Contractor's Solicitor to the order of Revenue until Completion, at which point the Proceeds may be retained by the Contractor or released by the Contractor's Solicitor to the Contractor as the case may be.
7. The Employer agrees to provide to the Contractor as soon as practicable full details of the HTB Application, including the information and confirmations referred to in section 9(11) and (12)(a) of the *Finance Act 2016*, the Employer's claim number assigned by the Revenue to the HTB Application, the access code and application number.
8. The Employer consents to the Proceeds being paid by the Revenue to the Contractor as qualifying contractor or its nominated solicitor.
9. If the HTB Application is successful, the Proceeds actually received prior to Completion by the Contractor or its nominated solicitor regarding the HTB Application shall be treated as a credit against the Contract Price on Completion.
10. On Completion, and once the Proceeds have been offset against the balance deposit due, then the Contractor shall have no liability to the Employer in respect of the Proceeds.
11. If the HTB Application is unsuccessful or if the Contractor is or becomes obliged to repay the Proceeds to the Revenue pursuant to the terms of the HTBS, the Employer will:
 - (a) in the case only of the former, immediately notify the Contractor's solicitor; [and]
 - (b) pay the difference between the deposit paid on signing of this Agreement and the total deposit payable within 14 days; [and the unavailability of the Proceeds shall not be grounds for the Purchaser to delay Completion or terminate/rescind this Agreement] or
12. [Where special condition 11 applies, and the Employer fails to pay the sum due in accordance with Special Condition 11 either party shall be at liberty to terminate this Agreement by service of written notice at any time thereafter to that effect to the other, in which case the portion of the deposit paid by the Employer to the Contractor shall be refunded but without prejudice to any claims which either party may have for antecedent breach.]
13. For the purpose of General Condition 27, a full deposit shall be deemed to be paid only when the total deposit payable has been received by the Contractor or the Contractor's Solicitor.
14. The Employer acknowledges that if the sale has not completed within two years from the date the Contractor receives the appropriate payment, the Contractor shall be obliged to repay the appropriate payment to the Revenue pursuant to the terms of the HTBS.



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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. Please also note that a deadline for applications is in place; the deadline is two weeks before each course's start date.

BUSINESS LAW COMMITTEE

SATISFACTION OF REGISTERED CHARGES

Section 416 of the *Companies Act 2014* requires that evidence of satisfaction of a registered charge in the Companies Registration Office (CRO) must be submitted in order for the Registrar to mark a charge as satisfied on the register.

A registered charge in the CRO is evidenced as satisfied either fully or partially by the lodging of a:

- Form C6 – full satisfaction; or
- Form C7 – partial satisfaction, signed either by an authorised signatory of the company or the registered charge holder.

In the event that the Form C6 or Form C7 is signed by an authorised signatory of the company (and not signed by the registered charge holder) and lodged in the CRO, the Registrar will issue a 21-day notice to the registered charge holder. The purpose of this notice is to inform the registered charge holder that a Form C6 or Form C7 has been lodged by the company and that, unless an objection to its registration is received within 21 days, the charge will be marked by the Registrar as fully or partly satisfied.

This process works well for the most part; however, where a charge registered in the CRO has been transferred to a third party and the CRO has not been notified of the change of ownership, there is a risk of the charge being marked as satisfied by the Registrar when it has not been released by the current owner of the charge (as they will not have been notified).

The Registrar is only obliged to issue the 21-day notice to the registered charge holder and not the acquirer of the charge. The registered charge holder may not respond to the notice and, if an objection is not received, the charge will be marked as satisfied after the expiry of the 21-day notice period.

CRO approach

Guidance note 3 on the Form C6 and guidance note 5 on the Form C7 provide that, where the charge holder has changed since the registration of a charge, then a Form C17 evidencing the transfer of the charge should be lodged before the Form C6 or Form C7 is lodged.

The Form C17 must be signed by both the registered charge holder and the current owner of the charge whether that is the party that the registered charge holder transferred to or not.

Our attention was alerted to scenarios arising on portfolio loan sales whereby ownership of debt and supporting charges were changing hands, but Form C17s were not being lodged in the CRO. As highlighted herein, there is no statutory basis for or obligation on the CRO to notify the current charge holder if it is not the registered charge holder. It should also be noted that no responsibility attaches to the CRO in circumstances where no Form C17 has been filed and the current charge holder is not notified.

Guidance

Practitioners should consider doing the following:

- If acting for a party acquiring a loan or other asset benefitting from a registered charge, clarifying if the vendor is the registered charge holder and, if not, insisting on a Form C17 being signed by an authorised signa-

tory on behalf of the registered charge holder and the vendor, as a condition precedent to completion of the acquisition.

- Ensuring that an authorised signatory of the vendor and of their own client (the acquirer) sign an additional Form C17 for registration following the acquisition.

If acting for a company that intends repaying its debt to a current charge holder that is not the charge holder registered in the CRO:

- Seeking a Form C17 (in addition to calling for a deed of release/discharge) that has been signed by both an authorised signatory of the registered charge holder and the current owner of the charge – being the party receiving funds and releasing the charge, or
- If the current charge holder refuses to provide a Form C17, practitioners should not make a commitment to their client to arrange for the satisfaction of the charge to be completed in the CRO, as this may be outside their control.

EXPRESS OR IMPLIED INDUCEMENTS TO MAKE A CLAIM FOR DAMAGES FOR PERSONAL INJURY

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

All practising solicitors are reminded that, under the *Solicitors Advertising Regulations 2019* (SI No 518 of 2002) (the regulations), an ‘advertisement’ means any communication that is intended to publicise or otherwise promote a solicitor in relation to the solicitor’s practice. At a recent meeting

of the Advertising Regulations Division of the Regulation of Practice Committee (the committee), the application of section 4(a)(vi) of the regulations was considered in the context of online legal updates and blog posts that include the settlement award for a claim for personal injury or medical negligence.


Regulation 4(a)(vi) directs that an advertisement must not expressly or impliedly solicit, encourage or offer any inducement to any person or group or class of persons to make claims

for damages for personal injuries or to contact the solicitor concerned with a view to such claims being made. This restriction, originally contained in the *Solicitors (Advertising) Regulations 2002*, was retained under the *Solicitors Advertising Regulations 2019*.

The committee directed that, where a legal update or blog post either states a settlement award, or provides a link to a news article containing same, it must not also contain contact information for the firm, as to do so would be tantamount to an implied induce-

ment to persons to make a claim for damages for personal injury.

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

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

John Elliot, Registrar of Solicitors and Director of Regulation

GUIDANCE ON USE OF SCANNED AND DIGITAL SIGNATURES

This guidance note covers some of the issues arising from use of scanned or digital signatures in various transactions.

It has been prompted by an enquiry from a practitioner in relation to the use of a scanned document in an Irish property transaction. In the specific circumstances of the transaction, a contract document was signed by a purchaser and the signature witnessed by a solicitor via Skype. The signed document was then scanned. The solicitor printed the document and signed it as a witness.

The contract furnished was not in electronic form but had been produced using electronic means. It is a hard copy of an original written contract with the original signature of the purchaser. The hard copy has an original signature by the purchaser's solicitor as a witness by electronic means of the actual execution in writing by the purchaser. Thus, it is treated as a copy and not as the original contract. In considering the issues involved, provenance is a very important consideration.

Electronic Commerce Act

Section 9 of the *Electronic Commerce Act 2000* (ECA) provides: "Information (including information incorporated by reference) shall not be denied legal effect, validity or enforceability solely on the grounds that it is wholly or partly in electronic form, whether as an electronic communication or otherwise."

Thus, a copy of a document transmitted by fax or email is as valid as a photostat copy transmitted by post, subject to the normal rules of evidence. Faxes had been accepted as valid copies prior to the ECA. The technology used in sending scanned copies by email and in sending faxes

is, in both cases, digital technology; the first a transmission over the internet, and the second a transmission over the PSSN. Thus, a copy is admissible in evidence if the original is lost or deliberately retained by the party against whom it is to be enforced. This is subject to being able to show on the balance of probabilities that it has not been altered.

Section 10 of the ECA states that sections 12-23 are without prejudice to, among other things, "the law governing the manner in which an interest in real property may be created, acquired, disposed of or registered, other than contracts (whether or not under seal)..."

Thus, sections 12-23 of the ECA are not affected by the law governing the manner in which an interest in real property may be created, insofar as they apply to contracts relating to land.

Section 19 of the ECA provides: "(1) An electronic contract shall not be denied legal effect, validity or enforceability solely on the grounds that it is wholly or partly in electronic form, or has been concluded wholly or partly by way of an electronic communication. (2) In the formation of a contract, an offer, acceptance of an offer or any related communication (including any subsequent amendment, cancellation or revocation of the offer or acceptance of the offer) may, unless otherwise agreed by the parties, be communicated by means of an electronic communication."

Thus, there is no provision of the ECA that renders or denies the copy of its legal effect as a copy.

Proof of authenticity of a copy

If the copy has been scanned, it is normally impossible to alter

it without advanced technical knowledge and tools.

In the case of a contract for sale, the returned contract can be compared with the initial contract and correspondence relating to changes.

The question as to whether the signature is forged or added to a contract without the person's consent is exactly the same question in relation to the signature on the original contract.

Authenticity of a signature

The kernel of the original query above is not the validity of the contract or the signature (which is manual and not electronic), but proof of the making of the physical signature.

This is normally witnessed, but it is not a legal requirement that it is so. The legal requirement is that the contract is in writing (see section 51 of the *Land and Conveyancing Law Reform Act 2009*).

In this case, the solicitor for the purchaser, who knew the purchaser, saw the purchaser sign the contract over Skype. He then received a copy of the contract by electronic means and was prepared to verify the signature of the purchaser by attesting a signed copy. This appears to be more than adequate proof of the authenticity of the signature. If a copy of the contract was furnished to the vendor's solicitor by way of a copy with the purchaser's signature typed on it, it should be sufficient.

Documents executed abroad have rules of attestation that differ from those executed within the State. Execution outside the State often takes place before an Irish consular official or before a notary public certified by a local court, which is certified by an Irish consular official.

Provenance

In the age of electronic communication, identity fraud has increased rapidly because the electronic methods of security are easily breached or replicated by those with electronic expertise. Property fraud in England has been facilitated by persons changing their names by deed poll and producing valid passports to prove identity.

The principal way to counter fraud is provenance – for example, family solicitors who have acted for all the members of a family for decades and can vouch their identity. This is becoming more important as persons dealing with Social Protection are beginning to find out. Despite going through all kinds of security checks, some members of the public are still required to drop into their local Social Protection Office with their passports or other means of photographic identification. EC regulations establish that qualified electronic identification systems for electronic signatures require a statutory body to physically associate an electronic signature with a real person. Solicitors are in a unique position to provide this provenance, somewhat similar to notary publics in civil law systems, but must also be aware of the dangers in providing this service.

Property fraud has become an issue in England. Examples include the change of name to the name of a vendor, and then obtaining a passport and ancillary documents. This method was used to fool a solicitor. *Mishcon de Reya LLP*, which acted for a fraudulent vendor, was held liable in damages to the defrauded purchaser. This has sent shock waves through the legal profession in England.

Which jurisdiction?

If special conditions are being amended, the following special condition or something similar might be appropriate.

“This Contract may be executed in any number of counterparts (whether original or facsimile) and by the different parties hereto on separate counterparts, each of which when executed and delivered shall constitute an original and all of which when taken together shall constitute one and the same instrument but shall not be effective until each party has executed at least one counterpart and counterparts have been exchanged and full deposit payable hereunder received by the Vendor. The expression ‘counterpart’ shall include an executed and delivered copy of this Contract transmitted by either facsimile or by email (in PDF, JPEG or other agreed format).”

Another issue to be considered is whether Irish law is the ‘proper law’ of the formation of the contract. The proper law of formation of a contract may differ from the governing law of the contract itself.

In such instances, it is recommended that the general condition governing arbitration be amended to specify the following:

- The proper law of formation of the contract, including the agreement to arbitrate, shall be Irish law,

- The seat of arbitration to be Dublin,
- The applicable law of the contract to be Irish law,
- The applicable law for the arbitration clause to be Irish law,
- Arbitration to apply to all disputes (to make any award enforceable outside Ireland as a court judgment may not be enforceable).

Memorandum in contract

The written contract is a memorandum of an agreement already reached. An unsigned contract set out on the letterhead of the purchaser is sufficient, as is one with his typed signature. A contract with the name and address of the purchaser and a copy of his signature sent by his solicitor for the purpose of binding the purchaser must *a fortiori* be regarded as a binding document. This is, of course, subject to the terms of the usual correspondence, to the effect that no contract would come into being until the contract had been signed by both parties and/or exchanged and the deposit paid in full, etc.

Electronic transmission

It has already been shown that such a document is a valid copy (subject to proof of authenticity) and the question is, can it be regarded as an original? In this instance, it was physically signed, scanned, sent by email to the solicitor, printed out,

and sent to the vendor’s solicitor. It was clearly intended to be binding. It must be regarded as an original binding document that can be signed by the vendor, creating a binding contract. This, of course, is subject to the normal rules of evidence in the event of a claim that the document was forged or altered.

Validity of witnessing

In this instance, the solicitor witnessed the signing on Skype. Can he sign as a witness? It would appear that he can. Mr Justice John Hedigan, in early March 2010 (reported in *The Irish Times* on 3 March 2010) in giving judgment in an application by John Stirling to halt a District Court prosecution based on destroyed CCTV evidence, held that a garda viewing an incident on CCTV is akin to someone looking through binoculars or through “a special window”. Even though the footage was destroyed, the garda could give evidence of what he had seen. Thus a solicitor viewing the live signature of a contract by his client over the internet can give evidence to that event. However, it would be prudent to qualify the witnessing by stating where it happened, and the electronic method by which it had been witnessed.

Authenticity

As always, documents are subject to authenticity in the event that

they are claimed to be forgeries or altered. The best proof is that a document is furnished by the party’s solicitor and has been signed by the party in front of the solicitor. However, this is not foolproof, as can be seen by the number of fraudulent sales and mortgages carried out in England. However, in England, few vendors attend at their solicitor’s office and most events are carried out by post. If the entire process is conducted digitally, the best protection and proof of authenticity is produced by hashing and public key encryption with a qualified digital signature. Europe and America take different approaches. However, Europe has now taken a more pragmatic approach, as set out in [Regulation \(EU\) no 910/2014](#) of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market (and repealing Directive 1999/93/EC, upon which the ECA is based).

Issues with digital signatures

Digital signatures cannot be used in a manner in which an interest in real property may be created, acquired, disposed of, or registered, other than contracts (whether or not under seal). (See section 10 of the ECA.) This can be overruled or amended by regulations made by the Minister for Enterprise under section 3 of the act.



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Land Registry

It is not clear as to the extent the Land Registry may change the rules. Under sections 13 and 14 of the ECA, the Land Registry can accept advanced digital signatures with qualified certificates for the execution of a document and for the person who witnessed the execution. At present, the Land Registry requires transfers to be witnessed by solicitors. If not, they require proof of identification, such as passports, utility bills, etc.

Seal

The requirement of the use of a seal for a deed of assurance or transfer (except in the case of a company) is no longer necessary and no longer a practical impediment. Australia and many other jurisdictions do not require the use of a seal by a company. Regulation (EU) No 910/2014

provides for the use of electronic seals by companies and government bodies. The Supreme Court in *McGuinness, Charles and Noel Mulligan v Ulster Bank Ireland Limited* ([2019] IESC 20; 28 March 2019) held that a deed executed by an attorney of a company without a seal was perfectly valid, as if it were a deed by reason of section 64(3) of the *Land and Conveyancing Reform Act 2009*.

Affidavits and declarations

Affidavits and declarations cannot be made electronically. However, there appears to be nothing that prohibits furnishing electronic copies of declarations already made. These are generally accepted by local authorities in respect of the furnishing of NPPR charges clearance certificates. However, the Courts Service, in designing an elec-

tronic system for obtaining judgment by default, rejected such a system, as it considered that it would be too troublesome to them to administer. They would be required to check the affidavits and reject incorrect ones.


Digital signature system

Revenue under ROS built (circa 2000) a Qualified Digital Signature System that subsequently has been adopted by the Companies Registration Office. This has proven to be most effective. However, in view of the 2014 European directive, a less secure PKE may be used.

For several years in and around the year 2000, the Technology Committee investigated the possibility of the Law Society providing Qualified Digital Signatures to the profession and their clients. The cost of doing so was prohibitive.

Password-protected system

Most electronic conveyancing systems do not go to the expense of Qualified PKE. They mainly use closed systems accessed by password. There are many password systems, such as two passwords used by Bank of Ireland, verification of new accounts by text verification code to a mobile phone, which must be entered, PIN and chip used by credit cards.

The Working Group for Electronic Conveyancing has not yet disclosed its preferred system, which will, to a great extent, depend on the provider. 

(This guidance note was prepared by James Heney, Technology Committee. It is intended for guidance only and is not intended to provide legal advice. Practitioners should consider the specific circumstances of each transaction in relation to the issues covered in this guidance note.)



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SOLICITORS DISCIPLINARY TRIBUNAL

REPORTS OF THE OUTCOMES OF SOLICITORS DISCIPLINARY TRIBUNAL INQUIRIES ARE PUBLISHED BY THE LAW SOCIETY OF IRELAND AS PROVIDED FOR IN SECTION 23 (AS AMENDED BY SECTION 17 OF THE *SOLICITORS (AMENDMENT) ACT 2002*) OF THE *SOLICITORS (AMENDMENT) ACT 1994*

In the matter of Noel J Gargan, a solicitor practising as a partner in the firm of Christie & Gargan, solicitors, Unit 2 Stewart Hall, Parnell Street, Dublin 1, and in the matter of the *Solicitors Acts 1954-2015* [2018/DT93]

Law Society of Ireland (applicant)

Noel J Gargan (respondent solicitor)

On 30 September 2019, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of professional misconduct in that he:

- 1) Failed to comply with an undertaking dated 12 September 2005 furnished to the complainants in respect of his named client and the borrower and property in Co Louth in a timely manner,
- 2) Failed to respond to the Society's correspondence in a timely manner or at all and, in particular, the Society's letters of 25 November 2015, 12 January 2016, 26 January 2016, 2 November 2016, 19 December 2016, 20 March 2017, 25 April 2017, 3 November 2017, and 28 November 2017.

The tribunal ordered that the respondent solicitor:

- 1) Stand censured,
- 2) Pay a sum of €750 to the compensation fund,
- 3) Pay the sum of €1,512 as a contribution towards the whole of the costs of the applicant.

In the matter of Maurice B O'Sullivan, a solicitor practising as Maurice O'Sullivan

& Company Solicitors, at 9 Colbert Street, Listowel, Co Kerry, and in the matter of the *Solicitors Acts 1954-2015* [2017/DT24, 2017/DT38, 2017/DT39, 2017/DT40, 2017/DT41, 2017/DT42, 2017/DT51, 2017/DT73, 2017/DT78, and 2017/DT115; and High Court reference 2019 no 23 SA]

Law Society of Ireland (applicant)

Maurice B O'Sullivan (respondent solicitor)

2017/DT24

On 11 January 2018, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of professional misconduct in his practice as a solicitor in that he:

- 1) Failed to comply with an undertaking furnished to First Active Plc on 1 May 2002 in respect of his named client and borrower and property in Co Limerick in a timely manner or at all,
- 2) Failed to comply with an undertaking furnished to First Active PLC on 6 March 2002 in respect of his named clients and borrowers and property in Co Limerick in a timely manner or at all,
- 3) Failed to comply with an undertaking furnished to First Active PLC on 1 June 2005 in respect of his named client and the borrower and property in Co Limerick in a timely manner,
- 4) Failed to comply with an undertaking furnished to Ulster Bank Ireland Limited on 26 April 2006 in respect of a named borrower and prop-

NOTICE: THE HIGH COURT

In the matter of Maurice O'Sullivan, a solicitor, and in the matter of the *Solicitors Acts 1954 - 2015* [2019 no 23 SA]

Take notice that, by order of the President of the High Court made on 14 October 2019, it was ordered that Maurice O'Sullivan, solicitor, previously practising as Maurice O'Sullivan Solicitors, at 9 Colbert Street, Listowel, Co Kerry, be struck from the Roll of Solicitors.

A stay was placed on this order until after 31 December 2019.

John Elliot, Registrar of Solicitors, Law Society of Ireland, 7 January 2020

- erty in Co Kerry in a timely manner or at all,
- 5) Failed to comply with an undertaking furnished to First Active PLC on 1 June 2007 in respect of named borrowers and property in Co Kerry in a timely manner or at all,
- 6) Failed to comply with an undertaking furnished to First Active Plc on 2 October 2007 in respect of the named borrowers and property in Co Kerry in a timely manner or at all,
- 7) Failed to comply with an undertaking furnished to Ulster Bank on 6 October 2008 in respect of the named borrowers and property in Co Kerry in a timely manner or at all,
- 8) Failed to comply with an undertaking furnished to Ulster Bank on 14 July 2009 in respect of the named borrowers and property in Co Kerry in a timely manner or at all,
- 9) Failed to respond to the Society's correspondence and, in particular, the Society's letters of 23 October 2015 and 6 November 2015 in a timely manner, within the time provided, or at all.

2017/DT38

On 11 January 2018, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of professional misconduct in his practice as a solicitor in that he:

- 1) Failed to comply with his client's instructions to register her entitlement to her property in Co Kerry in a timely manner or at all, having been instructed to do so in 1999/2000,
- 2) Failed to respond to the complainant's queries in relation to her instructions,
- 3) Failed to respond to the Society's correspondence of 29 February 2016, 22 March 2016, 22 April 2016, 14 July 2016, 18 July 2016 in a timely manner, within the time provided, or at all,
- 4) Failed to comply with the direction made by the Complaints and Client Relations Committee at its meeting on 28 June 2016 that he furnish an update to the committee on or before 20 August 2016.

2017/DT39

On 11 January 2018, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of professional misconduct in his practice as a solicitor in that he:

- 1) Failed to respond satisfactorily to correspondence from one of the joint executors of an estate and, in particular, the co-executor's letter of 8 July 2015 in a timely manner,
- 2) Failed to respond to the Society's correspondence and, in particular, the Society's letters of 14 January 2015, 2 February 2015, 20 February 2015, 3 March 2015, 10 Septem-

ber 2015, 6 October 2015, 22 December 2015, 2 February 2016 and 23 February 2016 in a timely manner, within the time provided, or at all.

2017/DT40

On 11 January 2018, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of professional misconduct in his practice as a solicitor in that he:

- 1) Failed to comply with an undertaking dated 9 July 2004 furnished to the complainants in respect of his named client and property in Dublin 8 in a timely manner,
- 2) Failed to comply with an undertaking furnished to the complainants on 7 March 2006 in respect of his clients and the borrowers and property in Co Kerry in a timely manner or at all,
- 3) Failed to comply with two undertakings, one furnished on 7 September 2001 and the second furnished on 29 April 2004, to the complainants in respect of his client and the borrower and property in Co Kerry in a timely manner or at all,
- 4) Failed to respond to the Society's correspondence and, in particular, the Society's letters of 15 February 2016, 24 March 2016 and 18 April 2016 within the time provided, in a timely manner, or at all,
- 5) Failed to comply with a direction made by the Complaints and Client Relations Committee at its meeting on 26 April 2016 that he furnish a response to the Society on or before 10 June 2016,
- 6) Failed to comply with a direction made by the Complaints and Client Relations Committee at its meeting on 28 June 2016 that he furnish an update to the Society on or before 20 August 2016.

2017/DT41

On 11 January 2018, the Solicitors

Disciplinary Tribunal found the respondent solicitor guilty of professional misconduct in his practice as a solicitor in that he:

- 1) Failed to protect his former clients' interests and failed to ensure that they had title to their properties in Co Kerry in a timely manner or at all,
- 2) Failed to respond to the Society's correspondence and, in particular, the Society's letters to him of 12 November 2014, 1 December 2014, 7 January 2015, 5 February 2015, 9 March 2015, 23 March 2015, 14 April 2015, 9 June 2015, 20 July 2015, 10 September 2015, 6 October 2015, 29 October 2015, 26 January 2016 and 25 February 2016 within the time provided, in a timely manner, or at all,
- 3) Failed to comply with a direction made by the Complaints and Client Relations Committee at its meeting of 3 June 2015 and communicated to him by letter dated 9 June 2015 that he furnish updates to the Society every six weeks.

2017/DT42

On 11 January 2018, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of professional misconduct in his practice as a solicitor in that he:

- 1) Failed to comply with an undertaking furnished to the complainants on 28 January 2004 in respect of his named client and borrower and property in Co Kerry in a timely manner or at all,
- 2) Failed to comply with an undertaking furnished to the complainants on 20 January 2009 in respect of his named clients and the borrowers and property in Co Kerry in a timely manner or at all,
- 3) Failed to comply with an undertaking furnished to the complainants on 17 October 2007 in respect of his named clients and borrowers and property in Co Limerick in a

timely manner or at all,

- 4) Failed to comply with an undertaking furnished to the complainants on 11 October 2007 in respect of his named clients and the borrowers and property in Co Limerick in a timely manner or at all,
- 5) Failed to comply with an undertaking furnished to the complainants on 11 October 2007 in respect of his named client and the borrower and property in Co Limerick in a timely manner or at all,
- 6) Failed to comply with an undertaking furnished to the complainants on 2 October 2006 in respect of his named client and the borrower and property in Co Kerry in a timely manner or at all,
- 7) Failed to comply with an undertaking furnished to the complainants on 3 July 2006 in respect of his named client and the borrower and property in Co Kerry in a timely manner or at all,
- 8) Failed to comply with an undertaking furnished to the complainants on 14 March 2005 in respect of his named clients and the borrowers and property in Co Kerry in a timely manner or at all,
- 9) Failed to comply with an undertaking furnished to the complainants on 21 June 2006 in respect of his named client and the borrower and property in Co Kerry in a timely manner or at all,
- 10) Failed to comply with an undertaking furnished to the complainants on 9 April 2001 in respect of his named client and the borrower and property in Co Kerry in a timely manner or at all,
- 11) Failed to comply with an undertaking furnished to the complainants on 28 October 2004 in respect of his named clients and the borrowers and property in Co Kerry in a timely manner or at all,
- 12) Failed to comply with an

undertaking furnished to the complainants on 29 October 2004 in respect of his named clients and the borrowers and property in Co Kerry in a timely manner,

- 13) Failed to comply with an undertaking furnished to the complainants on 30 July 2007 in respect of his named client and the borrower and property in Co Kerry in a timely manner or at all,
- 14) Failed to comply with an undertaking furnished to the complainants on 28 November 2006 in respect of his named client and the borrower and property in Co Kerry in a timely manner or at all.

2017/DT51

On 11 January 2018, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of professional misconduct in his practice as a solicitor in that he:

- 1) Failed to comply with an undertaking dated 30 September 2014 furnished to the complainant in respect of his named clients and the borrowers and property in Co Kerry in a timely manner or at all,
- 2) Failed to respond to the Society's correspondence and, in particular, to the Society's letters of 4 October 2016, 20 October 2016, 3 November 2016, 18 November 2016, 30 November 2016 and 15 December 2016 within the time provided, in a timely manner, or at all,
- 3) Failed to attend the meeting of the Complaints and Client Relations Committee on 24 January 2017, despite being required to do so by letter dated 17 January 2017.

2017/DT73

On 19 April 2018, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of professional misconduct in his practice as a solicitor in that he:

- 1) Failed to comply with an

- undertaking furnished to the complainants on 27 June 2007 in respect of his named clients and the borrowers and property in Co Kerry in a timely manner,
- 2) Failed to comply with an undertaking furnished to the complainants on 4 May 2007 in respect of his named clients and the borrowers and property in Co Limerick in a timely manner or at all,
 - 3) Failed to comply with an undertaking dated 29 May 2006 furnished to the complainant in respect of his named clients and the borrowers and property in Co Kerry in a timely manner or at all,
 - 4) Failed to comply with an undertaking dated 13 September 2001 furnished to the complainant in respect of his named clients and the borrowers and property in Co Kerry in a timely manner,
 - 5) Failed to comply with an undertaking dated 21 November 2003 furnished to the complainants in respect of his named clients and the borrowers and the property in Co Kerry in a timely manner,
 - 6) Failed to comply with an undertaking furnished to the complainants on 30 June 1997 in respect of his named clients and the borrowers and property in Co Kerry in a timely manner,
 - 7) Failed to comply with an undertaking furnished to the complainant on 2 October 2002 in respect of his named clients and the borrowers and property in Co Kerry in a timely manner,
 - 8) Failed to comply with an undertaking dated 23 April 2009 furnished to the complainant in respect of his named clients and the borrowers and property in Co Kerry in a timely manner,
 - 9) Failed to comply with an undertaking dated 23 March 2007 furnished to the complainant in respect of his named client and the borrowers and property in Co Kerry in a timely manner,
 - 10) Failed to comply with an undertaking dated 13 November 2012 furnished to the complainant in respect of his named clients and the borrowers and property in Co Kerry in a timely manner,
 - 11) Failed to comply with an undertaking dated 20 June 2001 furnished to the complainant in respect of his named clients and borrowers and property in Co Kerry in a timely manner.
- 2017/DT78**
- On 19 April 2018, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of professional misconduct in his practice as a solicitor in that he:
- 1) Failed to protect his client's interest and failed to ensure that his client had title to his property in Co Kerry in a timely manner,
 - 2) Caused unnecessary stress to an elderly client by failing to return the complainant's birth certificate to him in a timely manner,
 - 3) Failed to respond to his client's enquiries,
 - 4) Failed to respond in a timely manner or at all to the Society's correspondence and, in particular, the Society's letters of 21 November 2016, 7 December 2016, 5 January 2017, 3 March 2017, 5 April 2017, 20 April 2017, 4 May 2017 and 24 May 2017 in a timely manner, within the time provided, or at all,
 - 5) Failed to comply with the direction made by the Complaints and Client Relations Committee at its meeting on 28 February 2017 that he pay a sum of €550 towards the costs incurred by the Society as a result of his failure to respond to the Society's correspondence and to

- attend the meeting,
- 6) Failed to comply with the direction made by the Complaints and Client Relations Committee at its meeting on 6 June 2017 and that he make a further contribution of €350 towards the cost incurred by the Society,
 - 7) Failed to comply with the direction made by the Complaints and Client Relations Committee at his meeting on 18 July 2017 that he return the birth certificate to his client forthwith,
 - 8) Failed to attend the Complaints and Client Relations Committee meeting on 28 February 2017, 4 April 2017 and 18 July 2017, despite being required to do so.

2017/DT115

On 19 April 2018, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of professional misconduct in his practice as a solicitor in that he:

- 1) Failed to register the interests of his clients in relation to the registration of their title to their home, having been instructed and paid to do so in 2006, in a timely manner,
- 2) Failed to respond satisfactorily to his clients' enquiries in relation to their instructions to him in a timely manner,
- 3) Failed to respond in a timely manner or at all to the Society's correspondence and, in particular, the Society's letters of 14 July 2015, 23 October 2015, 25 November 2015, 9 June 2017 and 28 June 2017.

The tribunal ordered that all matters should go forward to the High Court and, on 14 October 2019, in proceedings 2019 no 23 SA, the High Court ordered that:

- 1) The respondent solicitor's name be struck off the Roll of Solicitors, with a stay on the said order until 31 December 2019,
- 2) The respondent solicitor pay

- a sum of €13,000 as a contribution towards the cost of the disciplinary proceedings,
- 3) The respondent solicitor pay the whole of the costs of the applicant's High Court application, such costs to be taxed in default of agreement.

In the matter of Gary Matthews, a solicitor practising as Gary Matthews Solicitors, 27 Rosses Quay, Rostrevor, Co Down, BT34 3GL, and in the matter of an application by the Law Society of Ireland to the Solicitors Disciplinary Tribunal [8178/DT164/14]

Law Society of Ireland

(applicant)

Gary Matthews (respondent solicitor)

On 24 October 2019, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in the following matters:

- 1) On or around 26 July 2010, he failed to disclose to his client that he had compromised the matter with a named insurance company for a sum of €23,000,
- 2) On or around 26 July 2010, he arranged for a cheque that was crossed and made payable to his client to be lodged to an account under his control, contrary to section 66(17) of the *Solicitors Act 1954* (as amended by section 76 of the *Solicitors (Amendment) Act 1994*),
- 3) He misrepresented by way of an email dated 23 August 2010 to the complainant, that a named insurance company had made the payment in respect of the settlement directly into the complainant's bank account, when he knew or ought to have known that this payment, in fact, originated from his firm, and
- 4) He misrepresented on one or more occasions to the complainant that the settlement of €23,000 made by the named insurance company included

a specific amount(s) to cover legal fees and outlays, when he was aware or ought to have been aware that no part of the €23,000 was attributable to legal fees.

The Solicitors Disciplinary Tribunal made the following orders on 24 October 2019:

- 1) That the respondent solicitor stand censured,
- 2) That the respondent solicitor pay the sum of €5,000 to the compensation fund of the applicant,
- 3) That the respondent solicitor pay the agreed costs of the applicant to be taxed by a taxing master of the High Court in default of agreement.

In the matter of Declan O'Callaghan, solicitor, formerly practising in the firm of Kilrane O'Callaghan & Co, Solicitors, Pound Street, Ballyhaderreen, Co Roscommon, and in the matter of the Solicitors Acts 1954-2015 [2019/DT22]

Law Society of Ireland (applicant)

Declan O'Callaghan (respondent solicitor)

On 5 November 2019, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in that he:

- 1) Unlawfully and without authority retained client moneys in his client account due to be paid to a firm of named solicitors on behalf of litigation costs and expenses from the estate of a named client,
- 2) Failed to remit costs and outlays to a firm of named solicitors arising out of litigation between their named client against the respondent solicitor's named client, resulting in court proceedings being issued against the complainant's client,
- 3) Failed to provide an explanation as to why client moneys had been retained by the respon-

dent solicitor for a period of, in or around, four years, and not properly remitted to a firm of named solicitors in discharge of their legal costs and outlays in the said litigation.

The tribunal ordered that the respondent solicitor:

- 1) Stand censured,
- 2) Pay the sum of €10,000 to the compensation fund, to be paid within 12 months from the date of the order of the tribunal,
- 3) Pay the sum of €7,500 as a contribution towards the whole of the costs of the applicant, to be paid within 12 months from the date of the order of the tribunal.

In the matter of Ronan O'Brien, a solicitor practising as principal of Ronan O'Brien & Company, Solicitors, 69 Church Street, Cavan, Co Cavan, and in the matter of the Solicitors Acts 1954-2015 [2018/DT88]

Law Society of Ireland (applicant)

Ronan O'Brien (respondent solicitor)

On 7 November 2019, the tribunal found the respondent solicitor guilty of misconduct in that he, between March 2012 and February 2013, received a Social Welfare payment, to wit, Jobseekers Benefit, at a time when he ought to have known he was not entitled to receive such benefit.

The tribunal ordered that the respondent solicitor:

- 1) Stand censured,
- 2) Pay the sum of €3,000 to the compensation fund,
- 3) Pay a contribution of €4,000 towards the whole of the costs of the Law Society of Ireland.

In the matter of John B O'Connor, solicitor, practising as John B O'Connor & Co, Solicitors, 37 Upper Mount Street, Dublin 2, and in the

matter of the Solicitors Acts 1954-2015 [2018/DT57]

Law Society of Ireland (applicant)

John B O'Connor (respondent solicitor)


On 19 November 2019, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in that he:

- 1) Failed to transmit all requested documents of title and files belonging to named complainants, despite being requested to do so by the named complainants,
- 2) Failed to comply with the direction of the Complaints and Client Relations Committee dated 7 March 2017, whereby he was directed to hand over all files requested by the named complainants, either originals or, if not possible, complete copy files,
- 3) Failed to comply with the direction of the Complaints and Client Relations Committee at its meeting on 29 May 2017, whereby he was again directed to forward original files and documents or, if the originals were not available, complete copy files and documents to the named complainants,
- 4) Failed to reply adequately or all to the Society's correspondence and, in particular, letters dated 8 September 2016, 29

September 2016, 2 December 2016, 15 December 2016, 13 January 2017, 10 February 2017, 9 March 2017, 4 April 2017, 11 May 2017, 25 May 2017, 19 July 2017, 15 August 2017, 14 September 2017, 4 October 2017, 9 January 2018 and 16 January 2018, respectively,

- 5) Failed to attend a meeting of the complainants and Client Relations Committee on 7 March 2017, despite being required to do so,
- 6) Failed to attend a meeting of the Complaints and Client Relations Committee on 9 May 2017, despite being required to do so,
- 7) Failed to attend a meeting of the Complaints and Client Relations Committee on 24 October 2017, despite being required to do so,
- 8) Failed to attend a meeting of the Complaints and Client Relations Committee of 8 February 2018, despite being required to do so.

The tribunal ordered that the respondent solicitor:

- 1) Stand censured,
- 2) Pay the sum of €7,500 to the compensation fund,
- 3) Pay the sum of €4,909 as a contribution towards the whole of the costs of the Law Society of Ireland. 



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WILLS

Arnold, Isabella (deceased), late of 3 Willie Nolan Road, Baldoyle, Dublin 13, who died on 20 May 2019. Would any person holding or having knowledge of a will made by the above-named deceased please contact Michael J Kennedy and Company, Solicitors, Parochial House, Baldoyle, Dublin 13; tel: 01 832 0230, email: reception@mjsolicitors.com

Begley, Thomas Anthony (otherwise Tony) (deceased), late of Cooladalane, Lismore, Co Waterford, who died on 8 November 2019. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Neil Twomey & Co, Solicitors, Fernville, Lismore, Co Waterford; tel: 058 54658, email: info@neiltwomeysolicitors.com

Callan, Yvonne Patricia (deceased), late of 11 The Orchards, Greenwood Walk, Ayrfield, Dublin, and formerly 10 St Alphonsus Avenue, Drumcondra, Dublin 9, and Creevy Oliver, Carrickmacross, Co Monaghan, who died on 6 October 2019. Would any solicitor holding or having knowledge of a will made by the above-named deceased dated after June 2005 please contact Brian Morgan, Morgan McManus Solicitors, The Diamond, Clones, Co Monaghan; tel: 047 51011, email: dmcmanus@morganmcmahon.ie

Cullen, Mary Patricia (deceased), late of 76 Larkfield Grove, Harold's Cross, Dublin 6W. Would any person having knowledge of a will made by the above-named deceased, who died on 4 June 2019, please contact Cathal N Young, O'Reilly & Co, Solicitors, 1-2 Lower Leeson Street, Dublin 2; D02 NY60; tel: 01 671 2773, email: info@yor.ie

Curristine, Helen Ita (deceased), late of Derrymore, Killucan, Co Westmeath, who died on 13 November 2019. Would any person having knowledge of the whereabouts of any will executed by the said deceased

RATES**PROFESSIONAL NOTICE RATES****RATES IN THE PROFESSIONAL NOTICES SECTION ARE AS FOLLOWS:**

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

please contact Hamilton Sheahan and Company, Solicitors, Main Street, Kinnegad, Co Westmeath; DX 235001 Kinnegad; tel: 044 937 5040, email: roisin@hamiltonsheahan.ie

Daly, Bernadette (deceased), late of 7 Powerscourt, Abbeyleix Road, Portlaoise, Co Laois, who died on 11 November, 2019. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Anne Manning, Breen Manning Solicitors, Tower Hill, Portlaoise, Co Laois; tel: 057 866 0006, email: anne@breenmanning.ie

Devereux, Kathleen (otherwise Catherine) (deceased), late of Begerin Loftus, New Ross, Co Wexford, who died on 18 June 2019 (approx). Would any person holding or having knowledge of a will made by the above-named deceased please contact Paul A Rogers & Company, Solicitors, 6 Charles Street, New Ross, Co Wexford; tel: 051 425 155, email: law@paulrogerslaw.com

Finn, Breda (deceased), late of 50 Cross Road, Thomondgate, Limerick, who died on 6 March 2019. Would any person having knowledge of a will made by the above-named deceased please contact David

Punch & Company, Solicitors, 11 Glentworth Street, Limerick; DX 3048 Limerick; tel: 061 419 144, email: info@davidpunchsolicitors.ie

Fitzpatrick, Seán (John) (deceased), late of 7 O'Rourke's Park, Sallynoggin, Co Dublin, otherwise Balally/Dundrum, Dublin 14, who died on 31 December 2018. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Amy Fitzpatrick, Brendan Maloney & Company, Solicitors, Kilbride Cottage, Killarney Road, Bray, Co Wicklow; tel: 01 286 5700, email: amy@brendanmaloney.ie

Jones, Kathleen Cora (deceased), late of 34 Martin

Street, South Circular Road, Dublin 8. Would any person having any knowledge of a will made by the above-named deceased, who died on 16 September 2019, please contact B O'Neill Solicitors, Camden Business Centre, 12 Camden Row, Dublin 8; tel: 01 479 0545, email: boneill@boneillsolicitors.ie

Kelly, Margaret (otherwise Peg) (deceased), late of 39 Marley Close, Rathfarnham, Dublin 16, who died on 16 November 2018. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Molloy Murphy, Solicitors, Exchange House, Castleknock Village, Castleknock, Dublin 15; tel: 01 803 0433, email: info@molloymurphy.ie

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TRACING HEIRS TO ESTATES, PROPERTY & ASSETS

Lee, John Barry, (deceased), late of 125 Villa Park Gardens, Navan Road, Dublin 7, who died on 30 October 2019. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Ms Helen Lee, 125 Villa Park Gardens, Navan Road, Dublin 7; tel: 087 236 1147, email: hmlleemitchell@gmail.com

MacGeehin, Eithne (Enya), (deceased), late of 3 Hollybank Road, Drumcondra, Dublin 9, who died on 18 November 2019. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Prospect Law, 10 Prospect Road, Glasnevin, Dublin 9; tel: 01 830 7799, email: legal@prospectlaw.ie

Mangan, Carmel, (deceased), late of 408(a) (also 408) Ballyouster, Celbridge, Co Klidare, who died on 14 July 2014. Would any person having knowledge of the whereabouts of any will executed by the said deceased please contact Hamilton Sheahan and Company, Solicitors, Main Street, Kinnegad, Co Westmeath, within a period of 1 month from the date hereto; DX 235001 Kinnegad; tel: 044 93 75040, email: roisin@hamiltonsheahan.ie

Noone, Josephine (deceased), late of 20 Wilfield Road, Ballsbridge, Dublin 4, and formerly of Toomanaghy, Castlereagh Road, Ballaghaderreen, Co Roscommon, who died on 17 November 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 James V Tighe and Company, Solicitors, Main Street, Celbridge, Co Kildare; DX 138004 Celbridge; tel: 01 627 2397, email: james@jamesvtighe.com

O'Connell, Aidan (deceased), late of 59 Ballytore Road, Rathfarnham, Dublin 14, who died on 14 January 2012. Would any person having knowledge of the whereabouts of a will made by the above-named deceased please contact O'Connor Solicitors, 8 Clare Street, Dublin 2; tel: 01 676 4488, email: helen.mcgrath@oclegal.ie

O'Reilly, Philomena Frances (deceased), late of Kilmacud Park, Stillorgan, Co Dublin, and formerly of Belmont Villas, Donnybrook, Dublin 4, who died on 10 August 2019. Would any person having knowledge of the whereabouts of a will made by the above-named deceased please contact Gleeson McGrath Baldwin, Solicitors, 12 Lower Kilmacud Road, Stillorgan, Co Dublin; tel: 01 283 2106, email: solicitors@gmgb.ie

Ryan, Annie Teresa (deceased), late of Knockroe, Kilmaine, Co Mayo, and Hollymount Private Nursing Home & Retirement Home, Kilrush, Hollymount, Claremorris, Co Mayo. Would any person having knowledge of any will made by the above-named deceased, who died on 20 November 2019, please contact Geraldine Dooley, solicitor, c/o Catherine Murphy & Co, Solicitor, Main Street, Headford, Co Galway; tel: 093 36030, fax: 093 36031, email: gdooley@cmurphysol.com

Tuite, Mary (otherwise Mary Elizabeth) (deceased), formerly

of Kingsbury, Staffordshire, England, and Cushina, Portarlinton, Co Laois, and late of 51 Eastham Park, Eastham Road, Bettystown, Co Meath. Would any person having knowledge of a will executed by the above-named deceased, who died on 28 September 2019, please contact Nora Collier, Tallans Solicitors, The Haymarket, Drogheda, Co Louth; DX 23009; tel: 041 983 8708, fax: 041 983 9111, email: nora@tallans.ie

Weldon, Kenneth Joseph (deceased), late of 3 Richmond Park, Wexford Town; 120 Charlemont, Griffith Avenue, Dublin; and 1 Boland's Cottages, East Wall, Dublin 3. Ken was a good and decent man and we want to make sure that his last wishes are fulfilled. Sadly, Ken passed away suddenly on 15 June 2018. He made an updated will with a Dublin solicitor in 2009 and then again in 2016. Please contact Peggy Weldon, 14715 Yearling Terrace, Rockville, Maryland 20850, USA; tel: +1 240 506 5534, email: pweldon@holychild.org

Whyte, Anna Christina (or Christine) (deceased), late of Fortlodge, Kylebrack, Loughrea, Co Galway, and Tuamgraney, Scarriff, Co Clare. Would any person having knowledge of a will dated 13 August 1976 executed by the above-named deceased, who died on 23 December 1984 please contact Michael Collins & Company, Solicitors, Dominic Street, Portumna, Co Galway; tel: 090 974 1980, fax: 090 974 1981, email: michael.collins@collinslaw.ie

TITLE DEEDS

Would any person having knowledge of the whereabouts of indenture of lease for lives renewable forever, dated 21 October 1871, made between John Joseph Eyre of one part and Margaret Connolly of the other part in relation to lands at Bridge Street, Clifden, in the county of Galway, please contact Crean O'Flaherty Solicitors, Millwood, Carrigduff, Bunclody, in the county of Wex-

ford; tel: 053 937 7938, email: michael@creanandco.ie

In the matter of section 69 of the Landlord and Tenant (Amendment) Act 1980 and in the matter of an application by Sanderly Holdings Limited

Any person having a freehold estate or any intermediate interest in all that and those a site at the rear of the houses 48-52 Glasnevin Hill, formerly part of the rear gardens of these houses and held under an indenture of lease dated 1 December 1913 between Muriel Isabel Gerty and others of the one part, and Andrew Ryan of the other part for a term of 150 years from 1 May 1913 at a rent of £20 per annum, containing covenants by the lessee not to erect any additional building, the plan or plans for which shall not be previously submitted to and approved of by the lessor.

Take notice that Sanderly Holdings Limited, the person currently entitled to the lessee's interest under the lease, intends to apply to the Dublin Circuit Court for an order under section 69 of the *Landlord and Tenant (Amendment) Act 1980* authorising the erection of portion of an apartment block on and a basement car park under the said site, and in default of any objection being received from the person or persons beneficially entitled to the superior interest, including the freehold reversion within 21 days of the date of this notice, intends to issue a Civil Bill seeking relief as aforesaid, and subsequently apply to the Circuit Court by motion for such directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interests including the freehold reversion in the aforesaid property are unknown or unascertained.

Date: 7 February 2020

Signed: HMBO Solicitors (solicitors for the applicants), 12 Ely Place, Dublin 2, (solicitors for Sanderly Holdings Limited)

In the matter of the Landlord and Tenant (Ground Rents) Acts 1967-1984 and in the matter of the premises situate at Main

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Street, Leixlip, in the county of Kildare – Hannigan Holdings Limited (applicant)

Take notice that the applicant herein intends the county registrar sitting at the Courthouse, Naas, in the county of Kildare, on 27 March 2020 at 11:30am for the following reliefs: (1) an order to determine whether the applicant herein has the right as incident to its existing leasehold interest to acquire the fee simple in the premises described in the schedule hereto together with any intermediate leasehold interests; (2) an order determining the purchase price of the said fee simple and any intermediate leasehold interests; (3) if necessary, an order apportioning such purchase in fee simple together with any superior intermediate leasehold interests; (4) if necessary, an order pursuant to section 18 of the *Landlord and Tenant (Ground Rents) Act 1967* appointing an officer of the court to execute any conveyance or assignment of the fee simple or any intermediate leasehold interests (if necessary); (5) further or other relief.

Which application is to be grounded on the affidavit of Patrick Gerard Hannigan sworn 4 September 2018, the nature of

the case and the reasons to be offered.

Schedule: all that and those the premises known as the Middle Shop Licensed Premises, Main Street, Leixlip, in the county of Kildare, shown outlined in red on map 1 attached hereto and thereon edged in red.

Date: 7 February 2020

Signed: LC O'Reilly Timmins & Co (solicitors for the applicant), The Harbour, Kilcock, Co Kildare

In the matter of the Landlord and Tenant (Ground Rents) Acts 1967-2007 and in the matter of the premises at Leixlip in the county of Kildare – estate of Patrick Hannigan (deceased) – (applicant)

Take notice that the applicant herein intends to apply to the county registrar sitting at the Courthouse, Naas, in the county of Kildare, at 11:30am on 27 March 2020 for the following reliefs: (1) an order to determine whether the applicant has pursuant to his existing entitlement in the premises described in the schedule hereto (the premises) and entitlement to enlarge his existing leasehold interest in to a fee simple and for that purpose to acquire the said fee simple and

any intermediate leasehold interest; (2) an order determining the price to be paid by the applicant for the said fee simple and any intermediate leasehold interest and apportioning same, if necessary; (3) if necessary, an order pursuant to section 8 of the *Landlord and Tenant (Ground Rents) Act 1967* apportioning an officer of the court to convey on behalf of any unknown or unascertained person entitled to any superior interest in the premises; (4) further or other relief.

Which application is to be grounded upon the notice of intention to acquire the fee simple dated 19 June 2019, the opinion of James Dwyer SC, the nature of the case and the reasons to be offered.

Schedule: all that and those all buildings and yards situate at the rear of the Middle Shop Licensed Premises, Leixlip, Co Kildare shown outlined in red on the Map attached hereto and marked with the letter 'A' together with the right of way serving as shown on the map annexed hereto coloured yellow thereon

Date: 7 February 2020

Signed: LC O'Reilly Timmins & Co (solicitors for the applicant), Pound Street, Leixlip, Co Kildare

In the matter of the Landlord and Tenant (Ground Rents) Acts 1967-2007 and in the matter of the premises at Leixlip in the county of Kildare – estate of Patrick Hannigan (deceased) (applicant)

Take notice that the applicant herein intends to apply to the county registrar sitting at the Courthouse, Naas, in the county of Kildare, at 11:30am on 27 March 2020 for the following reliefs: (1) an order to determine whether the applicant has, pursuant to his existing entitlement in the premises described in the schedule hereto (the premises) and entitlement to enlarge his existing leasehold interest in to a fee simple and for that purpose to acquire the said fee simple and any intermediate leasehold interest; (2) an order determining the price to be paid by the applicant for the said fee simple and any intermediate leasehold interest and apportioning same, if necessary; (3) if necessary, an order pursuant to section 8 of the *Landlord and Tenant (Ground Rents) Act 1967* apportioning an officer of the court to convey on behalf of any unknown or unascertained person entitled to any superior interest in the

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premises; (4) further or other relief.

Which application is to be grounded upon the notice of intention to acquire the fee simple dated 19 June 2019, the opinion of James Dwyer SC, the nature of the case, and the reasons to be offered.

Schedule: all that and those the rooms located on the first floor above the Middle Shop licensed premises shown outlined in red on the map attached hereto and marked with the letter 'B' together with the roof and all structures above same.

Date: 7 February 2020

Signed: LC O'Reilly Timmins & Co (solicitors for the applicant), Pound Street, Leixlip, Co Kildare

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 RH Site Maintenance Limited, c/o Edmund J Burke & Co, Solicitors, 43 South Mall in the city of Cork

Any persons having interest in the freehold and/or the intermediate estates in the following property: the hereditaments and premises situate at and adjacent to Lover's Walk, Redemption Road, Cork, and Hatten's Alley Lane, Blackpool, Cork, and No 88 Great William O'Brien Street, Cork, as more particularly referred to in the indentures of leases hereinafter mentioned.

Take notice that RH Site

Maintenance Limited intends to submit an application to the county registrar for the county of Cork for the acquisition of the freehold interest and all intermediate interests in the aforementioned property comprised in the four leases hereinafter referred to, and any party asserting that they hold a superior interest in the hereditaments and premises demised by either lease and the fee simple thereof are called upon to furnish evidence of title to the aforementioned hereditaments and premises to the below named.

Such person or persons who are entitled to the interests of Thomas McDermott of the first part, Patrick Walter Corrigan and Marianne Corrigan (grantors) and John Laffan (grantee), pursuant to lease dated 21 May 1866 made between the aforesaid grantors of the first and second parts and the grantee of the third part, whereby the hereditaments and premises therein described as the south part of the Orchard called Sargeant's Orchard, being part of the lands at Farranpherish, otherwise Farranferris, formerly in the north liberties of the city of Cork but now in the barony and county of Cork, were demised unto the said John Laffan for a term of 309 years 364 days from 25 March 1866, subject to the yearly rent of £32 10s thereby reserved and the covenants and conditions therein contained.

Such person or persons who are entitled to the interests of Richard Brocklesby pursuant to lease made 25 July 1754 made between

the said Richard Brocklesby of the one part (grantor) and George Forster (grantee) of the other part, whereby the hereditaments and premises therein described, part of which are now known as No 88 Great William O'Brien Street in the parish of St Anne Shandon and the city of Cork were demised unto the said George Forster for a term of 500 years from 25 March 1754, subject to the yearly rent of £13.7s.4p and the covenants and conditions therein contained.

Such person or persons who are entitled to the interests of Madam Yvonne Biard, Catherine Anne Marie Queston, Colomba Poggio, Paul Zuani, Pierette Discazeaux, Gaetano Costa, Italo Costa, Rosita Costa and Gugiellmina Cella of the one part (grantors) pursuant to lease dated 7 April 1987 and made between the aforesaid grantors of the one part and Mary Sheehan (grantee) of the other part, whereby the premises described as 86 Great William O'Brien Street, situate in the parish of St Anne Shandon and city of Cork were demised unto the lessee for a term of 99 years from 29 September 1978 subject to the yearly rent of £500 thereby reserved and the covenants and conditions therein contained.

Any person or persons entitled to the grantors' interest in the aforesaid leases or those holding any superior interests in the properties therein demised should provide evidence of their title to the applicant's solicitors within a period of 28 days from the date of this notice.

In default of such notice being received, the applicant, RH Site Maintenance Limited, intends to proceed with an application before the county registrar for the county of Cork to acquire the fee simple interest and all intermediate interests in the said property and will apply to the county registrar for such directions and orders as may be appropriate on the basis that the person or persons entitled to the superior interests including the freehold interest in the aforesaid premises are unknown or unascertained.

Date: 7 February 2020

Signed: Edmund Burke & Co (solicitors for the applicant), 44 South Mall, Cork

In the matter of the Landlord and Tenant Acts 1967-2005 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978 and in the matter of the property at 12-15 O'Curry Street, Limerick ('the property'), formerly known as Frederick Street, Limerick, and Doyles Yard, Limerick – Michael O'Callaghan and Catherine O'Callaghan (applicants)

Take notice that any person having any interest in the freehold estate of the following property: 12-15 O'Curry Street, Limerick, formerly known as 12-15 Frederick Street and Doyles Yard, Limerick. Take notice that Michael O'Callaghan and Catherine O'Callaghan, c/o Kieran O'Brien, Solicitors, 25 Barrington Street, Limerick, intend to submit an application to the county registrar for the city of Limerick for acquisition of the freehold interest in the aforesaid properties, and any party asserting that they hold a superior interest in the aforesaid premises (or any of them) are called upon to furnish evidence of the title to the aforementioned premises to the below named within 21 days from the date of this notice.

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

Date: 7 February 2020

Signed: Kieran O'Brien and Associates (solicitors for the applicant), 25 Barrington Street, Limerick

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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 Emerald Invest AB

Any person having a freehold estate or any intermediate interest in all that and those the lands now known as no 27 Belvedere Place, Dublin 1, being the entirety of the premises the subject of a lease dated 28 day of March 1881 between John Flynn of the one part and James O'Flaherty of the other part for a term of for a term of 999 years from 25 March 1880 at a rent of £6.6 sterling and therein described as 'all that and those that parcel of ground situate on the west side of Belvedere Place in the parish of Saint George and county of the city of Dublin containing in front to Belvedere Place aforesaid 21 feet, ten inches, and in the rear 21 feet, ten inches, and in depth from front to rear 112 feet, be all or any of said admeasurements more or less bounded on the east by Belvedere Place aforesaid on the south by building ground belonging to the said John Flynn, on the west by the site of an intended stable lane to be made, and on the north by a plot of ground demised by the said John Flynn to the said James O'Flaherty by lease bearing date 10 September 1880 and on which the dwellinghouse now known as no 26 Belvedere Place is now erected, as the same is more fully described in the map or terchart in the fold of these presents'.

Take notice that Emerald Invest AB intends to apply to the county registrar of the county of Dublin to vest in it the fee simple and any intermediate interests 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, Emerald Invest AB intends to proceed with the application before the Dublin county registrar at the end of 21 days from the date of this notice and will apply to the Dublin county registrar for such directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interests including the freehold reversion in the aforesaid property are unknown or unascertained.

Date: 7 February 2020

Signed: Chris van der Lee & Associates (solicitors for the applicant), 9-10 Eustace Street, Dublin 2

In the matter of the *Landlord and Tenant Acts 1967-2008*, the *Landlord and Tenant (Ground Rents) (No 2) Act 1978*, the former *Tailteann Cinema, Suffolk Street, Kells, Co Meath* – an application by David Butler

Take notice any person having an interest in the freehold estate or any intermediate interest in all that and those the former Tailteann Cinema, Suffolk Street, Kells, Co Meath, being currently held by David Butler (the applicant) under an indenture of lease dated 2 June 1936 ('the lease') between Margaret Mary Scanlan of the one part and Tailteann Theatres Limited of the other part, that the applicant, as lessee under the lease, intends to apply to the county registrar for the county of Meath for the acquisition of the freehold interest and all intermediate interests in the aforesaid property, and any party asserting that they hold a superior

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interest in the aforesaid property is called upon to furnish evidence of title to the same to the solicitors named below within 21 days from the date of this notice.

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

Date: 7 February 2020

Signed: Malone and Martin (solicitors for the applicant), Market Street, Trim, Co Meath; DX 92 001 Trim

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 property no 42 Sundrive Road, Kimmage, Dublin 12 – John Manifold (applicant)

Take notice that any party having interest in the freehold estate of the following property: all that and those the property know as 42 Sundrive Road, Kimmage, Dublin 12, the subject of an indenture

of lease dated 24 October 1935 between Mary W Kavanagh on the one part and Michael Greene of the other part for a term of 173 years commencing 23 October 1935, subject to the rent of IR£20 thereby reserved.

Take notice that John Manifold ('the applicant') intends to submit an application to the county registrar for the city of Dublin for the acquisition of the freehold interest in the aforesaid property and that any party asserting that they hold a superior interest in the aforesaid property are called upon to furnish evidence of the title to the aforesaid premises to the undermentioned solicitors within 21 days from the date of this notice.

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

Date: 7 February 2020

Signed: Gill Traynor (solicitor for the applicant), 39/41 Sundrive Road, Dublin 12

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A PRACTITIONER'S GUIDE TO THE EUROPEAN CONVENTION ON HUMAN RIGHTS (6th EDITION)

Karen Reid. Sweet & Maxwell (2019), www.sweetandmaxwell.co.uk. Price: Stg £175 (incl VAT).

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the initial application to court, with little formality and no fees. Application is permitted only after the final decision where domestic remedies exist, with time limits measured in months. Only one in ten cases (at most) pass the first stage. Once a case has been communicated to the Government, and if there is an oral hearing, a lawyer must be obtained. If a violation is found, the court has discretion to award 'just satisfaction', and is increasingly specifying concrete measures to be taken, among other potential remedies.

This hardback is thorough and practical. The concept of human rights has been enthusiastically welcomed into the popular psyche; this book will provide assistance to a lawyer investigating the options open to a client.

Aoife Byrne is a solicitor with a particular interest in human rights, and is a member of the Gazette Editorial Board.



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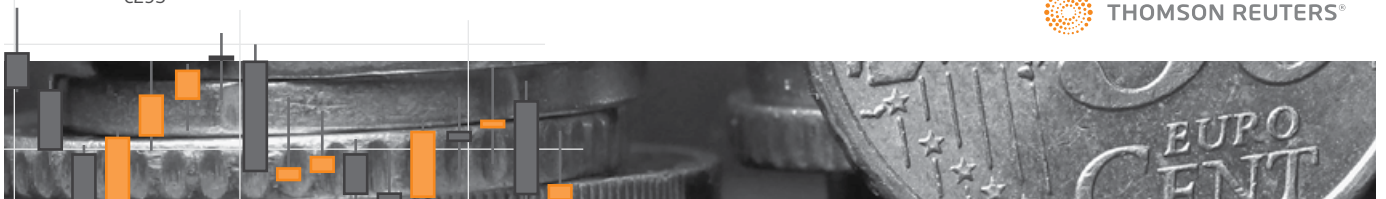
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DIVORCE AND JUDICIAL SEPARATION PROCEEDINGS IN THE CIRCUIT COURT

Keith Walsh. Bloomsbury Professional (2019), www.bloomsburyprofessional.com. Price: €150 (or €132.44 in e-book format, incl VAT).

Divorce and Judicial Separation Proceedings in the Circuit Court, by Keith Walsh, is a comprehensive analysis of practice and procedure arising from order 59 in the *Circuit Court Rules*, which has undergone a number of amendments and updates in recent years. Helpfully, this publication guides practitioners in relation to order 59, as currently in force.

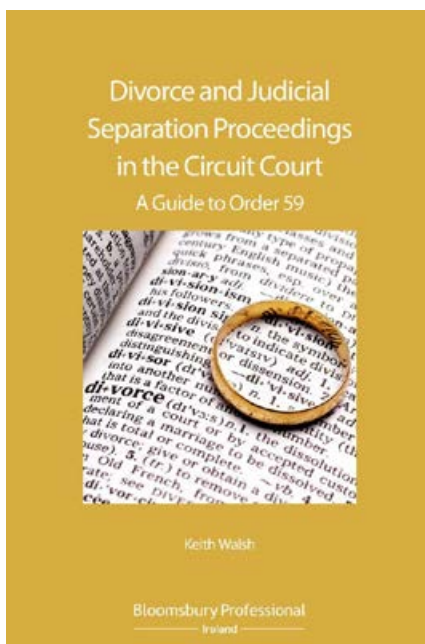
The book provides a step-by-step guide to each aspect of procedure: from the commencement of proceedings, through the pleadings, case progression, guardianship, parentage and DNA tests where parentage is in issue, domestic-violence proceedings, proceedings under the *Hague Convention*, and under the *Gender Recognition Act 2015*.

A substantial portion of the book is devoted to precedents in divorce and judicial-separation proceedings that practitioners will appreciate, and an appendix deals with the issue of service outside this jurisdiction.

The case-progression chapter sets out the differences between the practices that apply between the Dublin Circuit only and the court circuits outside of Dublin, with useful notes and assistance as to what should be considered when preparing for trial.

In each chapter, a practical, constructive approach has been adopted, which is attributable to the author's expert, practical knowledge of the Circuit Court family law system.

The book contains extensive commentary of the *Circuit Court Rules* under order 59,



referring to both reported and unreported decisions, legislation and practice directions.

The clear and concise manner in which it is written makes the book an excellent reference tool for practitioners. It is an invaluable and necessary guide, and great praise is due to the author.

Joyce A Good Hammond is a partner at Hammond Good in Mallow, Co Cork, and is a member of the Conveyancing Committee of the Law Society of Ireland.

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By Michael O'Doherty

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Internet Law by Michael O'Doherty looks at key pieces of legislation such as the EU General Data Protection Regulation and Defamation Act 2009; forthcoming legislation such as the Harmful Digital Communications Act; and the EU ePrivacy Regulation, which aims to ensure stronger privacy rules for all electronic communications.

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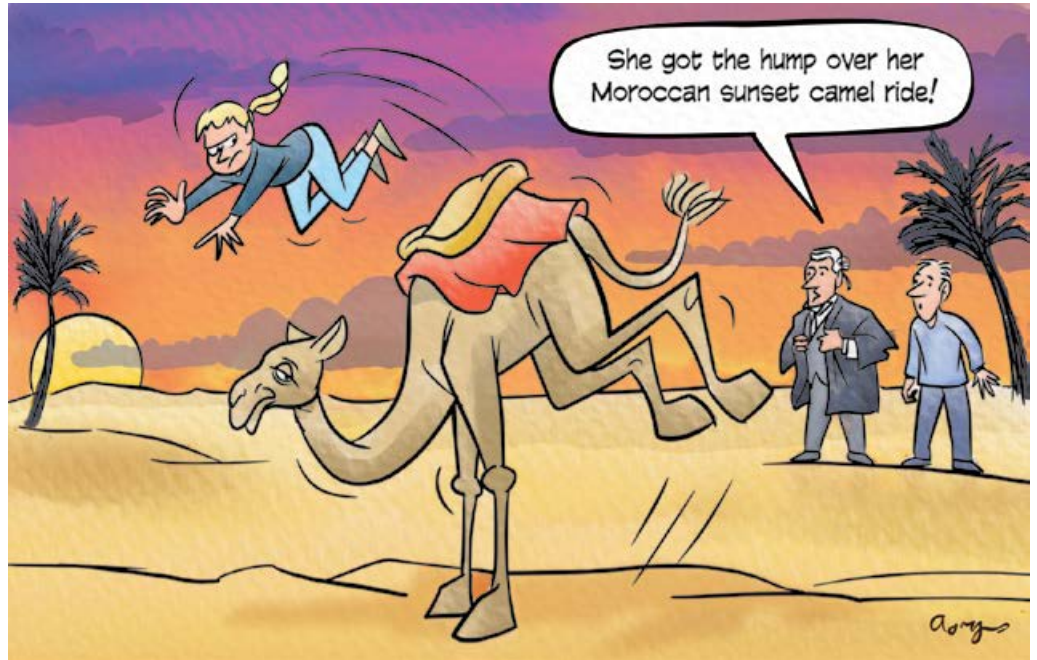
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CHOPPY LEGAL WATERS FOR SHIP OF THE DESERT

A leisurely sunset camel ride in Morocco turned sour for a New Jersey woman when she was tossed to the ground by her testy mount, resulting in a broken arm and bruising, *Time* magazine reports.

Breanne Ayala (24) has sued booking site TripAdvisor and its subsidiary Viator for negligence and breach of contract, accusing them of failing to ensure that the camel-tour company was operating safely. Ms Ayala claims that the camel ride she was promised did not go as planned, because “she was placed on a pregnant, runaway camel that broke away from the tour and tossed her to the ground”.

TripAdvisor and its subsidiary Viator declined to comment on the pending litigation.



I CHALLENGE YOU TO A DUEL!

David Ostrom, of Paola, Kansas, recently filed a motion in an Iowa court seeking trial by combat to resolve a dispute with his ex-wife, the *Des Moines Register* reports. In an effort to make the contest fair, he pointed out that she would have the right to select a champion to fight for her, suggesting that she choose her attorney. Ostrom said he would be happy to dual against one or the other, or both, “on the field of battle where [he] will rend their souls from their corporal [sic] bodies”.

Anticipating that his motion would be granted, Ostrom asked the Iowa District Court in Shelby County for 12 weeks of ‘lead time’ in order to source or forge katana and wakizashi swords.

“To this day, trial by combat has never been explicitly banned or restricted as a right in these United States,” Ostrom argued in court records, adding that it



was used “as recently as 1818 in a]British court”.

Ostrom got the idea after hearing about a 2016 case in which New York Supreme Court Justice Philip Minardo (who retired in 2017) acknowledged that duels had not been abolished.

The ex-wife’s attorney opposed the motion, saying that, although he and his client “do have souls

to be rended, they respectfully request that the court not order this done”.

The judge said that until the proper procedural steps to initiate a court proceeding were followed, the court would take “no further action concerning any motion, objection or petition filed by either party at this time”.

‘CHEQUE’ MATE!

A Detroit man who sued his employer for racial discrimination ended up suing a bank for the same reason after it allegedly refused to accept his settlement cheque from the first case, the *Detroit Free Press* reports.

In fact, Sauntore Thomas says TCF Bank called police and reported him for fraud when he attempted to cash the cheque

on 21 January. Thomas said that the assistant manager claimed the bank’s computerised cheque verification system was down and she would have to call to verify that the cheque was legal – then returned to say that the verifying bank official “was not around”.

However, she had instead called the police. Two officers ended up questioning Thomas while two others stood guard

outside. He called his lawyer to explain that the cheque was legitimate, having resulted from a civil-suit settlement. The lawyer then sent the bank the federal court complaint so that they could see that the amount matched.

The bank refused to budge, however, refusing to accept the cheque, though Thomas was not arrested.

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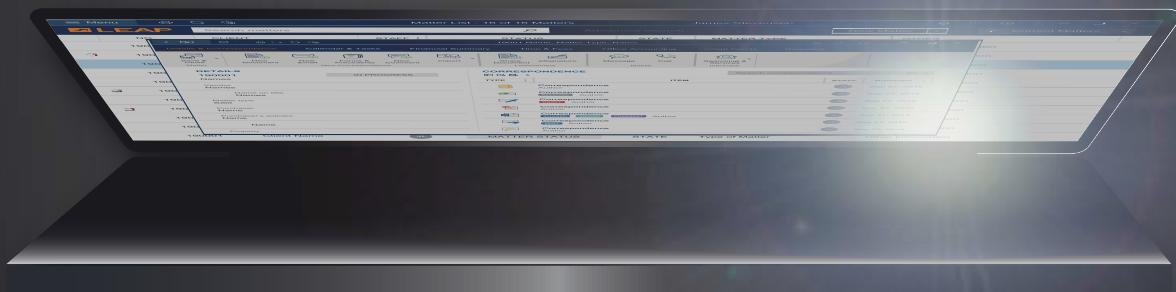
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