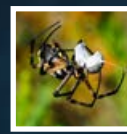




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European trademarks no longer offer protection in the UK. And there's a deadline looming



Undercover
Nicola Tallant talks to the Gazette about gangland crime and its impact on the rule of law



Spider and the fly
Merger control regulations continue to evolve – here's what you should know

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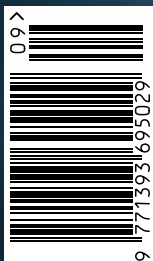


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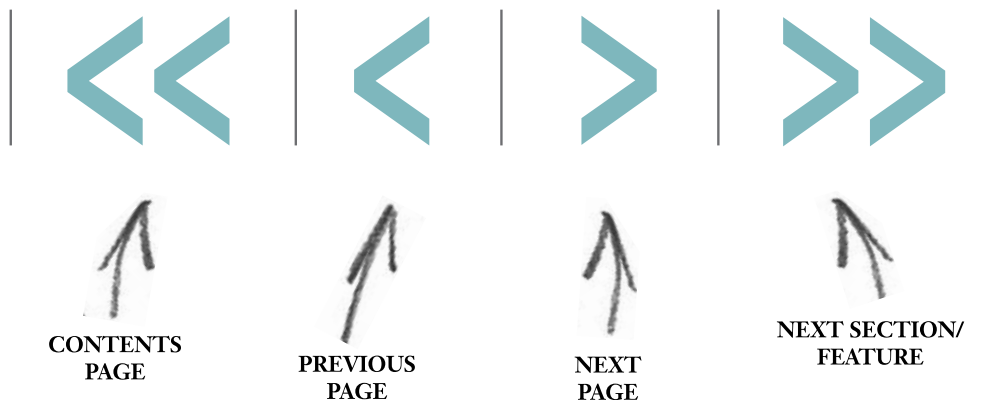
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Gazette.ie now delivers a weekly briefing of the top legal news stories, as published on Gazette.ie, to Law Society members and subscribers via email.

PRESIDENT'S MESSAGE

PROTECTING THE RULE OF LAW

You will have read the Street Law moot court case published on p13 of the July *Gazette*. Street Law is a programme that takes a practical approach, and which taps into students' interest in the law. This outdoor classroom dealt with topics such as natural justice, the structure of our constitution, and how the court system works.

I do think we should set out to promote the Street Law Programme across the country. Those fine Law Society staff members and trainees, including John Lunney, Patricia Harvey, Sorcha Hayes, Mary Ann McDermott and Simon Treanor BL, who have organised and managed the programme for some years, would only be too happy to see it expanded, and I am sure that bar associations would also show enthusiasm in organising a Street Law event in their own counties.

Democracy and the rule of law go hand in hand. We know that democracy is under huge pressure in many parts of the world. The climate emergency will pile on the pressure. A panicked society can so easily yearn for the 'strong man' to lead. Such societies made up of good people can find themselves disempowered.

Totalitarian leaders, whether of the right or the left, know full well how to make use of fear to extend control. They thrive on chaos and bewilderment. According to George Orwell, the strategy of fear is one of their most valuable tactics.

Mindful of Afghanistan

Afghanistan comes to mind right now in this lovely peaceful morning in my native Mayo. We cannot take democracy and our democratic institutions for granted, whether they be the Law Society, the judicial system, or State bodies. We must encourage our children and young people to engage and really take on board the immeasurable values of their constitutional rights, including free speech and the right of assembly, and to develop an understanding of the rule of law and its role in framing equality within society.

The deepening climate crisis will put greater pressure on the freedoms we take for granted. Cynicism undermines democracy. The defenders of freedom – and that includes solicitors – either through fatigue, despair or a false idea of strategy have retreated. As we are obliged to know more and more about less and less, we can easily lose sight of, or disengage from the bigger issues, and so we are slow to protest.


Return to physical meetings

The need to return to physical meetings is now quite urgent for all of us. Like any family, Council has its ups and downs. While Zoom meetings have seen 100% attendance, there has also been dissatisfaction with Council meetings among its members. Measures have been taken during the year that resulted in a report entitled the *Leadership and Council Effectiveness Review*, which will be debated at a special meeting of the Council on Friday 17 September.



WE CANNOT TAKE DEMOCRACY AND OUR DEMOCRATIC INSTITUTIONS FOR GRANTED

Blackhall Place is just an eerie granite building without the people and, like the nation, it has no life of its own – it is the people working there who give it life and its dynamic atmosphere. "Come what come may, Time and the hour runs through the roughest day" (*Macbeth*, act 1, scene 3). So, my colleagues, let's propose a toast to the reopening of physical gatherings, with or without masks, in the immediate future.

In the meantime, I hope you have enjoyed the sunny days of August! 



JAMES CAHILL,
PRESIDENT

PGC SHUTTERSTOCK/ALAMYGAZETTE STUDIO



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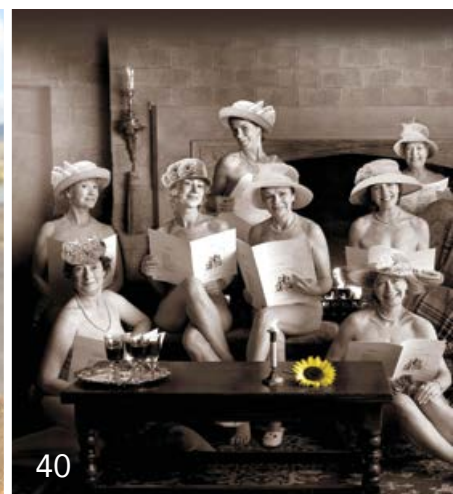
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THE BIG PICTURE



FIG. WAKIL KOHSA/ARF VIA GETTY IMAGES



LEAVING ON A JET PLANE

Afghan people clamber aboard a Kam Air plane – belonging to Afghanistan's largest private airline – as they wait to be evacuated from Kabul airport on 16 August 2021, following a stunningly swift end to the country's 20-year war. More than 10,000 people have mobbed the city's airport trying to flee the Taliban's feared hard-line brand of Islamist rule

GOLFING SOCIETY'S CENTENARY CUP



The Irish Solicitors' Golfing Society held the centenary of its Challenge Cup and Captain's Prize at Portmarnock Golf Club on 23 July. This was the first outing of the society since the pandemic, with social-distancing guidelines being adhered to by the 75 golfers who turned out to play in scorching temperatures. Club captain John Goodwin presented the Captain's Prize and Challenge Cup to Cairbre Óg Finan (Naas), who enjoyed a record score of 46 points. Elaine McElhinney (Lahinch) won the Quinlan Cup (33 points), while Pdraig Duffy (36 points) took the Gerry Doyle Plate (for handicaps of 12 or lower). Joe Chambers (40 points) won the Ryan Cup, while Patrick Donaghy (32 points) captured the Juniors' Prize. Richard Bennett (32 points) was the pick of the 'Past Captains', while Bill Jolley (19 points) and Cairbre Finan Snr (18 points) took the prizes for the best front and back nine. David Powderly (35 points) won the 'Veterans Prize'. Sincere thanks to Henry Lappin (honorary secretary) and Harry Quinn for organising the event



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ANNUAL CONFERENCE 2021

Outsource are delighted to launch their Autumn seminars which will take place on 6 and 20 October 2021. These will be done online and will cover the following topics.

- Legal market overview and the implications for firms
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Speakers will include David Rowe and Donal Maher from Outsource, an O'Leary's Professional Indemnity Insurance Director & Cyber Crime expert and other legal sector specialists. Seminars will qualify for 4 CPD points, 3 under group study and 1 under general regulatory.

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LEGAL SERVICES EXCELLENCE STANDARD

■ The Law Society will soon be launching a new Legal Services Excellence Standard. The new practice-management standard for members was first announced at the AGM in 2020.

The voluntary standard will be certified through the National Standards Authority of Ireland (NSAI) by means of an independent audit.

The Legal Services Excellence Standard is the result of six years of research, design and development by the Practice Management Standard Working Group. The next phase will be to implement the standard.

How to get certified

There are four requirements in the standard: business planning, development and continuity; infrastructure; operational systems (client care); and human resources, competence and knowledge management.

There is a specific set of criteria for each of the four requirements, and applicants must show evidence that they have met these criteria. Applicants can acquire all

of the information relating to the certification process through the Legal Services Excellence Standard online portal, which is currently under development.

The auditing process is a combination of a review of documentation to ensure compliance with the four requirements of the standard, plus individual meetings with a cross-section of staff to ensure operational implementation compliance. A maximum of 250 marks is available for each of the four requirements, giving a potential score of 1,000. A minimum score of 60% is needed for each of the four requirements in order to achieve certification. Full details of the process will be available in future communications.

Law Society Finuas Skillnet has received funding from Skillnet Ireland to design and develop new training and business supports to equip solicitors with the knowledge and skills to prepare their firms for the legal services excellence standard audit.

Brian McMullin, chair of the Legal Services Excellence Steering Group, said: "I am certain that



the standard will, in time, enjoy recognition at home and abroad as representing the best practice to which Irish solicitors should aspire.

"While participation in the standard will be entirely voluntary, it is expected that it will provide a framework for law firms who wish to demonstrate the quality of the legal services they supply. Although many firms may already have core elements of the standard in place, working towards attaining the standard will provide an invaluable opportunity for firms to make practice-management improvements. The

Law Society intends to provide additional training and educational resources to assist and support firms in achieving this goal. Our clients and the profession in general will be the ultimate beneficiaries."

What's in it for me?

The benefits of attaining the standard include increased operational efficiency, client satisfaction, increased employee engagement, succession planning, regulation compliance, and a positive impact on your bottom line.

Having attained a well-regarded professional standard also gives you a competitive advantage, as well as increasing your earning potential and establishing your professional credibility.

If you have any queries in relation to the Law Society Legal Services Excellence Standard, please email Deirdre Nugent at d.nugent@lawsociety.ie. If you have any queries in relation to the Law Society Finuas Skillnet, Legal Services Excellence Standard, CPD or business training supports, please email finuasskillnet@lawsociety.ie.

GOING GLOBAL WITH THE VIRTUAL CALCUTTA RUN

■ An astonishing 40 teams have already signed up to participate in the Virtual Calcutta Run – The Legal Fundraiser, taking place throughout Ireland from 17-26 September.

The Attorney General's Office, the Chief State Solicitor's Office, King's Inns, and the Irish Bar have all decided to create some healthy competition by registering teams this year. Many firms are using the event to support staff working remotely and creating clubs on the Strava app to encourage an online community for staff to connect with each other – sharing training runs and photos of their local area leading up to and during the event itself.



The aim is for the profession to (virtually and collectively) run, walk, cycle, swim or hike 30,000km over ten days from Dublin to Cork, then on to New York, Tokyo, and then Kolkata before 'finishing up' in Dublin.

This year's target is once again

€300,000, to help alleviate homelessness by supporting the Peter McVerry Trust and The Hope Foundation. Having successfully raised €285,000 last September, we are hopeful once again that the profession will fully unite to raise funds for a vital cause and display

the generosity shown over the past 22 years – raising €4.6 million to alleviate homelessness.

Participants can join their firm team when registering, create a new team, or can simply register individually and participate locally in their area and in their own time, or in small, safe groups if their firm has reopened their office, adhering to Government guidelines.

Distance can be tracked on a variety of apps, such as Fitbit, Strava and Garmin, which are connected to the Calcutta Run idonate.ie fundraising page.

If you would like to be involved and show your support, please register at www.calcuttarun.com.

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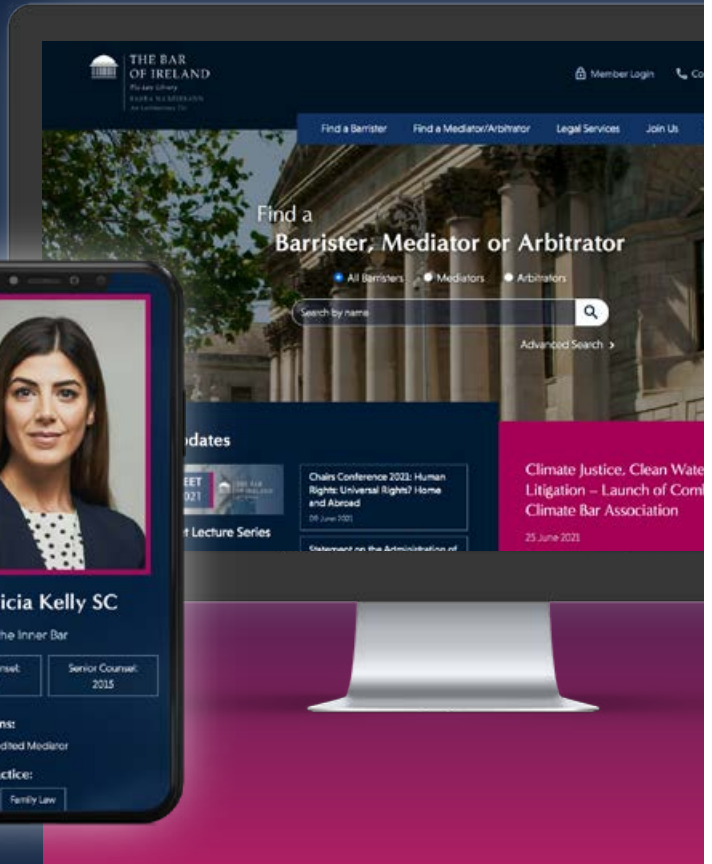


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CERVICALCHECK TRIBUNAL DEADLINE EXTENDED TO JANUARY 2022

■ The CervicalCheck Tribunal, which was set up to hear and determine claims linked to CervicalCheck, has extended the closing date for eligible claims to 26 January 2022.

The Government agreed to set up the tribunal in December 2018 to provide an alternative system, outside the courts process, for dealing with claims arising from the misreading of test result in the CervicalCheck system.

The extension follows the signing into law of the *CervicalCheck Tribunal (Amendment) Act 2021* on 16 July 2021.

The original deadline was 26 July 2021, but the tribunal's work was affected by COVID-19 restrictions, as well as the cyber-attack on the HSE, which resulted



PIC: EAMONN FARRELL/ROLLINGNEWS.IE

Lorraine Walsh – patient representative and a founder of the cervical cancer support group, 221+

in the tribunal's email and databases being taken offline as a precautionary measure.

Speaking in the Dáil, Minister for Health Stephen Donnelly

said: "After the appointment of the members on 1 December, the epidemiological situation in Ireland worsened considerably, and the necessary restrictions imposed on movement and working practices caused significant disruption to all legal proceedings, particularly those where claimants had to attend medical practitioners to secure reports on their conditions."

The body was established on 27 October 2020, but there was a subsequent five-week pause during which claims could not be made, as discussions with the more than 220-strong patient support group took place. The group had previously raised a number of concerns about how the tribu-

nal would operate – including its adversarial nature.

Minister Donnelly said that he had given the group a commitment that its members would not be disadvantaged by the five-week gap.

Opposition parties, while supporting the extension, had raised questions about the tribunal, pointing out that very few claims had been made to date. David Cullinane (Sinn Féin spokesperson on health) said that the women affected by the controversy were "voting with their feet".

The amendment to the original legislation allows for a six-month extension for the receipt of claims. It also allows the minister to order a further six-month extension.

'FAIR DEAL' CHANGES WILL FREE UP VACANT FAMILY HOMES FOR SALE

■ Family-owned farms and businesses will no longer be factored into calculations of nursing-home care costs, under new legislation.

The change is included in the *Nursing Homes Support Scheme (Amendment) Bill 2021*, which has passed through the Oireachtas and has been sent to the President for signing.

It amends the nursing-homes support scheme, commonly known as *Fair Deal*, to protect family farms and businesses from nursing-home care costs, where a family successor commits to working the farm or business for six years.

After three years, the value of family-owned farms and businesses will no longer be taken into account when calculating the cost of a person's nursing-home care.

The bill also extends the exist-

ing three-year cap on contributions to the cost of care, based on the value of a principal residence to the proceeds from the sale of that residence.

The department has said that this is consistent with the scheme's core principle of fairness, by treating the home and its proceeds of sale in a similar way.

It is intended that this change will also remove any disincentive for people who want to sell their vacant home while in *Fair Deal* – an important consideration in the context of the housing crisis, the department has said.

Mary Butler (Minister of State for Mental Health and Older



PIC: SASKO LAZAROV/ROLLINGNEWS.IE

Minister Mary Butler: 'The bill will ensure that Fair Deal is fair for all'

People) said: "This change is essential to the viability and sustainability of family farms and businesses, allowing them to be

passed down to the next generation.

"Ultimately, the bill seeks to alleviate any unnecessary financial pressures placed on these families by updating the current law. It will ensure that *Fair Deal* is fair for all, enhancing accessibility and affordability of the scheme for more farm and business-owning families."

Another change is the introduction of the right for any person, when attending an interview under the scheme, to be accompanied by another person over 18. There is also a provision for the bill, once enacted, to come into operation within 90 days.

AUTUMN 2021 DIPLOMAS SCHEDULE

■ A complimentary copy of this academic year's prospectus is included with this issue of the *Gazette*. Copies can also be

obtained from diplomateam@lawsociety.ie. There are 19 courses to choose from this autumn, ranging from family law, to commer-

cial property, to mediator training. The full autumn programme is now available to view and book online at lawsociety.ie/diplomacentre.

ENDANGERED LAWYERS

TONY GERMAIN NKINA, BURUNDI



Tony Germain Nkina is a well-known lawyer in Kayanza, northern Burundi, and a member of the Gitega Bar Association. Mr Nkina was a representative of the Association for the Protection of Human Rights and Detained Persons (APRODH), until the Burundian government suspended the organisation in 2015 as part of a larger crackdown in civil society.

Burundi adjoins Ruanda, Tanzania and Congo and, like Ruanda, has an 85% majority of Hutus and minority of Tutsis. Achieving independence in 1962, it has suffered bouts of ethnic cleansing, genocides, and two civil wars in the 1970s, and again in the 1990s, which resulted in hundreds of thousands of deaths. The economy is undeveloped and the country is one of the world's poorest. It is very densely populated, with a population of 11.5 million, and is largely a rural society, with under 14% urbanised.

On 13 October 2020, Nkina was arrested when he was visiting a client, Apollinaire Hitimana, in relation to a land dispute. He was briefly detained by the intelligence service in Kayanza, then transferred to police detention, and finally to Ngozi prison, where he is currently detained. On 15 June 2021, Nkina was convicted by the court of Kayanza of "collaboration with rebels who attacked Burundi" and sentenced to five years in prison and a fine of approximately \$500. His client was found guilty

of complicity in the same offence and also sentenced and fined. His appeal was due for hearing on 12 August. On 10 August, six human-rights organisations, including Amnesty International and Human Rights Watch, stated that his prosecution is in all likelihood because of his past human rights work, and appealed for his release.

October 2020 was a tense period in Kayanza following attacks by an armed group in the previous weeks, with several people killed or abducted. Nkina happened to visit Kabarore, one of the areas affected, soon after these attacks. The authorities accused him of collaborating with an armed opposition group that they hold responsible for the attacks and charged him with endangering internal state security. While he had not worked for APRODH or any other Burundian civil society organisation for the past six years, he may well still be associated with APRODH, especially as he was riding his former APRODH motorcycle on the day of his arrest.

Nkina is the only known former staff member of a human-rights organisation imprisoned in Burundi at the present time. Two other human-rights defenders were released earlier in 2021. Others are in exile.

Alma Clissmann is a member of the Human Rights Committee.

SOCIETY LAUNCHES NEW INSIGNIA

■ The Law Society has developed exclusive insignias for signatories to the *Gender Equality, Diversity and Inclusion Charter* and the *Professional Wellbeing Charter*.

Signatories can use the insignias on firm stationery, websites, social media, business cards, and other marketing materials to publicly promote their commitment to the charters.

The charters and their insignias can also help inform future employees, clients, and colleagues that a firm takes professional wellbeing and gender equality, diversity and inclusion



LAW SOCIETY OF IRELAND

GENDER EQUALITY, DIVERSITY AND INCLUSION CHARTER SIGNATORY



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PROFESSIONAL WELLBEING CHARTER SIGNATORY

very seriously and is striving to improve these in its workplace.

For more information on the charters and their insignias, visit www.lawsociety.ie/gedi and www.lawsociety.ie/wellbeingcharter.

TRANSCRIBE WINS 'BUSINESS ALL-STARS' ACCREDITATION

■ Irish legal transcription service, Transcribe, has been awarded national quality accreditation by the All-Ireland Business Foundation.

The prestigious 'Business All-Stars' accreditation comes as the company celebrates 12 years in business, delivering a secure, outsourced typing service to Irish solicitors and barristers.

Principal Sinéad Glennon says: "This accreditation provides our typing service with national recognition of our commitment to accuracy, efficiency, reliability and, above all, copperfastens the

trust placed in us by legal professionals over the years."

Sinéad established Transcribe in 2009, and the business has now grown to employ 12 typists.

The company uses ultra-secure software for transferring sound files and is registered with the Data Protection Commissioner.

To date, Transcribe.ie is Ireland's only Business All-Stars-accredited outsourced typing service, offering a specialist remote typing service to the legal profession. For more information, visit www.transcribe.ie or phone Sinéad at 091 638 580.

YMC CONFERENCE

■ The Younger Members Committee will host an online conference on 7 October, from 2pm to 4.30pm, on what the practice of law will be like in the year 2050. Speakers include Chief Justice Frank Clarke, Catherine Guy (CEO of Sixt Leasing and FAI director), Tiernan Brady (global director of inclusion at Clifford Chance), and

Daniel Davey (senior performance nutritionist for the Dublin Senior football team and Leinster Rugby). The conference will also launch the publication of the results of the recent 'Future of Work' survey. Attend and claim 2.5 general CPD hours. To book, mail the Professional Training Team at lpspt@lawsociety.ie.

DATE SET FOR COUNCIL NOMINATIONS



PIC: SHUTTERSTOCK

■ Nominations have opened for elections to the [Law Society of Ireland Council](#), with a deadline of 5pm on Monday 13 September.

Candidates must be nominated by two fellow members of the Law Society, and one member cannot nominate more than two candidates.

The Council, which governs the Society, comprises 31 elected members, four provincial delegates and 13 nominated members.

At least eight Council meetings are held each year. Membership of the Council allows solicitors to play an important role in shaping and developing the future of their profession.

Once nominations are in, candidates will have until 5pm on Thursday 7 October to submit canvassing literature for distribution to members.

The poll closes at 5pm on Thursday 28 October, with the count being held the following day, 29 October.

FINUAS SKILLNET MEMBER DISCOUNTS

■ Law Society Finuas Skillnet is a learning network for firms and practices within the legal sector and for professional advisors within Ireland's international financial services (IFS) sector. Through the delivery of highly specialised education and training, the network supports the growth, competitiveness, and sustainability of Ireland's legal and international financial services sectors.

The network addresses both the technical and non-technical skills needs of its members, with programmes designed and delivered by solicitors for solicitors.

Benefits of membership include

up to 20% discount on applicable Law Society Finuas Skillnet training events, and membership is open to all private-sector enterprises within the legal and international financial services sectors based in the Republic of Ireland.

Law Society Finuas Skillnet is promoted by the Education Department of the Law Society of Ireland and works in partnership with Skillnet Ireland, the Government's Workforce Development agency, which provides funding and support.

To find out more or to apply for membership, see lawsociety.ie/finuasskillnet or email finuas_skillnet@lawsociety.ie.

IRLI IN AFRICA EDUCATION KEY IN FIGHT AGAINST CHILD ABUSE



In September 2020, IRLI launched a programme in tandem with local partners Children's Dignity Forum (CDF) to enhance the investigation and prosecution of child sexual abuse cases in Tanzania. IRLI and CDF both recognised the importance of raising awareness of child sexual abuse among community members in rural locations in Tanzania to understand why, despite child sexual abuse being commonplace in Tanzania – one in seven boys, and one in four girls report having experienced some form of sexual violence before they reach the age of 18 – there is a significant issue of under-reporting.

During the project period, CDF has facilitated 17 community sessions throughout numerous areas in Tanzania, reaching thousands of people. During the sessions, facilitators raise awareness of child sexual abuse, available mechanisms of redress, and engage in dialogue with community members to understand why there is such reluctance to report child sexual-abuse matters to the police.

Building community members' trust in the criminal justice process, as well as fostering enhanced cooperation among the actors involved (including medical officials and those working in criminal justice) is also a key component of these

awareness sessions. These have been delivered in cooperation with magistrates, prosecutors, medical professionals, police officers and education officers.

Community members are reluctant to report child sexual abuse cases due to a perceived failure of the criminal justice system to hold perpetrators to account, the prevalence of alleged abusers being family members of the victim, as well as the commonplace preference to settle communal disputes outside of the courts system.

CDF has facilitated additional community sessions throughout secondary schools to target age groups that are particularly vulnerable to child sexual abuse. These sessions have been particularly illuminating: many of the target group had a limited understanding of what child sexual abuse was – and even lacked the awareness that it constituted a criminal offence. The session facilitators thus spoke of the legal process, how to issue a complaint, and the psychosocial and medical support available to them. Over 1,000 students have been reached as a result of the sessions.

James Douglas is director of programmes at Irish Rule of Law International. For more information about our work, visit www.irishruleoflaw.ie or follow us on social media.

MAXIMISE TAX RELIEF FOR 2020 VIA PENSION CONTRIBUTIONS

■ The deadline for final tax payment for the 2020 tax year under the self-assessment system is fast approaching. One way to reduce your tax liability is to make a contribution to an approved pension arrangement.

Income-tax relief is available from the pension contributions you make to one of the following pension arrangements:

- Occupational pension schemes,
- Personal retirement saving accounts,
- Retirement annuity contracts.

Tax relief is available at your marginal rate of tax, subject to an earnings limit of €115,000 and contribution rates which are dependent upon your age as follows:

AGE	% OF NET RELEVANT EARNINGS
Up to age 30	15%
30 to 39	20%
40 to 49	25%
50 to 54	30%
55 to 59	35%
60 and over	40%

■ The Government has nominated solicitors Máire Conneely and Brendan O'Reilly for appointment as ordinary judges of the District Court. The two vacancies arose in the District Court following the retirements of Judge Patrick Durcan on 15 May and Judge Terence JW Finn on 9 June.

Máire holds a B Corp Law from NUIG (1996), an LLB from NUIG (1997), and qualified as a solicitor in August 2001. She is a solicitor in the litigation

GROSS FUND PERFORMANCE PER ANNUM TO 30 JUNE 2021				
Fund	One year %	Three years % pa	Five years % pa	Annual management charge pa
Managed fund	21.7%	8.0%	8.2%	0.87%
Diversified equity fund	33.4%	11.9%	11.0%	0.92%
Absolute return fixed income	4.9%	2.9%	2.6%	0.50%
Long bond fund	-1.1%	6.2%	2.7%	0.30%
Cash fund	-0.6%	-0.6%	-0.5%	0.14%

Source: performance calculated by Mercer using pricing from State Street Fund Services (Ireland) Limited and underlying investment manager data where necessary. Performance shown gross of Mercer and underlying manager fees; gross of hedging fees (where applicable); net of all other expenses including custody and administration costs; annual management charges are applied as a percentage of the assets of the fund. Past performance is not a reliable indicator of future results. The value of your investment may go down as well as up.

There are also tax advantages at retirement, in that you can take up to 25% of your fund as a lump sum, with up to the €200,000 available tax free. Your funds also accumulate tax free while invested.

You can still be eligible for a tax refund for 2020 by putting money into a pension scheme and submitting a claim to the Revenue before 31 October 2021 (later if you submit your return online).

Law Society members who are self-employed, in partnership, or in non-pensionable employment are eligible to make a pension contribution to the Law Society Retirement Trust Scheme.

The scheme offers all the flexibility of a personal policy and, in addition, offers a number of enhanced features, including a simple and transparent charging structure and best-in-class investment management. There is also a flexible 'lifestyle strategy' in place that gradually reduces the level of equity risk in your retirement fund the closer you get to your chosen retirement age.

There are currently five fund offerings available to members of the Society under the Retirement Trust Scheme, which the investment committee is confident represent high-quality retirement

and tax-saving solutions to members.

More information can be obtained from the scheme administrator at Mercer by emailing JustASK@mercer.com or by phoning 1890 275 275. A copy of the explanatory booklet can also be found on the Law Society's website.

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SOLICITORS NAMED FOR DISTRICT COURT BENCH



Máire Conneely



Brendan O'Reilly

and dispute resolution department at A&L Goodbody.

A specialist in alcohol licensing, gaming and lotteries, and betting law, she is co-author of *Brewers and Distillers in Ireland: The Complete Licensing Guide* (Clarus Press, August 2021).

Brendan O'Reilly is a solicitor with O'Reilly Solicitors in Cootehill, Co Cavan. He holds a BA UCG (1985), an LLB UCG (1987) and an LLM UCD (2017). He qualified as a solicitor in February 1992.



WELLBEING

Our 'Ask an expert' section deals with the wellbeing issues that matter to you

ANYTIME YOU NEED A FRIEND

Q *I'm a solicitor, practising now for 15 years, working in a small firm. At the moment, I am finding it hard to cope. I look after and care for my elderly and sick parents, while also trying to keep my job. It's like I have two jobs. I am just so drained, and I can't afford to stop working to solely look after my parents. Any advice is welcome.*

A Being a carer is not an easy thing to do. It's very normal to feel tired and stressed at times. Even if you are happy to be a carer, it can be a very hard job. Here are a few things that might help.

Get organised – life can suddenly become very busy when a loved one becomes sick. Make lists, so you know what needs to be done, and ask other people to take on certain jobs. Have regular family meetings, so that everyone knows what's happen-

ing and is working together.

Know your limits – don't feel you have to do everything on your own; it's ok to ask for help. Make sure the work of caring is shared out fairly. It's a good idea to share out the work from the start, so that you don't get worn out, and keep a little time to yourself.

Look after yourself – when someone you care about is unwell, all of your attention may be on them. But it's important to remember to look after your own health and wellbeing, so that you can cope with the demands of being a carer. Looking after yourself includes eating well, taking regular exercise, getting enough sleep, getting health problems checked out, and checking in with your mental-health regularly. It's important to have some support to turn to when you are tired and stressed. Try to plan outings and meetings that don't

involve discussing your loved one. It's okay to need a break. Sometimes it feels like looking after yourself is just another thing to add to the 'to-do' list but, remember, if you don't look after yourself, you'll be no good to them.

Coping with your emotions – feeling negative emotions doesn't mean you love the person who's sick any less. But it's important to recognise and manage your feelings. Otherwise, feelings can overwhelm you and make you irritable, resentful, depressed or unwell. If you are feeling tired or unwell, not sleeping well, losing your appetite, or if you are tearful, angry, or finding it hard to cope, tell someone and get some support, sooner rather than later. Talk to a friend or family member, or go to your GP.

Be kind to yourself – being a carer is a wonderful achievement, giving so much of your-

self to help your loved one at a very difficult time in their life. If you have a tough day, remind yourself of this: being a carer isn't always easy – you're doing the best you can.

To submit an issue that you'd like to see addressed in this column, please email professionalwellbeing@lawsociety.ie. Confidentiality is guaranteed.

The question and response in this column are hypothetical and were written by Aoife McNamara, information development manager at the Irish Cancer Society. Any response or advice provided is not intended to replace or substitute for any professional, psychological, financial, medical, legal, or other professional advice.

LegalMind is an independent and confidential mental-health support available to Law Society members and their dependants, 24 hours a day, and can be contacted at 1800 81 41 77.



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MEDICAL NEGLIGENCE AND CHILDBIRTH (2ND ED)

Doireann O'Mahony. Bloomsbury Professional (2021), www.bloomsburyprofessional.com.
Price: €225 (incl VAT).

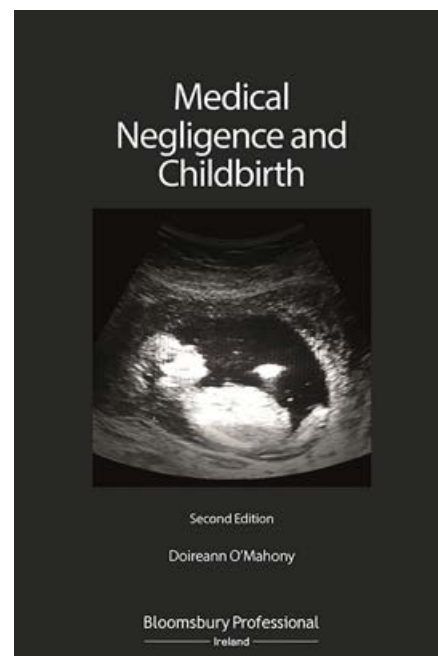
January 2021 saw the publication of the second edition of *Medical Negligence and Childbirth* by Doireann O'Mahony BL. It has been significantly expanded upon, from 15 chapters to 25 chapters, and the ten new chapters cover issues such as autism, termination of pregnancy, wrongful birth, fatal injuries, inquests, and the psychiatric and psychosexual aspects of injuries relating to childbirth.

This volume builds on the innovative feature of the first edition, incorporating contributions from medical experts in various fields. To repeat the comments of Cross J on the first edition: "It is this combination of the medical and legal that renders Ms O'Mahony's work unique."

The author has obtained contributions from experts who are pre-eminent in their fields, including Prof Kevin Gournay (professor of psychiatry at King's College Hospital, London), Prof Christoph Lees (consultant in maternal and foetal medicine), and Prof Marc Winslet (professor of surgery and colorectal surgery). On inquests, the contribution comes from Dr Brian Farrell (emeritus Dublin District Coroner), a recognised expert on inquests in this jurisdiction.

The author's unique approach brings to the work exceptional authority and clarity. For instance, in the chapter dealing with the injuries caused by obstetric forceps, complex issues of physiology and physics are explained with the use of visual aids, diagrams, and photographs. The chapters on obstetric anal sphincter injury, psychiatric injury relating to childbirth, and psychosexual injury shine a light on areas that hitherto lingered in the shade.

The author's treatment of the issue of damages is most comprehensive and covers issues such as periodic-payment-order compensa-



tion, life expectancy, the cost of care, and heads of special damage.

The chapters dealing with psychiatric and psychosexual injuries include sections on treatment options and recommendations, underlining the invaluable input of medical expertise.

Often, a textbook appeals to too narrow an audience, but the author is to be applauded for making this book accessible and intelligible, not only to experienced lawyers and doctors, but also medical or legal lay people. The volume offers a commanding overview of an area that, at some point, touches all of our lives. Highly recommended.

Roger Murray SC is a partner at Callan Tansey Solicitors LLP, Law Chambers, 3 Wine Street, Sligo.

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ARTHUR COX EMPLOYMENT LAW YEARBOOK 2020

Arthur Cox Employment Law Group. Bloomsbury Professional (2021), www.bloomsburyprofessional.com. Price: €99 (paperback, incl VAT).

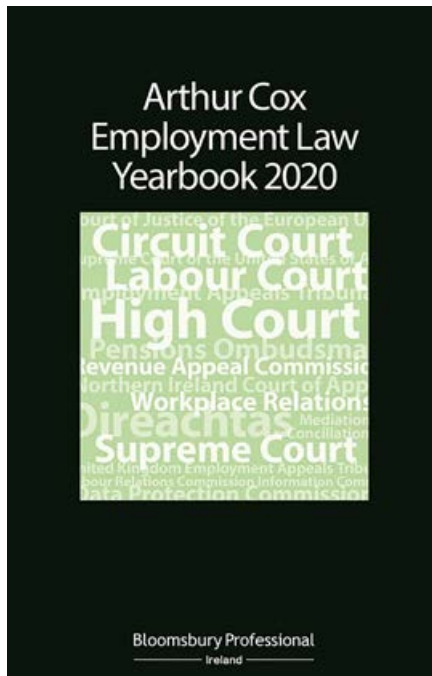
This is the tenth volume of the *Arthur Cox Employment Yearbook*. It sets out recent developments in the area of employment law for Ireland for 2020 and is extremely well researched.

The current edition comprises 23 chapters, including one that deals with the impact of COVID-19. It contains well-researched references, both in relation to legislation, statutory instruments, and the impact upon WRC and Labour Court hearings. The book also contains a chapter on statutory instruments passed during 2020.

The book references cases in Ireland, Northern Ireland, and Britain. The ongoing impact of GDPR is dealt with in a comprehensive manner.

This book is an excellent resource for lawyers practising in the area of employment law, and it will prove invaluable in assisting practitioners drafting submissions for employment law cases. It also contains an excellent chapter dealing with employment law injunctions and applications for judicial review.

There is a very helpful chapter dealing with the tax treatment of employment payments, and legal fees paid on termination of employment. The chapter dealing with whistle-blowing, and the *Prevention of Corruption Acts*, is also very helpful.

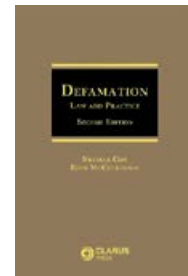


I would highly recommend the *Arthur Cox Employment Law Yearbook 2020* as an essential resource for all legal practitioners undertaking practice in this area of law. [G](#)

Patrick Mullins is a partner at BDM Boylan Solicitors LLP, Hanover Street, Cork.

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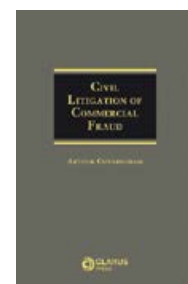
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NEW STAMPING GROUND

The Government has introduced a new stamp-duty rate of 10% on cumulative purchases of ten or more houses in a 12-month period. **Julia Considine** assesses the practical implications of the change

JULIA CONSIDINE IS A SOLICITOR AND CHARTERED TAX ADVISER AT DELOITTE IRELAND LLP



NUMEROUS MATTERS REMAIN OUTSTANDING, AND IT REMAINS TO BE SEEN WHETHER REVENUE GUIDANCE OR OTHER LEGISLATIVE UPDATES WILL ADDRESS THESE OVER THE COMING MONTHS

On 19 May, the Dáil passed a [financial resolution](#) that introduced a new stamp-duty rate of 10% on cumulative purchases of ten or more houses in a 12-month period. The measures are set out in a new section 31E in the *Stamp Duties Consolidation Act 1999* (SDCA), and took effect from 20 May 2021.

Practitioners were just getting to grips with the implications of the section when, just a few short weeks later, the *Finance (COVID-19 and Miscellaneous Provisions) Act 2021* was announced. This rectified some questions, but numerous matters remain outstanding, and it remains to be seen whether Revenue guidance or other legislative updates will address these over the coming months.

The intention of the new legislation is to dissuade bulk-buying of residential properties and is aimed at direct purchases plus indirect acquisitions via companies, partnerships, or IREFs (Irish real estate funds).

Effect of section 31E

Subsection 5 of the act is the main charging provision and applies where a person acquires a residential unit on or after 20 May 2021, and the total number of residential units acquired by that person or a connected person in

the 12 months immediately preceding that date, including the current acquisition, is greater than or equal to ten residential units.

Section 31E defines a 'residential unit' as residential property situated in the State comprising an individual dwelling. It also defines an 'apartment block' as a multistorey residential property that comprises, or will comprise, not less than three apartments with grouped or common access. Where a person acquires ten or more residential units within a 12-month period, each unit is referred to as a 'relevant residential unit'. This definition of relevant residential unit specifically excludes a residential unit in an apartment block.

The provisions are drafted broadly to ensure that, where a number of individual purchases either on a single-unit or less than ten-unit basis, the 10% charge applies when a tenth unit is acquired by the person, or a person connected with them, within a 12-month period.

From 20 May onwards, the charge applies to all ten units, even where the first nine units have been stamped at the 1%/2% rate at the time of their acquisition. Units purchased before the financial resolution came into effect will count towards triggering the threshold of ten, but the

new rate will only apply to units acquired after 20 May 2021.

When a tenth relevant residential unit is acquired, and the prior nine residential units need to be 'stamped up', the prior transactions are treated as occurring on the date of the tenth acquisition.

Stamp duty chargeable in respect of a relevant residential unit that is not paid can remain a charge on the property indefinitely until the duty, interest, and penalties are paid.

The *Finance (COVID-19 and Miscellaneous Provisions) Act* also provides for the potential for partial refund of the 10% stamp duty paid where, within 24 months, a lease for at least ten years is executed in favour of a housing authority/approved housing body (section 83D SDCA). The refund would result in an effective rate of 1% to 2% rate applying; however, a clawback will arise where the lease is terminated within ten years, and the level of the clawback depends on when the lease is terminated.

Transitional measures

Section 31E(17) provides a measure of relief for a limited number of scenarios. Where a transaction falls into the transitional measures, stamp duty at the 1% to 2% rate should apply to that acquisition. In order to qualify for the transitional measures, the acquisition of the



‘relevant residential units’ must be one for which:

- A binding contract is entered into before 20 May 2021,
- The instrument effecting the acquisition is executed before 20 August 2021, and
- A specific statement is included certifying that the instrument is executed solely in pursuance to a binding contract entered into before 20 May 2021.

Subsection 9 brings stocks, marketable securities, units in an IREF, and partnership interests into the scope of the new charge. The stock/units/shares must derive value directly or indirectly from a residential unit.

If the transfer results in a change in the person/persons having direct or indirect control over the residential unit, then the head of charge is changed to “conveyance of transfer on sale of any property other than stocks or marketable securities or a policy of insurance or a policy of life insurance” in respect of that part of the value of the stocks, marketable securities, units or interests (as the case may be) that is derived from the relevant residential unit, and the normal stocks or marketable securities head of charge (currently 1%) would

apply to the amount not derived from a relevant residential unit. In calculating the part of the value that is derived from a residential unit, you do not account for any arrangement involving transfers of assets/cash from connected parties where the main purpose is the avoidance of tax, and regard shall be had to the market value of residential unit.

Clarification needed

- Where a purchase is resting on contract (that is, more than 25% of the consideration is paid and the contract itself has become stampable if a deed of conveyance is not stamped with 30 days), it is not clear how this interacts with the new rate and transitional measures.
- It is hoped that clarity will be provided on the meaning of “change in control over the residential unit”. Guidance issued for section 31C SDCA states that control is not defined, and should be given its normal meaning referencing the ability to sell the property.
- As set out, the new 10% rate does not apply to residential units in an apartment block that is defined as a multistorey building that comprises at least three apartments with grouped


or common access. An understanding of the meaning of ‘grouped or common access’ is necessary to determine whether it includes internal access via a common main door, or external common access via a gate. The definition of apartment block may give rise to questions for apartments with own-door access.

- Section 31E(15) deems the underlying houses to be acquired when the shares are transferred/change-of-control occurs. Does this result in historical acquisitions (prior to 20 May 2021) by a company being included in the threshold of ten units?
- If a charge were to arise on shares, this could give rise to difficulties for entities that regularly buy and sell residential property, and would appear to make it extremely difficult for a future purchaser of a company to satisfy themselves as to whether section 31E applied to a particular purchase, and whether the correct rate of stamp duty was paid.
- A transfer of shares could give rise to more than one rate of stamp duty applying – from a filing perspective; this could give rise to multiple returns

being required for one stock transfer form.

- Section 31E(11) says that regard shall be had to market value when calculating the part of the value of stocks or marketable securities that drive value from a residential unit. When read in conjunction with the new schedule, it is not clear how the 10% rate is to be calculated – does the rate apply to the market value of the underlying residential unit, regardless of the market value of the company?
- It is also uncertain if any unpaid duty arising under the new section 31E on an acquisition of shares in a company/IREF/partnership will result in a charge on shares/units/interests themselves, or on the underlying property.

Significant complexities

While the aim of the legislation is to counter the bulk-buying of residential properties, the complexities that this raises from a conveyancing, corporate and financial perspective cannot be underestimated, especially in circumstances where the possibility of an indefinite charge arising over the property (and possibly the shares/units) could arise. 



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MANAGING RESOURCES AND SECURITY CONCERNS IN REMOTE DOCUMENT REVIEW

By Gráinne Bryan, FTI Consulting and Deirdre Ryan, Maples Group

■ Electronic discovery is constantly evolving, always demanding that lawyers and litigation support professionals develop new skills, adapt to new techniques and adopt new technologies. With the massive shift to remote working that has occurred over the past year due to the global pandemic, the traditional landscape of discovery has changed considerably. Whereas, ordinarily, a document review would be located in the office under the supervision of review managers, current circumstances have created a situation where reviewers are now predominantly working remotely. This transition has been crucial for maintaining continuity. However, it has posed questions regarding the quality of review and raised information security concerns.

REALITIES

■ Ultimately, most law firms and in-house legal teams have now adjusted to the realities of remote document review and are now embracing the concept. Review teams have learned how to collaborate effectively in remote settings and document review managers have overcome the challenges that they may have encountered at the outset. In addition, this shift to remote document review has created many business efficiencies and resulted in various benefits for legal teams such as increased access to a bigger pool of resources and talent across a wider geographical area.

Significantly, there has also been increased productivity in document reviews which can likely be attributed to the flexibility of remote working for reviewers, particularly in circumstances where they no longer need to commute long distances to the office and adhere to standard office working hours. The quality of review has also improved, as there are less distractions and document review managers have placed a greater focus on review metrics.

Essentially, strong collaboration across law firms, their clients and outside providers has supported agility, scalability and a high standard of quality in document review projects.

Perhaps the biggest challenge that legal teams and service providers have had to overcome when managing remote document reviews has been the concerns around information security. Whilst this is always a key concern, it has become amplified since the onset of the pandemic. In response to FTI

Consulting's Resilience Barometer survey of global corporations, nearly one-third of respondents indicated that have experienced cyber-attacks including loss of customer/patient data, phishing, loss of IP and loss of third-party information since the beginning of the pandemic, and ranked security as one of the top four issues that has had an impact on lost turnover over the last year. Despite these findings, many organisations are still stuck in reactive mode —39% of respondents stated that they are reactive regarding the risk of a leak of sensitive information, while only slightly more (44%) said they are proactive on this front.

SECURITY CHALLENGES

■ Remote document reviews create certain security challenges. However, they can still be performed in a secure manner if a number of precautions are taken and there are many oversight options which can be relied upon to ensure the integrity of the project. In this regard, legal teams have had to review their protocols to address information security and workflows to maintain privilege, confidentiality and data protection over large volumes of sensitive information spread across a disparate network of remote reviewers.

Service providers have also implemented a number of additional security controls. Without these controls, remote workflows would otherwise be vulnerable to external and internal security threats that could result in a breach of confidential data, intellectual property or information protected by data privacy regulations. It is therefore critical that e-discovery teams work closely with security teams to ensure security risks are addressed and the highly-sensitive nature of documents under legal review is protected.

IMPLEMENTATION

■ A key step that e-discovery teams can take is to implement a virtual review technology platform or service for everyone involved on the document review team. The platform should provide a secure computer/interface with controlled user access, URL filtering, anti-malware protection, disabled print and local file copy/save and session watermarking. In addition to a foundational platform for remote review, legal teams should implement additional safeguards to maintain tight control over every remote matter. These safeguards should include the following:

- Ensuring that outside providers have a breadth of experience in managing remote workflows, and extensively vetting all team members and document reviewers who will have access to case files.
- Devising appropriate workflows for data with varying levels of confidentiality and tailoring access permissions accordingly for data with varying levels of confidentiality.
- Establishing a team with a global reach that can scale quickly, support localisation needs and execute document review within a certain jurisdiction's borders. In addition to alleviating geographical constraints, a team set up with a global reach can also support around-the-clock workflows for meeting tight timelines, all within a secure setting.
- Setting a high bar for communication and project management, to allow teams to stay connected and engaged. Regular (or indeed, daily) progress and query meetings are paramount in managing the quality of document review, ensuring deadlines and budgets are maintained, and reinforcing security. When everyone on the team is communicating (via pre-approved, vetted systems), the chances of someone using an unsanctioned communication channel or otherwise breaching security controls is reduced significantly.
- Enabling remote monitoring. In traditional review settings, reviewers work together in a review center, law firm or on-site within a corporation, overseen by a member of the legal team.
- Safeguarding against external threats and network penetration. Review platforms should include threat prevention and security incident and event management (SIEM) capabilities to defend against such risks.

It is expected that even beyond the pandemic, remote e-discovery workflows will continue to be relevant and widely used in the future. When counsel and e-discovery providers work collaboratively to establish repeatable, defensible and agile remote workflows, the result is a secure review that is efficient, eliminates the costs and delays involved with travel or commuting and makes it easier to scale-up to meet cross-border demands.

D-DAY FOR PENSIONS DIRECTIVE

The requirements of the *IORP II Directive* have been transposed into Irish law. **Stephen Gillick** and **Patrick O'Connor** assess the significant impact of the new regulations on the Irish pensions' landscape

STEPHEN GILLICK IS PARTNER AND HEAD OF PENSIONS IN MASON HAYES & CURRAN LLP.
PATRICK O'CONNOR IS A SENIOR ASSOCIATE ON THE PENSIONS TEAM



≡ AT A GLANCE

- The *European Union (Occupational Pension Schemes) Regulations 2021* have transposed the requirements of the *IORP II Directive* into Irish law
- The directive aims to improve the governance, risk management, and transparency of pension schemes
- The provisions of the directive will lead to an increase in cross-border pension activity, as well as a strengthened internal market



ver the past two years, there was speculation, concern and a good degree of confusion in the Irish pensions industry. The deadline for transposition of the *IORP II Directive* passed in January 2019, but numerous factors, not least COVID-19, conspired to ensure that transposition was put on the very long departmental finger.

Another probable reason for the delay in transposition was the pre-emptive judicial review action initiated by the *Association of Pension Trustees of Ireland* (APTI). APTI sought various reliefs against the Minister for Employment Affairs and Social Protection concerning transposition of the directive, including a declaration by the High Court confirming that the directive should not be applied to one-member arrangements. Though the matter was adjourned in late 2019, it is not expected to recommence.

The *European Union (Occupational Pension Schemes) Regulations 2021*



An eagle, landing

PIC: SHUTTERSTOCKGAZETTE STUDIO

transposed the requirements of the directive into Irish law and, for many trustees and pension providers, nothing will be the same again. The regulations make a number of sweeping changes to the *Pensions Act 1990* that cannot be ignored by the trustees of any scheme – no matter the size or complexity.

The overall purpose of the directive is to improve the governance, risk management, and transparency of pension schemes. It is hoped that the provisions of the directive, when fully transposed across the EU, will lead to an increase in cross-border pension activity, as well as a strengthened internal market.

Impact on trustee action

Trustees of all scheme types will need to immediately consider and understand the requirements of the regulations for their schemes. Depending on a scheme's existing level of preparedness, trustees will have to cover some core requirements. They will need to:

- Consider whether their trustee board meets the regulations' collective knowledge and qualification requirements. This new requirement will undoubtedly create difficulties for many lay trustees.
- Ensure that their scheme has the required number of trustees. A scheme or trust retirement annuity contract (RAC) must have at least two trustees. Where a sole corporate trustee is acting as a scheme or trust RAC trustee, it must have at least two directors on its board.
- Ensure that each trustee on the board satisfies the fitness and probity requirement in the regulations, which states that each trustee must be of "good repute and integrity". The regulations insert a new section 64AE into the *Pensions Act* that sets out a detailed list of offences and insolvency events. It confirms that if any trustee (person or corporate) is guilty of any such offences, or has entered into such insolvency arrangement, they shall fail to satisfy the new fitness and probity requirements.
- Understand the role and responsibility of each of the 'key function holders' and make the necessary appointments for their schemes. The key function holders are the internal auditor, risk manager and actuary (where applicable).
- Ensure that existing written policies are in place for their scheme's risk-management function, internal audit function, the actuarial function (where required), scheme administration, outsourcing activities and remuneration.

Pensions Authority

The Pensions Authority has been very active over the past number of years in preparation for the transposition of the directive. Under the regulations, it has significantly increased powers of intervention and new obligations. It stated in its press release after the regulations were published that "*IORP II* also requires the Pensions Authority to adopt a forward-looking and risk-based approach to supervising pension schemes

and to intervene where the interests of members are believed to be under threat”.

Given its increased powers and obligation to take a “forward-looking and risk-based approach”, we can expect a level of oversight and intervention from the authority that we have not seen before.

Chapter 3 of the regulations provides the Pensions Authority with new obligations under a ‘supervisory review process’. This provision requires the authority to review scheme and trust RAC strategies, processes, and reporting procedures.

In carrying out such oversight functions, the authority has noted that it will take into account “the size, scale and complexity of the activities of the scheme or trust RAC”. Under the regulations, the authority is also obliged to collaborate with the EU Commission on supervision of schemes and trust RACs and to cooperate with the European Insurance and Occupational Pensions Authority (EIOPA) for specified purposes.

As well as placing additional obligations on the Pensions Authority, the regulations provide it with additional powers. The authority can now issue schemes and trust RACs with ‘advisory notices’, which will require trustees to provide an external report on their scheme’s activities. The authority can exercise this power where it has concerns about information provided to it under a supervisory review of a scheme or trust RAC. As well as that, the authority can direct trustees to complete a stress test to help with identifying a scheme’s deteriorating financial conditions.



PIC: SHUTTERSTOCK

One-member arrangements

It did not come as a surprise to many that the regulations do not extend the existing derogation for one-member arrangements, such as small, self-administered schemes and executive pension plans. In its press release, which coincided with publication of the regulations, the Government noted that the application of the directive to all schemes is in keeping with its *Roadmap for Pensions Reform*. The stated rationale for this decision is to “ensure that all members and beneficiaries are afforded equal protection”, no matter the size of the scheme.

As well as increased costs, the biggest concern for the providers and members of one-member arrangements are the investment restrictions in the regulations. The origin of these restrictions can be found in article 19 of the directive. Much of the discussion around article 19 has focused on its references to responsible investing and the long-term impact of investment decisions on environmental, social, and corporate

governance factors. However, the regulations also transpose an article 19 requirement, which states that all schemes must invest “predominantly in regulated markets”. It should be noted that the regulations also take borrowing off the table for all scheme types.

In the past, one of the main attractions of one-member arrangements was their flexibility when it came to investing in unregulated markets, such as property and private-company loan notes. The word ‘predominantly’, in the context of the directive, is generally considered to mean at least 51% of the assets of the scheme. This new requirement, together with the inability to borrow to finance the purchase of assets, such as real property, will undoubtedly affect the popularity of one-member arrangements in the future.

However, there are some concessions in the regulations for one-member arrangements. The investment and borrowing rules will only apply to new

TRUSTEES AND EMPLOYERS CANNOT AFFORD TO IGNORE THE REGULATIONS OR WAIT FOR THE OUTCOME OF THE PENSIONS AUTHORITY’S CONSULTATION, WHICH IS DUE TO TAKE PLACE LATER THIS YEAR

NOW THAT THE REGULATIONS ARE UPON US, TRUSTEES AND EMPLOYEES SHOULD ENSURE THAT LEGAL ADVICE IS SOUGHT AS A FIRST STEP TO ENSURING THAT COMPLIANCE IS ACHIEVED

investments and borrowings – that is, the regulations will not be retroactive and do not affect scheme assets or borrowings that were in place before 22 April 2021.

More broadly, the regulations do provide some breathing room for providers of one-member arrangements. The requirements of the directive, other than the investment and

borrowing rules, will not apply to existing one-member arrangements until the end of a five-year transitional period, which began on 22 April 2021.

THE EAGLE HAS LANDED

There is no question that many trustees will welcome the fact that transposition of the directive has now occurred, and that they can at last get on with the necessary work. However, for some, the regulations will be entirely new territory, and there will be a considerable amount of work to be done to ensure that their schemes are compliant.

There are nine parts to the regulations, and there's a lot to unpack. If we were pushed to focus on what we consider to be some of the stand-out provisions, we might mention:

- The regulations insert a range of new definitions into the *Pensions Act*, including a new definition of 'one-member arrangement', which will apply to all single-member schemes and trust retirement annuity contracts (RACs) that are established for one person.
- Part 3 of the regulations removes the old exemptions that were in place for one-member arrangements and small trust RACs, and provide for transitional periods. The transitional period for small trust RACs extends to 31 December 2021, and the transitional period for existing one-member arrangements ends on 21 April 2026. Part 3 also confirms that existing borrowing arrangements entered into by the trustees of one-member arrangements are exempt from the regulations.
- Part 4 of the regulations contains the investment rules. It requires the trustees of all schemes and trust RACs to invest in accordance with the prudent person rule. It also confirms that the resources of all schemes and trust RACs must be predominantly invested in regulated markets, while investment in unregulated assets must be kept to 'prudent levels'.
- Part 5 of the regulations contains the governance provisions. It amends the *Pensions Act* with the inclusion of a number of experience and qualification requirements for trustees. It also deals with the appointment by trustees of the key function holders for their schemes. Part 5 also contains the fitness-and-probity provisions that relate to trustees, key function holders, and the outsourced providers of key functions.
- Part 6 of the regulations makes the preparation of a member's key information document – which must be referred to as a 'pension benefit statement' – a requirement for trustees. Trustees must make a pension benefit statement available to each scheme member, free of charge, at least annually. While this can be provided to members by electronic means, it must be provided on paper where the member requests it.

Trustees and employers cannot afford to ignore the regulations or wait for the outcome of the Pensions Authority's consultation, which is due to take place later this year. Ensuring compliance with the regulations will impact on every aspect of the day-to-day operation of all pension schemes. Now that the regulations are upon us, trustees and employees should ensure that legal advice is sought as a first step to ensuring that compliance is achieved. [g](#)

LOOK IT UP

LEGISLATION:

- [Directive \(EU\) 2016/2341](#) of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (IORPs) (recast)
- [Pensions Act 1990](#)
- [SI 128/2021](#) (*European Union (Occupational Pension Schemes) Regulations 2021*)

LITERATURE:

- ['IORP II Directive Transposed'](#) (Department of Social Protection press release, 27 April 2021)
- [A Roadmap for Pensions Reform 2018-2023](#) (Department of Social Protection, 2 July 2019)

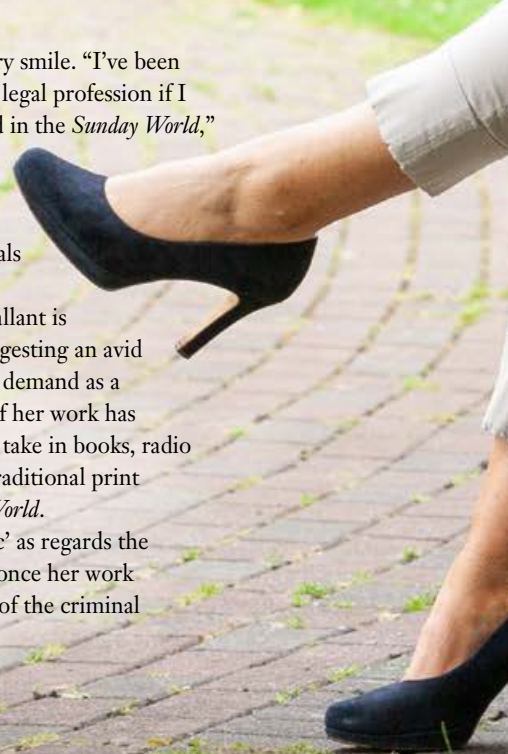
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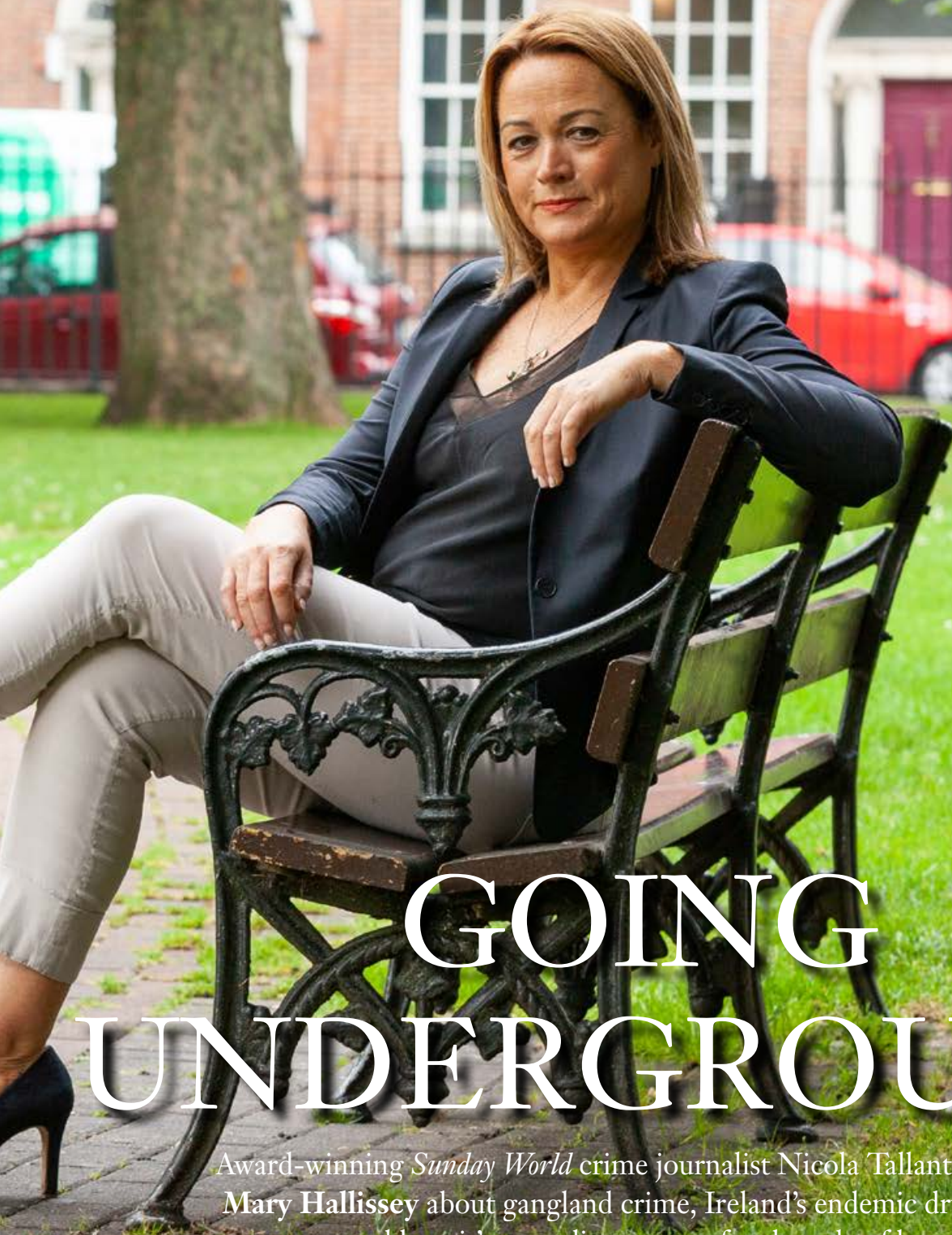
icola Tallant gives a wintry smile. “I’ve been asked by members of the legal profession if I make up stories published in the *Sunday World*,” she says.

But the award-winning journalist’s pieces about Ireland’s gangland criminals are all too real.

During our meeting, Tallant is recognised repeatedly, suggesting an avid public following. She is in demand as a journalist, and the scope of her work has widened in recent years to take in books, radio and TV, podcasting, and traditional print journalism in the *Sunday World*.

She is ‘platform-agnostic’ as regards the distribution of her stories, once her work increases public awareness of the criminal





GOING UNDERGROUND

Award-winning *Sunday World* crime journalist Nicola Tallant speaks to Mary Hallissey about gangland crime, Ireland's endemic drug scene, and how it's corroding respect for the rule of law

MARY HALLISSEY IS A JOURNALIST WITH THE LAW SOCIETY GAZETTE

THE CORRUPTING POWER OF DRUG MONEY HAS WAFTED ITS WAY INTO PUBLIC ADMINISTRATION, AND TALLANT HAS NO DOUBT THAT SOME GARDAÍ, CIVIL SERVANTS, CUSTOMS OFFICERS, AND OTHER ADMINISTRATORS ARE ON THE TAKE

underworld. She believes it doesn't matter how people get their news – whether tabloid, broadsheet or any other medium – once the public is aware that endemic drug use in this country is corroding respect for the rule of law. She laments the misplaced snobbery that disdains tabloid journalism, since the 'red-tops' do most of the investigative crime reporting in this country.

Town called Malice

Corruption goes hand-in-hand with widespread drug use, Nicola points out. The corrupting power of drug money has wafted its way into public administration, and Tallant has no doubt that some gardaí, civil servants, customs officers, and other

administrators are on the take. One garda has [already been jailed](#) for passing information to criminals.

Cocaine use is everywhere in middle-class Ireland, the journalist points out, from surgeons to solicitors, barristers to businesspeople. And corruption – of police forces, the legal profession and civil administration – has inevitably followed the rise of criminal drug gangs.

"The new garda anti-corruption unit is probably very vital at the moment," Nicola comments.

She is quite certain that democracy, and the rule of law, is now under serious threat in this country. From Tallant's perspective,

each arm of the State, including the legal profession, is now a target.

Resource-rich criminals can now do their drug business via encrypted technology, in part because of the globalisation of crime. More and more cocaine is being produced in Colombia, and in purer form, and drug-users no longer need to travel for their supply, even in small-town rural Ireland. This availability has led to the normalisation of drug use.

"I can see a bigger picture, and I can see that every line of coke, every €50 to €100 spent on weekend recreational drug use, is going straight into the pockets of the likes of the Kinahan Organised Crime Group, who are pouring misery onto underprivileged communities in this country.

"They have become so powerful that they are now taking on the very foundations of our State. They are challenging the judicial system."

Funeral pyre

Tallant points to the murders in Europe of both lawyers and journalists who have been involved in gangland criminal trials. She is adamant that such narco-terrorism will shortly arrive on our shores. A super-cartel has now taken over the European cocaine market. "These are a group of street dealers that, within five years, became billionaires," says Tallant.

Netherlands' crime journalist Peter R De Vries was shot in the head five times while leaving a TV studio on 6 July, dying nine days later. And in September 2019, Dutch lawyer Derk Wiersum was shot and killed near his home





TO ME, IT ISN'T ONLY JOURNALISTS WHO SHOULD BE AWARE OF THIS THREAT, IT IS THE LEGAL PROFESSION IN IRELAND THAT NEEDS TO SIT UP AND TAKE NOTICE. WE BLINDLY THINK THAT WOULDN'T HAPPEN HERE. IT BLOODY WELL WOULD, IN A MINUTE!

in Amsterdam. At the time of his death, Wiersum was the lawyer for a state witness, Nabil Bakkali. The latter's brother was also shot dead in 2018.

Before the lawyer's murder, Dutch justice minister Ferd Grapperhaus warned that the Netherlands was in danger of becoming a narco-state, with an economy dependent on trade in illegal drugs.

"What happened two years ago in Europe should have been a line in the sand, and here we are again," says Tallant. "To me, it isn't only journalists who should be aware of this threat – it is the legal profession in Ireland that needs to sit up and take notice.

We blindly think that wouldn't happen here. It bloody well would, in a minute!" she says.

The bitterest pill

"There are already 60 members of the Kinahan Organised Crime Group behind bars in this country, some awaiting trial, but most are already convicted on organised crime charges in the Special Criminal Court.

"We are dealing with organised crime on a day-to-day basis, and these criminals are a major threat because they have no respect for society. The more coke that's

bought on demand in this country, the more empowered they become.

"And they take on every level of the belief system in democracy and what it should be. They are grooming kids as soldiers of their drug gangs. They are infecting communities with fear, and yet we are willingly, blindly, funding them to do that, with our coke habits."

Cocaine is a middle-class drug, she points out, while heroin and crack are used in working-class areas. Tallant believes that it's time to shame cocaine users. The same people who are



ultra-fussy about the provenance of their food will buy cocaine, oblivious to the violence and exploitation endemic in its production and shipping.

“How did we make people aware that it wasn’t cool to smoke cigarettes, or to drink and get behind the wheel of a car?” she asks. “These are educated people. I couldn’t buy or use that stuff because I know where it’s come from, and I know who’s getting the money.”

She despairs of the prevalence and sheep-like acceptability of drug use in Ireland.

Tallant arches a finely shaped eyebrow: “It’s not good fun to be with people who are on cocaine, because they are just obnoxious and overconfident. And coke makes you talk, so it’s dangerous for people in certain occupations.”

News of the world

Nicola Tallant is clearly formidable, and knew from the age of 12 that she would be a reporter.

She trained as a journalist at the College of Commerce (Rathmines) in the early 1990s. Job placements ensured that would-be reporters were snapped up. She quickly achieved success on a variety of national titles. At the early age of 26, she was appointed news editor on the *Mirror*.

“I didn’t last a year,” she recollects. “I hated sending people out on stories that I wanted to be on. I actually felt cheated.”

Nicola then jointly set up her own news agency, supplying copy to numerous British titles during the last of the boom years for the newspaper industry.

While the agency work was highly lucrative, eventually Tallant wanted a return to digging deeper into news.

“We just cleaned up, and though it was exciting in the beginning to make lots of money, it was a bit soulless, because there wasn’t time to do any decent stories,” she says.

Several editors had asked her to get in touch should she want a change. She approached the *Sunday World* in 2008, and the deal was done in 20 minutes that Nicola would provide ten front-pages splashes each year.

“If I went on a job, I always wanted to come back with the bacon,” she said of her delivery of a string of crime scoops.

SLICE OF LIFE

■ What are you reading?

The Power of the Dog, by Don Winslow.

Favourite book?

■ Oscar Wilde’s *The Picture of Dorian Gray*.

Currently watching?

■ *Suburra: Blood on Rome*, on Netflix.

Favourite tippie?

■ White wine or bourbon and soda.

Dogs or cats?

■ My 13-year-old rescue lurcher, Milo.

Favourite band?

■ The Waterboys.

Favourite film?

■ *The Hangover*. All of them!

Favourite podcast?

■ *My Therapist Ghosted Me* (Joanne McNally and Vogue Williams)

News sources?

■ *The New York Times*, *The Guardian*, *Politico*, *Irish Independent*, Twitter.

COCAINE USE IS EVERYWHERE IN MIDDLE-CLASS IRELAND, FROM SURGEONS TO SOLICITORS, BARRISTERS TO BUSINESSPEOPLE. AND CORRUPTION – OF POLICE FORCES, THE LEGAL PROFESSION AND CIVIL ADMINISTRATION – HAS INEVITABLY FOLLOWED THE RISE OF CRIMINAL DRUG GANGS

The modern world

She notes that lack of concentration and lack of ability with technology are two common traits in press reporters.

“Like all journalists, I’m not very good at concentrating on something for a long time. I can throw myself at a thing, but I have a short focus, and when I’m done, I never want to see it again. It’s part of the personality.

“Also, when I’m interviewing journalists, from across the world, none of them can work out how to use the simplest of equipment,” she says.

“It’s been a really exciting job. I’ve been all over the world, to places I’d never have been to in ordinary life, and have met and spoken to everyone from the lowest of the low to the highest of the high.”

She describes sitting in the back of a surveillance van in the small hours, and says it’s “quite the buzz” when a stakeout reveals a vital photo or piece of intel. “It yields a far richer story,” she says.

There were hair-raising stories, such as the time a Dublin punter brought a box of unused bullets he had found dumped at a bus stop into the newsroom.

Another tipster asked if the *Sunday World* could pay for her taxi to the office. The woman arrived in reception wearing a hospital gown and wheeling a drip, and passed on valuable information about a murder.

How does Nicola know who to trust?

“That is always a difficult one, and it’s becoming more difficult, because a lot of criminals want to pass information using



encryption.” Encryption distorts the normal trust-building mechanisms, she says.

“Without seeing someone and meeting them, you’ve lost so many of your senses, of who they are and what their motive is. Sometimes, they are giving you information that has the potential to get somebody killed. This is not celebrity stuff about who’s having an affair. It couldn’t be more serious.

“In every relationship, trust builds, but encryption distorts that, because you have to work out why you are getting the information. It’s choppy waters to work

out how to do that properly, and how to be responsible.”


By the nature of her work as a crime journalist, Tallant deals with people with ‘lower moral standards’. “Most of the people I am writing about are convicted criminals, who are, by their very nature, not honest or law-abiding. A lot of them are dangerous people. It’s a very difficult world to navigate. Everything is given to you for a reason, so it’s important not to get sucked into false narratives.”

Five o’clock hero

Her podcast, *The Witness – In His Own Words*, tells how the courage of young Joey O’Callaghan helped to secure two gangland murder convictions.

O’Callaghan started work on a milk round at the age of 12, but the float was a cover for a sordid drug dealership, which led him down a dangerous path. He eventually entered the witness-protection programme, but felt abandoned when he struggled with his new identity, with only a phone number for a liaison officer (who had retired) as his contact point.

Joey was eventually diagnosed with PTSD and OCD, but is now doing well with proper treatment and medication.

“It’s not good enough. He lost ten years of his life,” Tallant says. “The witness-protection programme is a vital element in the State’s fight against organised crime, but I don’t think it’s acceptable to send a witness away, signed off, with no aftercare. Life doesn’t work like that, and each individual should be monitored and given proper psychological help.” 

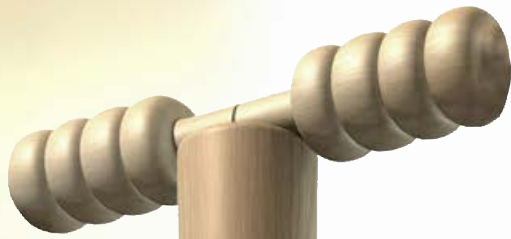
STICKY WICKET

Justine Carty and **Susan Martin** look at some of the most common ethical problems that arise for solicitors in practice – and how to avoid those sticky wickets

JUSTINE CARTY IS A SOLICITOR WITH THE PROPERTY REGISTRATION AUTHORITY AND IS CHAIR OF THE LAW SOCIETY'S GUIDANCE AND ETHICS COMMITTEE. SUSAN MARTIN IS THE PRINCIPAL OF MARTIN SOLICITORS AND IS A MEMBER OF THE COMMITTEE. BOTH ARE MEMBERS OF THE LAW SOCIETY'S COUNCIL

☰ AT A GLANCE

- Poor communication is at the heart of most complaints received by the LSRA
- The Law Society's Guidance and Ethics Committee provides assistance to solicitors on matters of professional conduct and ethics
- Best practice around dealing with clients of other solicitors
- Confidentiality, the duty of candour – and exceptions to the rule
- Conflict of interest – or a risk of conflict of interest
- Acting for a legal personal representative in an estate



The Legal Services Regulatory Authority (LSRA) *Annual Report 2020*, published on 20 July 2021, starkly states that “poor communication is still very much at the heart of” most complaints that are received by them. Communication, or lack of it, is a common theme resulting in complaints made by clients against solicitors. Notably, this is also a familiar theme for complaints regarding the medical and accounting professions.

Complaints made by clients against solicitors were aired formerly at the Law Society’s Complaints and Client Relations Committee and at the Solicitors Disciplinary Tribunal, with adverse findings published in the *Gazette*. Complaints are now handled by the LSRA under the provisions of the *Legal Services Regulation Act 2015* in its role as the independent regulator for the profession.

The Society’s Guidance and Ethics Committee provides assistance to solicitors on matters of professional conduct and ethics via their *Guide to Good Professional Conduct for Solicitors*, practice notes, guidance articles, and the helpline.

Client of another solicitor

Once a solicitor is on record for the other party in a matter, it is not good practice for the solicitor of the first party to contact them directly (see the *Guide to Good Professional Conduct*, third edition, chapter 7). There are common-sense reasons why this should be the case: it causes confusion, may expose the solicitor to an allegation of bullying or intimidation,

and it is unfair to the individual – they should have the benefit of their solicitor’s advice when dealing with correspondence.

Writing directly to someone else’s client can cause unnecessary distress for the recipient. There are exceptional times, however, when it may be necessary to contact that solicitor’s client directly. While these instances are rare and do not often arise in practice, the following list identifies some situations where it may be acceptable to make direct contact:

- Where it is necessary to serve a litigant with a copy order with penal endorsement. This must be served on them personally and cannot be served on their solicitor. It would be good practice to send a copy of the correspondence to their solicitor to make them aware of this development in the matter.
- Where, in a litigation matter, a solicitor has had pre-proceedings correspondence with another solicitor, but they have not replied to say whether they intend to come on record for their client. After writing to them with a warning, and assuming no reply has been received, it would be acceptable to serve their client directly. Thereafter, it would be good practice to send that solicitor a copy of the proceedings for their information, and so that they are aware that their client has been served.
- In a conveyancing matter, it is sometimes the case that the vendor will provide an undertaking to assist with Property Registration Authority queries. These are typically given directly by a

vendor, and not by their solicitor. If a query arose, and writing to the vendor's solicitor elicited no response, having warned the solicitor appropriately, it would be possible to write directly to the vendor regarding the undertaking.

There may be other occasions in practice where it is necessary to write to someone else's client. A solicitor should carefully document on the file their thought process around this, showing how they arrived at the conclusion that it was necessary to write to the other party directly, before embarking on such correspondence.

Confidentiality

When dealing with their solicitor, a client ought to disclose their case with perfect candour, and they are entitled to believe that their solicitor will treat the information given confidentially (guide, chapter 4). In certain circumstances, the information may also be subject to the *in camera* rule, legal professional privilege, and GDPR.

On rare occasions, solicitors may find themselves in a situation where they believe it is necessary to depart from this policy of keeping their client's affairs absolutely confidential.

Again, the following list of examples is not exhaustive. Some instances include:

- Handing over a file or documentation on the demand of An Garda Síochána or the Revenue Commissioners. This should only be done with the consent of the client or a court order. Even where such an order exists, it is necessary to advise the client of their entitlement to exercise legal professional privilege, where applicable.
- Where a client discloses an intent to harm themselves or others. In such circumstances, the solicitor should assess



the threat and, if it is sufficiently serious, seek assistance and report the matter to the appropriate authorities (for example, the HSE, An Garda Síochána, Tusla). When acting as a guardian *ad litem*, solicitors are mandated persons within the meaning of the *Children First Act 2015*.

- Solicitors cannot be used to guide or assist in the commission of a crime. In this instance, the duty of confidentiality would be overtaken by the commission of an offence. Solicitors can never permit their offices to be used in this way.
- A more recent phenomenon concerns the ethical conflict caused by the confidentiality principle and solicitors' reporting obligations pursuant to section 19 of the *Criminal Justice Act 2011*. This legislation provides that, for certain scheduled crimes (such as financial, company, competition, and theft and fraud), it is an offence for a person to fail to disclose information to An Garda Síochána where that information might prevent the commission of an offence or lead to a conviction in respect of that offence. This provision applies to solicitors as well as to any other persons. Legal professional privilege will apply to information that would otherwise trigger a reporting obligation pursuant to section 19. Where a solicitor forms the view

that the information they receive from a client might be subject to a reporting obligation pursuant to section 19, but that information is privileged, then it would be good practice to clearly document how that conclusion was reached. In other words, to document the 'inaction'.

- The duty of confidentiality is enduring and survives the death of the client. For this reason, the client's papers or will can only be given to their executor or legal personal representative (LPR).
- Regarding family law matters, the *in camera* rule continues to apply after death and, consequently, it is not appropriate to release the file relating to matrimonial matters to the client's executor or LPR after death. If it were required by the LPR of the client, then a court order would be required to release it.
- When the subject of a Revenue audit, solicitors should ensure that their client's confidentiality is preserved.

Conflict of interest

What is meant by conflict of interest? A summary provided in the guide says that a solicitor finds themselves in a conflict-of-interest situation when they are:

- In breach of the duty of undivided loyalty owed to their client,
- In breach of the duty to make full disclosure to their client, and
- In breach of the duty of confidentiality owed to their client.

The guide advises: "Where there may be a conflict of interest or a risk of a conflict of interest, it is a matter for the judgement of the solicitor in deciding whether to act, based on the professional duty owed by a solicitor to their client. It is not a matter for the judgement of the clients or any third party. A solicitor must give careful thought to the matter to ensure that their professional obligation is discharged, and ensure that no conflict of interest arises or that no risk of a conflict arises."

Queries around conflict of interest arise frequently with respect to property or family law matters. Examples of conflict queries in family law matters arise where a solicitor purchases a property on behalf of a couple. After some time, the parties decide to go their separate ways, but one of the parties wishes to instruct the solicitor who purchased the house in the matrimonial

SOLICITORS GUIDE TO PROFESSIONAL CONDUCT

The fourth edition of the newly titled *Solicitors Guide to Professional Conduct* is due to be launched shortly. In line with the Law Society's 'green' agenda, the guide will be available in digital format to all solicitors.

Hard copies will also be available to members on an opt-in basis. Individual

members must opt-in to receive a physical copy of the guide – otherwise it will be made available as a PDF.

Further information will be circulated and available on the Law Society's website once the opt-in facility goes live. This opt-in facility will be operated on the same basis as the opt-in for the annual *Law Directory*.

SOLICITORS CANNOT BE USED TO GUIDE OR ASSIST IN THE COMMISSION OF A CRIME. IN THIS INSTANCE, THE DUTY OF CONFIDENTIALITY WOULD BE OVERTAKEN BY THE COMMISSION OF AN OFFENCE. SOLICITORS CAN NEVER PERMIT THEIR OFFICES TO BE USED IN THIS WAY

matter. This would put that solicitor in conflict with the other party they previously acted for.

In this situation, the solicitor should consider whether they hold information that would create an unfair advantage over the other party for whom they will not be acting, and whether it would be best to decline to act for either party. If, having exercised their professional judgement, they believe that there is no conflict in acting for one of the parties, they should note their decision-making process in how they arrived at this conclusion. It may be also worthwhile checking that the other party has no reasonable objection to the solicitor acting.

Acting for the LPR

An LPR in an estate may also be a beneficiary but, to prevent a conflict of interest arising, the solicitor acting for the estate may only act for this party *qua* LPR and not *qua* beneficiary. This means that, although the client may have two roles in respect of the administration of the estate, they are only a client as LPR. It may sometimes be the case that it is necessary for the LPR to take independent legal advice in respect of their role as a beneficiary.

It may cause frustration on the part of the client to receive advice of this nature, and they may perceive the division of roles as artificial. However, the reality of conflict of interest is only too clear when it arises.

Where there are two or more LPRs, the estate solicitor may encounter a situation where there is a dispute between the LPRs regarding some aspect to the estate. When this situation arises, it may cause a conflict

of interest unless handled carefully. It is worth bearing in mind the three duties that are owed to the client: undivided loyalty, confidentiality, and disclosure. If a dispute does arise, only when a recommendation is given to the parties to take independent legal advice, along with a reminder that the solicitor can only act when the parties give the same instruction (that is, are *ad idem*), can the matter proceed.

Where the relationship between LPRs has seriously broken down, then it may be necessary to recall the grant and seek orders of the court. If this happens, it is all the more important for the LPRs to have received legal advice independent of the solicitor for the estate.

If a solicitor acting for the LPR in the estate cannot act for that individual *qua* beneficiary, it follows that the solicitor cannot act on behalf of other beneficiaries in that estate. However, it is necessary for the estate solicitor to engage with beneficiaries during the course of the work in extracting the grant and distribution of the estate – for example, writing to the beneficiaries to let them know that they have received a bequest, or will take a share in the estate, and asking them for information regarding capital acquisitions tax. The estate solicitor will engage with the beneficiaries in distributing their share of the estate to them and in providing a copy of the estate accounts, where appropriate.

If a dispute arises between the estate and a beneficiary, it is good practice for the estate solicitor to write to the beneficiary and to recommend that they seek independent legal advice.

Seeking help

In dealing with clients, the court, or other solicitors, it is usual for ethical considerations to arise. Solicitors are reminded that, when encountering a difficult situation, help is available to them via the Guidance and Ethics Committee (tel: 01 672 4800 – ask for the committee secretary); the Guidance and Ethics Committee practice and guidance notes; the Solicitors' Helpline run by the DSBA (tel: 01 284 8484); and through the various committees of the Law Society or the DSBA.

The biannual reports of the LSRA into complaint handling contain recommendations that may pre-empt many complaints from arising in the first instance. The first step to take, therefore, when dealing with an ethical problem is to seek help. Remember that, if it is necessary to deviate from usual practice or general principles, solicitors should document their decision carefully in the event of a query or complaint arising in the future. [E](#)

LOOK IT UP

LEGISLATION:

- [Children First Act 2015](#)
- [Criminal Justice Act 2011](#)
- [Legal Services Regulation Act 2015](#)

LITERATURE:

- [A Guide to Good Professional Conduct for Solicitors](#) (3rd edition, 2013), Law Society of Ireland
- [Legal Services Regulatory Authority \(LSRA\) Annual Report 2020](#)

Now that ‘Brexit is done’, Britain is a ‘third country’ under EU law. This means that, from 1 January 2021, EU trademarks are no longer protected in the UK as a matter of EU law. However, the *Withdrawal Agreement* provides for continuity of protection in the UK of registered European trademarks. **Mark Hyland** explains

STRANGE BREW

DR MARK HYLAND IS IMRO ADJUNCT PROFESSOR OF INTELLECTUAL PROPERTY LAW AT THE LAW SOCIETY OF IRELAND AND LECTURER AT THE COLLEGE OF BUSINESS, TECHNOLOGICAL UNIVERSITY DUBLIN

≡ AT A GLANCE

- Trademarks are ‘territorial’ – they are limited to the territory of the country where they have been granted
- As registered trademarks and registered designs are the most harmonised forms of intellectual property rights in the EU, they are likely to be the ones most affected by Brexit
- For Irish individuals/companies currently contemplating an EU trademark, they must bear in mind that this particular trademark no longer offers protection within the UK
- Irish applicants will need to register trademarks separately and independently in the UK

Intellectual property (IP) refers to creations of the mind, and one of the main intellectual property rights (IPRs) is trademarks. Along with patents, industrial designs, geographical indications, and a number of less well-known IPRs, trademarks constitute the ‘industrial property’ branch of IP. This branch of IP is governed by the *Paris Convention* (1883), as revised, one of the oldest multilateral treaties on any subject still in force today. The other branch of IP is copyright, and that is governed by a distinct set of international treaties.

Badge

A trademark is a badge of origin that informs the public that a particular company or business is the commercial source of products or services

to which the trademark is affixed. Trademarks are recognisable symbols used to distinguish one company’s goods or services from the goods and services of its competitors. One of the most iconic trademarks, for example, is the ‘golden arches’ of the fast-food company McDonald’s.

Trademarks are central to establishing brand awareness and creating loyalty among consumers. A ‘brand’ can be referred to as the representative elements of a company’s corporate image, while a ‘trademark’ provides legal protection for that brand. Trademarks play an important role in enabling identification of goods or services by consumers, advertising and – somewhat obliquely – in the domain of consumer protection. When properly used, protected and promoted, a trademark can be one of the most valuable assets of a company.



While trademarks can be registered or unregistered in nature, this article focuses on registered marks. In the EU, there is a four-tier system for registering trademarks:

- **National trademarks.** These involve registration of a trademark at the local IP office. In Ireland, this means registering the mark at the Intellectual Property Office of Ireland, based in Kilkenny. Similarly, if protection is sought in Britain, then the relevant trademarks will need to be registered in the UK Intellectual Property Office (UKIPO) in Newport, Wales.
- **Regional trademarks.** A good example of regional trademark protection is the Benelux Trademark, valid and enforceable throughout the Benelux (Belgium, the Netherlands and Luxembourg). It is obtained from the Benelux Office of Intellectual Property (BOIP), located in the Hague.
- **European Union Trademark (EUTM).** The EUTM is granted by the EU Intellectual Property Office (EUIPO) in Alicante, and is valid in all 27 EU member states.
- **International trademarks.** International trademark registrations are effected via the Madrid System. This centralised system is operated by the World Intellectual Property Organization (WIPO) in Geneva and facilitates trademark protection in up to 124 countries. These countries represent more than 80% of world trade. The Madrid System is governed by two treaties – the *Madrid Agreement* (1891, and revised/amended since) and the 1989 *Madrid Protocol*.



Crossroads

The primary legislation on trademarks in Ireland is the *Trademarks Act 1996* (as amended). Section 6 of the act defines a trademark as “any sign capable of being represented graphically which is capable of distinguishing goods or services of one undertaking from those of other undertakings”.

Section 6(2) provides that a trademark may, in particular, consist of words (including personal names) or designs, letters, numerals, colours, the shape of goods or of the packaging of goods, or sounds, provided that such signs are capable of being represented on the register in a manner that enables the Controller of Intellectual Property (formerly, the Controller of Patents, Designs and Trademarks) and the public to determine the clear and precise

subject matter of the protection afforded to its proprietor.

Two of the best-known Irish trademarks are those of Aer Lingus and Guinness. The former comprises the literal portion ‘AER LINGUS’ in white accompanying a design of a light-green shamrock against a dark-green background. The Guinness livery comprises three elements: the registered literal portion ‘GUINNESS’, the gold-coloured harp (based on the 14th century Irish harp known as the ‘Brian Boru harp’) and Arthur Guinness’ famous signature. Interestingly, a harp was registered as a Guinness company trademark as far back as 1876.

Like all IPRs, trademarks are territorial in nature. This means that an IPR is limited to the territory of the country where it has been granted. For example, an Irish trademark granted by the Intellectual Property Office of Ireland is a national trademark, will be governed by domestic legislation, and will only be valid and enforceable in the Republic of Ireland. In contrast, the EUTM is unitary in nature. This means that it is valid and enforceable throughout the EU27. This carries distinct advantages, as the EUTM’s legal enforceability extends throughout the EU, comprising 450 million consumers. An EUTM is valid for ten years and can be renewed indefinitely, ten years at a time for each renewal. There are tangible cost advantages associated with taking out an EUTM, compared with effecting national filings.

Steppin’ out

As registered trademarks and registered designs are the most harmonised forms of IPRs in the EU, they are likely to be the IPRs most affected by Brexit.

The Brexit Transition Period ended on 31 December 2020 and, on 1 January 2021, the UK became a third country under EU law. This ‘third-country status’ has implications for trademark law, too. From 1 January 2021, EUTMs are no longer protected in the UK (including Gibraltar) as a matter of EU law. In addition, from that date, the territorial scope of protection of an EUTM is limited to the territory of the remaining 27 EU member states.

This arises from article 1(2) of the codifying *Regulation on the EU Trademark (Regulation (EU) 2017/1001)*, which describes the EUTM as having a “unitary character” and having “equal effect

DESPITE THIRD-COUNTRY STATUS, ARTICLE 54 OF THE WITHDRAWAL AGREEMENT PROVIDES FOR CONTINUITY OF PROTECTION IN THE UK OF REGISTERED EUTMS

THESE NEW 'COMPARABLE' TRADEMARKS ARE NATIONAL UK RIGHTS THAT ARE ENTIRELY INDEPENDENT FROM THE EU EQUIVALENTS AND WILL BE TREATED AS IF THEY HAD BEEN APPLIED FOR UNDER UK TRADEMARK LAW. ALL MATTERS RELATING TO THESE COMPARABLE MARKS WILL BE SUBJECT TO THE AUTHORITY OF THE UKIPO

throughout the union". From a legal perspective, article 126 of the *Withdrawal Agreement* confirms that the transition (or implementation) period ends on 31 December 2020, while article 127 concerns the scope of the transition.

However, despite third-country status, article 54 of the *Withdrawal Agreement* provides for continuity of protection in the UK of registered EUTMs. This protection was automatically granted free of charge by the UK at the end of the transition period. Article 54(1) provides that the holder of an EUTM that was registered or granted before the end of the transition period shall, without any re-examination, become the holder of a comparable (UK) trademark, consisting of the same sign, for the same goods or services.

Under article 54(5)(a) of the *Withdrawal Agreement*, these comparable trademarks shall enjoy the date of filing or the date of priority of the EUTM and, where appropriate, the seniority of a trademark of the UK claimed under article 39 or 40 of Regulation (EU) 2017/1001. In addition, the comparable trademarks shall not be liable to revocation on the ground that the corresponding EUTM had not been put into genuine use in the territory of the UK before the end of the transition period (see article 54(5)(b) of the *Withdrawal Agreement*).

These new 'comparable' trademarks are national UK rights that are entirely independent from the EU equivalents and will be treated as if they had been applied for under UK trademark law. All matters relating to these comparable marks – including maintenance, renewal, and dispute

resolution – will be subject to the authority of the UKIPO.

The details of the comparable rights are available on the UKIPO website, but no new registration certificates are being issued. The newly created UK rights will keep the same filing number as the EU rights – so, for example, a comparable trademark created from an EUTM obtained through a national filing before the EUIPO will have the prefix UK009, plus the EUTM registration number.

A company may opt out of owning a comparable UK trademark by giving notice to the UKIPO. Opting out may be appropriate, for example, where owning a UK trademark would place a party in breach of an existing intellectual property agreement.

Born under a bad sign

Holders of an EUTM application (including opposed applications) with a date of filing prior to 31 December 2020 have the right to file an application in the UK in respect of goods or services that are identical to or contained within the application previously filed at the EUIPO. This right, known as a 'right of priority', is provided for by article 59 of the *Withdrawal Agreement*. Applications must be submitted by 30 September 2021. Applications made pursuant to article 59 shall be deemed to have the same filing date and date of priority as the corresponding application filed at EUIPO. Applicants will be subject to the usual UKIPO application fees: Stg£170 for an online filing, and £50 for each additional class.

So, what are the implications for Irish holders of an EUTM seeking protection in the UK?

Much will depend on whether the EUTM came into existence before 31 December 2020. If it did, then the Irish holder of such an EUTM can avail of the comparable (yet legally distinct) UK mark, offering trademark protection within the UK.

If an Irish applicant for an EUTM filed the application prior to 31 December 2020, then they can avail of the right of priority contained in the *Withdrawal Agreement*, provided the application is submitted to the UKIPO by 30 September 2021.

For Irish individuals/companies currently contemplating an EUTM, they must bear in mind that this particular trademark no longer offers protection within the UK, as the UK is now a third country. Instead, the Irish applicant will need to register his trademark separately and independently in the UKIPO if he wishes to obtain protection within the UK.

This type of local filing can be effected in parallel with a distinct filing for an EUTM at the EUIPO. [E](#)

LOOK IT UP

LEGISLATION:

- [Madrid Agreement](#)
- [Madrid Protocol](#)
- [Trademarks Act 1996](#)
- [EU Regulation on the EU Trademark \(Regulation \(EU\) 2017/1001\)](#)
- [EU-UK Withdrawal Agreement](#)

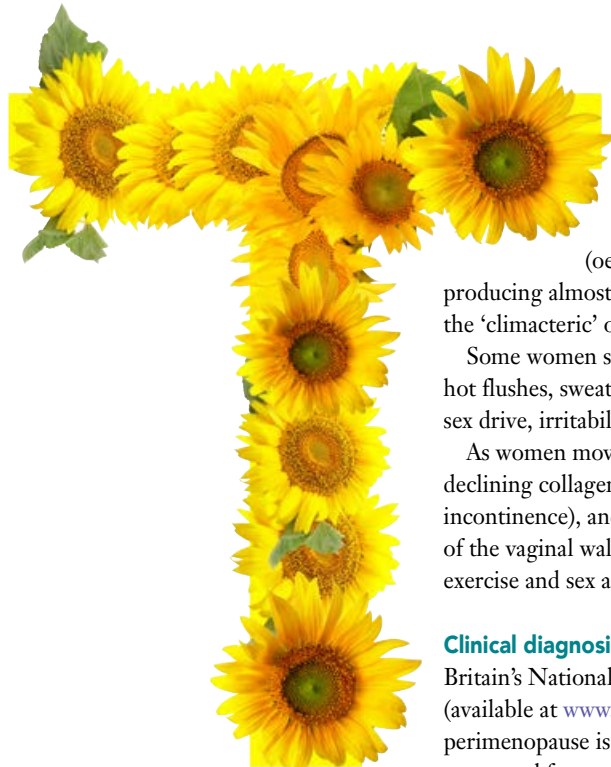
≡ AT A GLANCE

- 'Menopause' is widely referred to as the symptoms that often affect women during midlife
- More accurately, this transition should be referred to as the 'climacteric' or the 'perimenopause'
- The diagnosis of perimenopause is primarily a clinical one
- The most efficient and appropriate way to combat the disruptive symptoms of perimenopause is through HRT

ALL CHANGE

Employers need to be aware of the changing needs of older employees going through 'the change'. **Dr Deirdre Lundy** says that simple awareness on the part of human resources can make all the difference

DR DEIRDRE LUNDY IS COORDINATOR OF SEXUAL AND REPRODUCTIVE HEALTH COURSES AT THE IRISH COLLEGE OF GENERAL PRACTITIONERS, DUBLIN



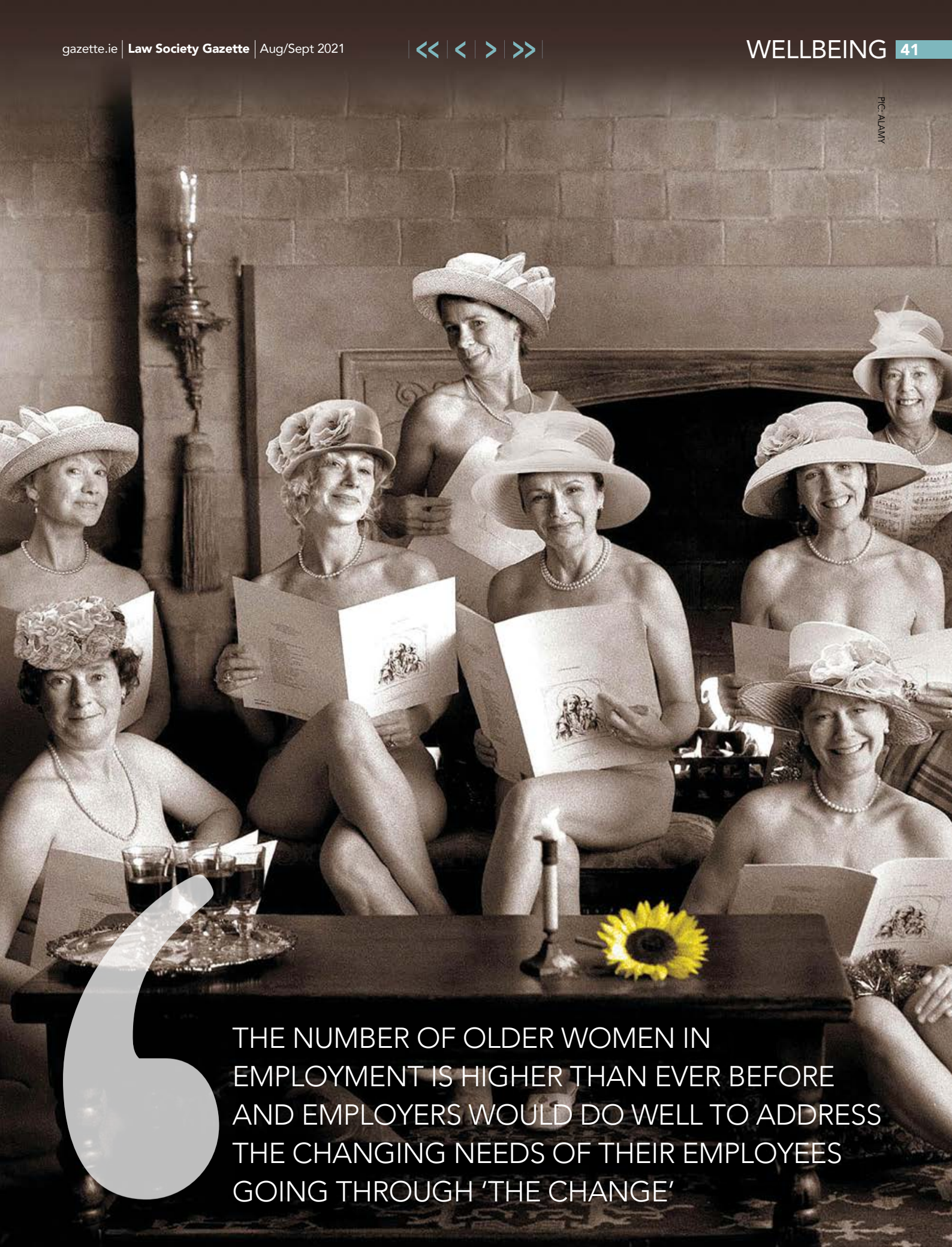
The menopause is officially defined as the last day of the final menstrual period, but most of us use the word 'menopause' when referring to the symptoms that often affect women during midlife. During this time, the ovary transitions from producing large amounts of reproductive hormones (oestrogens, progesterone, and a variety of androgens) to producing almost none. More accurately, this transition should be referred to as the 'climacteric' or, more recently, the 'perimenopause'.

Some women start to experience perimenopause with symptoms including hot flushes, sweating (especially at night), disrupted sleep, mood changes, poor sex drive, irritability, rage, anxiety, poor memory, and cognitive decline.

As women move deeper into the perimenopause, issues to do with declining collagen levels arise – for example, weakness of the pelvic floor (and incontinence), and skin, hair and nail quality may also be affected. The elasticity of the vaginal wall may disimprove (vaginal atrophy) as time goes on, so that exercise and sex are less comfortable.

Clinical diagnosis

Britain's National Institute for Health and Care Excellence (NICE) [guidelines](#) (available at www.womens-health-concern.org) affirm that the diagnosis of perimenopause is primarily a clinical one. Sex-hormone blood tests are only supported for women under 40-45 years of age when a diagnosis of premature



THE NUMBER OF OLDER WOMEN IN EMPLOYMENT IS HIGHER THAN EVER BEFORE AND EMPLOYERS WOULD DO WELL TO ADDRESS THE CHANGING NEEDS OF THEIR EMPLOYEES GOING THROUGH 'THE CHANGE'

ovarian failure is suspected, or for women over 50 years of age to help identify the end of contraceptive need.

Many women experience perimenopausal symptoms long before their final menstrual period, so it is not uncommon for women to still be having menstrual cycles while going through perimenopause. The one does not exclude the other. It is clearly no picnic – and some women suffer much worse than others. The worst of the symptoms usually ease off by a woman's late 50s, but some women continue to have menopausal symptoms well into their mid-60s and beyond. The most efficient and appropriate way to combat the disruptive symptoms brought on by all this menopausal hormonal fluctuation, and then decline, is to medically supplement and stabilise ovarian hormones. This is hormone replacement therapy or 'HRT'.

There has been much anxiety about the use of HRT and the impact that it might have on the development of breast cancer – as well as the development of thrombosis – but much of the fear was unwarranted. Risks of HRT use were not presented in an accurate way, either by the popular media or even by some of the medical publications.

HRT – why all the fuss?

HRT involves using small doses of usually quite physiological types of ovarian hormones (usually an oestrogen and a progestogen), which supplement and stabilise the fluctuations that occur during perimenopause. Certain symptoms, notably low libido, will require the additional of supplemental testosterone replacement therapy too.

HRT is produced by pharmaceutical laboratories – the higher-quality oestrogens are frequently derived from natural sources, such as soya or Mexican yam. One brand of oral oestrogen is derived from an extract of pregnant mare's urine, namely, Premarin. The higher quality oestrogens come in oral tablets, transdermal gels, patches and sprays, and there is even an intranasal oestrogen spray. Progestagens are available as oral tablets, vaginal pessaries, in a transdermal patch, or via the 52mg levonorgestrel intra-uterine device, Mirena.

HRT was prescribed liberally in the western world from 1970s, and users derived great benefit from it. The situation changed in 2002 though, when a study from the USA created concern about a possible link between using HRT and increased breast cancer. The Women's Health Initiative (WHI) was commissioned by the US Government's National Institute of Health (NIH) and explored strategies to prevent morbidity and mortality in older women. They were particularly keen to see what factors affected heart disease and cancer rates.

HRT study

In excess of 16,000 women were recruited to the HRT arm of the study. These were almost all over 55 (median age was 63), and they were either offered oestrogen alone (Premarin) if hysterectomised; Premarin plus 2.5mg of medroxyprogesterone acetate (MPA) – known as Prempro – if they had a uterus; or a placebo.

Initially, no difference in breast cancer detection was seen within the three groups

but, after the first five years, a slight increase was noticed in the number of breast cancers found in the women on the Prempro product versus the placebo and the Premarin. The Premarin-alone group actually reported a reduction in breast-cancer diagnosis after five years.

The extra numbers seen in the oestrogen plus progestagen (Prempro) arm were small, and did not reach statistical significance. The reported relative risk increase in breast-cancer detection was quoted as 1.26 times background – which is about the same increase in breast-cancer detection associated with women who drink one large glass of wine a day, and almost half the relative risk increase associated with women who are overweight or obese.

Fake news

There was no suggestion that the HRT was creating new cancers. The authors chose to halt the Prempro arm of the study until more information was gathered but, sadly, things took an unfortunate turn when some of the authors published the data relating to breast cancer without discussing it with other lead authors. Their article in the *Journal of the American Medical Association* was very alarming in its tone (attracting much criticism), reporting "a marked increase in breast cancer" among the HRT-using group. The popular newspapers picked up their story and terrifying headlines quickly appeared in most major publications, causing hundreds of thousands of women to abruptly stop their HRT.

Some women coped well without the hormones, but others saw their symptoms return with a vengeance and were too scared

THE MOST EFFICIENT AND APPROPRIATE WAY TO COMBAT THE DISRUPTIVE SYMPTOMS BROUGHT ON BY ALL THIS MENOPAUSAL HORMONAL FLUCTUATION, AND THEN DECLINE, IS TO MEDICALLY SUPPLEMENT AND STABILISE OVARIAN HORMONES. THIS IS HORMONE REPLACEMENT THERAPY OR 'HRT'

HOT FLUSHES AND SWEATING WILL BE HARDER TO COPE WITH IN AN OFFICE ENVIRONMENT WHERE THE TEMPERATURE IS SET TOO HIGH, OR PERSONAL FANS ARE PROHIBITED

to seek help. Even when they did ask for advice, they didn't know who to believe. No matter how much some clinicians tried to reassure patients about the real relationship between HRT and breast cancer, there were just as many other doctors warning patients to avoid it at all costs!

Other associations explored by the Women's Health Initiative (WHI) study looked into the impact of oestrogen on women with established ischemic heart disease. WHI data seemed to suggest an early increase in ischemic event risk – particularly heart attack and stroke – but once a patient was established on HRT for approximately 6-12 months, the incidence of heart attack and stroke was reduced (implying protection from the HRT). We now understand that this is linked to the use of oral oestrogens principally, which can promote blood clotting and may destabilise plaques. We know from more recent studies that transdermally delivered oestrogens, when used in modest doses, do not have this impact.

HRT today

In 2015, NICE published a review of menopause care and HRT, which reaffirmed what menopause doctors had been saying all along: if your patient is suffering and needs HRT to control troublesome perimenopausal symptoms, she should feel confident to use it, and you should support her in her choice.

They pointed out that most women who need HRT are well under the age of the subjects in the WHI study; the products we are encouraged to use now are much more physiological in effect; and, in most cases, the benefits outweigh risk. An individualised approach to prescribing was encouraged, and

many GPs enjoyed an increased confidence in offering HRT.

We have also noticed an increasing number of women willing to talk about their symptoms and consider HRT use since the NICE guidelines were published. Having said that, not every woman with menopausal symptoms will choose to use HRT – it is entirely discretionary.

Alternatives to HRT

Women who won't or can't consider HRT may use over-the-counter vitamin and mineral supplements to help alleviate symptoms. None are proven to be as effective as prescription HRT, but they may help some individual patients. Alternative therapies for vasomotor symptoms include alpha-agonists, such as Clonidine (an old-school high-blood-pressure medication), the overactive bladder medication Oxybutynin, or one of the SSRIs/SNRIs (selective serotonin reuptake inhibitors/serotonin and norepinephrine reuptake inhibitors), such as Prozac or Effexor. Sadly, relief with these treatments appears to be short-lived, and none is actually licensed for menopausal symptom relief.

Mood problems can be addressed by antidepressant medications, of course, but antidepressants are not the treatment of choice for menopause-related mood disorder, according to NICE. HRT, however, is recommended by NICE for menopausal mood changes.

Vaginal moisturisers and lubricants are available that may help improve the symptoms of vaginal dryness and discomfort that plague some menopausal women, but prescription vaginal oestrogen preparations are also readily available, and are extremely safe to use – no studies have ever shown vaginal oestrogen to have any effect on breast-cancer rates.

Menopause at work

The number of older women in employment is higher than ever before and employers would do well to address the changing needs of their employees going through 'the change'. Simple awareness on the part of human resources can make a big difference.

Hot flushes and sweating will be harder to cope with in an office environment where the temperature is set too high or personal fans are prohibited. Heavy menstrual bleeding and flooding will be tricky to negotiate when your workplace limits toilet breaks, and so on. There are many companies offering menopause awareness training for staff and employers. [E](#)

LOOK IT UP

LITERATURE:

- *BMS Handbook: Management of the Menopause 2017*, British Menopause Society, www.thebms.org.uk, £20 plus P&P
- *ELITE: Early Versus Late Intervention Trial with Estradiol* (www.clinicaltrials.gov)
- *Menopause Modules*, Dr Louise Newson (www.fourteenfish.com – targeted at medical practitioners)
- *My Menopause Doctor*, Dr Louise Newson (www.menopausedoctor.co.uk – available to all)
- *Menopause: Diagnosis and Management* (www.nice.org.uk, NICE Guideline 23, 12 November 2015; last updated 5 December 2019)
- Prescribable alternatives to HRT (see www.thebms.org.uk)

'WHERE IS GEORGE GIBNEY?' TAKES TOP JMA GONG

Many of the winning entries at this year's Justice Media Awards focused on giving a voice to the victims of crime and on making the law accessible for ordinary citizens.

Mark McDermott reports

MARK McDERMOTT IS EDITOR OF THE *LAW SOCIETY GAZETTE*



MANY ENTRIES FOCUSED ON GIVING A VOICE TO THE VICTIMS OF CRIME AND LETTING THEM SHARE THEIR STORY IN THEIR OWN WORDS. THIS THEME IS STRONGLY REFLECTED BY THE OVERALL AWARD WINNER THIS YEAR

A podcast series that took a deep-dive into the child-abuse allegations surrounding one of Ireland's most famous swimming coaches has won the Overall Award at this year's Justice Media Awards (JMAs). Mark Horgan and Ciarán Cassidy, of the *Second Captains* programme for BBC Sounds, were presented with the award for their production titled 'Where is George Gibney?' The judges described the "exceptional" podcast series as "a remarkable piece of journalism and an extraordinary listen". It also took the top prize in the 'Broadcast Journalism (Radio/Podcast - National)' category.

The overall winner was selected from a total of 200 entries, received from more than 130 journalists across Ireland. The Law Society announced the winners of the 'Jammies' at an online awards ceremony on 24 June 2021.

In total, 39 awards and merits were presented across 12 categories, including four prizes in a new category, 'Best Student Journalism'. Louise Kennedy of *The College Tribune* (University College Dublin) became the first-ever winner in this category. Announcing the winners, Law Society President James Cahill commented: "Journalism that promotes a greater public understanding of the law, the legal sys-

tem, and specific legal issues is of immense value, and this year's awards recognise many great examples.

"Often at these awards, certain themes become apparent, and outstanding cases are highlighted. This year, many of our entries focused on giving a voice to the victims of crime and letting them share their story in their own words. This theme is strongly reflected by our overall award winner this year."

Mr Cahill added: "There was also a strong focus on making the law accessible for ordinary citizens who are impacted by the law every day. This is legal journalism at its finest."



Overall winners Ciarán Cassidy and Mark Horgan



Sarah Taaffe-Maguire (*Business Post*)



Maxine Bramley (*Live 95*)



Frank Greaney (*Newstalk*)



Niall Delaney (*Ocean FM*)

Overall winner

Mark Horgan and Ciaran Cassidy (*Second Captains* production for BBC Sounds) for ‘Where is George Gibney?’

Print/online journalism (daily)

Winner: Jenny Friel (*Irish Daily Mail*) for ‘Section 252 – why it needs to change by those it most affects’. *Merit:* Michael Doyle (*The Irish Sun*) for ‘Irish pubs versus FBD Insurance’ – a series of articles covering a landmark case between four Irish pubs and the insurance company. *Merit:* Orla Ryan (*Journal.ie*) for a series of articles and podcasts on mother-and-baby homes, and related legislation.

Print/online journalism (Sunday)

Winner: Sarah Taaffe-Maguire (*Business Post*) for ‘Landmark verdicts: Female leaders on court cases that shaped the modern world’. *Merit:* Aaron Rogan (*Business Post*) for ‘Facebook versus the Data Protection Commissioner’.

Print/online journalism (local)

Winner: Aidan O’Connor (*Kerry’s Eye*) for ‘Justice at last’. *Merit:* Ann Murphy (*The Echo*) for ‘The drugs questions which should be asked by the Citizens’ Assembly’.

Broadcast journalism (radio/podcast – national)

Winners: Mark Horgan and Ciaran Cassidy (*Second Captains*) for ‘Where is George Gibney? Episode 4 – ‘He upped and vanished’.

Merit: Róisín Ingle, Kathy Sheridan, Jennifer Ryan and Suzanne Brennan (*The Irish Times Women’s Podcast*) for ‘Sealing the records: Maeve O’Rourke and Mary Harney’. *Merit:* Christine Bohan, Aoife Barry, Nicky Ryan and Sinéad O’Carroll (*Journal.ie*) for ‘Why has the Irish media been barred from reporting the names of children who have been murdered?’

Broadcast journalism (radio/podcast – local)

Winner: Niall Delaney (*North West Today*) for ‘We are family – same sex couple’s birth-cert fight’. *Merit:* Sinéad Hubble, Ellen Butler, Robert Fahy, Eoin Ó Donoghue, Will Faulkner (*Midlands Today*) for ‘Understanding the Book of *Quantum*’. *Merit:* Fran Curry, Doc Martin, Alison Hyland (*Tipp Today*) for its legal issues episode ‘Fight to stay alive’. *Merit:* Fiona Corcoran, Mairead Twohig and Pearse McCarthy (*Cork 106FM’s Opinion Line*) for ‘Magazine Road residents secure legal victory’.

Broadcast journalism (TV/video)

Winners: Máire Kearney, Mick Peelo and Sheila Ahern (*RTÉ One Factual*) for ‘Redress: breaking the silence’. *Merit:* Paddy Hayes and Aisling Ní Fhlaithearta (TG4) for ‘Finné Sinéad O’Leary’. *Merit:* Barry Cummins and Sallyanne Godson (*Prime Time*, RTÉ1) for ‘Guardian of the peace’. *Merit:* Shauna Keogh (*Virgin Media One* and *Virgin Media Television*) for

‘The Guards: Inside the K’ (Episode 3 – ‘Mental Health’).

Court reporting (print/online)

Winner: Francesca Comyn (*The Currency*) for ‘Human stories wrapped up in the meaning of words: the full story of FBD’s battle with Ireland’s publicans’. *Merit:* Mary Carolan (*The Irish Times*) for ‘Peter Kelly profile: fearless legal force for half a century’. *Merit:* Nicola Donnelly (*Irish Daily Star*) for ‘Victims of crime call for reform on District Court appeals system’. *Merit:* Shane Phelan (*Irish Independent*) for ‘Economic threat posed by COVID-19 puts insolvency system back in the spotlight’.

Court reporting (broadcast)

Winner: Frank Greaney (*Newstalk*) for ‘A beacon of hope: survivor speaks out after John McClean is jailed’. *Merit:* Nicole Gernon (*Virgin Media News*) for ‘Resentencing of teenager for attempted murder in Dun Laoghaire’.

Human rights/social justice reporting

Winners: Elaine Loughlin, Aoife Moore, Neil Michael and Eoin English (*Irish Examiner*) for their coverage of the *Mother and Baby Homes Commission of Investigation Report*. *Merit:* Conor Gallagher (*Irish Times*) for ‘George Nkencho’. *Merit:* Aoife Moore, Daniel McConnell, Paul Hosford (*Irish Examiner*) for ‘Direct provision – a billion-euro industry’. *Merit:* Patrick O’Connell and Ken

Foy (*Sunday World*) for ‘George Nkencho had no previous convictions’. *Merit:* Sarah Taaffe-Maguire (*Business Post*) for ‘Finding a way out: the “double closet” of being homeless and LGBTQI+’.

International justice reporting

Winner: Killian Woods and Barry J Whyte (*Business Post*) for ‘Firefighting in the witness box: Kingspan’s push back against allegations at the Grenfell Tower inquiry’. *Merit:* Sallyanne Godson and Barry Cummins (RTÉ1) for ‘The Irish people smugglers’. *Merit:* Sally Hayden (*Irish Times*) for ‘Kony’s children: the former child soldiers of Uganda’.

Newcomer of the year

Winner: Maxine Bramley (*Live 95*) for ‘What is *Coco’s Law* that comes into effect today?’ *Merit:* Rosanna Cooney (*Business Post*) for ‘Dentons vows to scare rivals’/‘Mother and Baby Home survivors’/‘The Sunday interview: Noeline Blackwell’.

Best student journalism

Winner: Louise Kennedy (UCD) for ‘Explaining the law surrounding sexual assault and consent’. *Merit:* Orla Murnaghan (*The Eagle*, Trinity College Dublin) for ‘EU v big tech’. *Merit:* Conor Courtney (*GCN*, UCL) for ‘History informs that the Trump trans healthcare ruling will have fatal consequences’. *Merit:* Elisha Carey (UCC) for ‘Tackling image-based sexual crime: refuse to stay quiet’.

TOP OF THE POPS

Now 18 months after the onset of COVID-19, **Justin Purcell** gives us his 'Top Ten' of Small Practice Business Updates and information sessions – delivered by the creatives in the Law Society's Support Services team

JUSTIN PURCELL IS THE LAW SOCIETY'S SMALL PRACTICE BUSINESS EXECUTIVE



THE ONLINE BUSINESS UPDATES PROVIDE INSIGHTS TO OWNERS AND PARTNERS IN SMALLER PRACTICES ON SELECTED BUSINESS-RELATED TOPICS, SUCH AS FINANCE, TECHNOLOGY, SALES, AND MARKETING

The challenges of COVID-19 have meant that the Law Society's Small Practice Business Hub has become highly creative in how it delivers important information to members. Proving that every social-distancing cloud has a silver lining, the hub has been busy generating up-to-the-minute 'business updates' and video webinars.

The online updates provide insights to owners and partners in smaller practices on selected business-related topics, such as finance, technology, sales, and marketing. The web-based information sessions are produced by the Society's Support Services team, and run for an average of 30 minutes weekly. They offer information on a range of useful topics for businesses and sole practitioners.

The [business updates](#) and [online business information sessions](#) are all available for review on the [Small Practice Business Hub](#) at www.lawsociety.ie (see 'Running a practice' in the solicitors' section of the website).

Here are ten of the most popular business updates and information sessions from the past 12 months.

1 'Paperless office'

In this update, we look at how a small practice might implement a 'paperless office', as well as other technology solutions that can bring efficiency and additional security to your practice. The article focuses on:

- Why you should go paperless,
- How to get started,
- Day-to-day file management, and
- The benefits.

To read further, see the update 'Going paperless: first steps' (April 2021). You can also watch the Small Practice Information Session webinar 'Developing a paperless office' (10 February 2021).

2 Financial planning

Maintaining good financial discipline will give you more flexibility in planning and managing the future. In this update, we look at how practitioners should be planning for the future, including:

- Recovery phase planning,
- Merging a practice,
- Ceasing or retiring from practice, and
- Tax issues.

Read the update 'Post-pandemic planning: mergers and retirement' (February 2021) and watch the Small Practice Information Session webinars 'Saving for retirement – the options' (28 April 2021) and 'Merging or retiring from practice' (27 January 2021).

3 Digital innovation

COVID-19 forced change upon us: we experienced a shift in behaviour that forced us to adopt technologies at an accelerated rate. In this update, we look at the

effect of COVID on how firms do their business:

- How digital technologies transform the way practices operate,
- How small practitioners can adapt to digital technology,
- Opportunities and potential benefits, and
- Practical tips to reduce costs using technology.

Read the update 'Digital innovation and transformation' (January 2021) and watch the webinar with Larry Fenelon (Lehman Solicitors) about his insights in the popular information session, 'The future of law and technology' (9 December 2020).

4 Growth strategy

It is important to assess how your practice is currently performing and to set goals. 'Growth strategy planning' is the process of documenting and establishing a future direction for your practice. In this business update, we look at the stages involved:

- Understanding practice performance,
- Client profiling,
- Market and competitor analysis,
- 'SWOT' analysis, and
- Identifying future objectives.

Read 'Growth strategy planning' (November 2020) and see the webinar 'Marketing plans and growth strategies' (11 November 2020).

PHOTO: SHUTTERSTOCKGAZETTE STUDIO



5 Marketing your firm

It can be hard for practitioners to take time away from focusing on clients and billable work. In this update, Mary Cloonan (Marketing Clever) writes about how important it is for practitioners to take the time to review their firm’s image in the eyes of their clients – see ‘How to start marketing your firm’ (December 2020). You can also watch these webinars:

- ‘Digital marketing post-COVID’, and
- ‘Marketing your practice post-COVID’.

6 Digital marketing

As a result of the pandemic, many of the usual ways of generating business have moved from face-to-face meetings. Practices will need to look at new ways of fostering relationships to gen-

erate new business. Now is the time to review and implement a new digital-marketing plan. If you are still hesitant to invest in digital marketing, consider the pointers in this update and decide what actions you need to take. Read ‘Ten steps to improve your digital-marketing performance’ (August 2020) and watch the webinar ‘Digital marketing post-COVID’ (June 2020).

7 Cybersecurity

Cybersecurity continues to be a major challenge for small practices. The continued emergence of new and disturbingly effective methods of cyberattack demonstrates the alarming ingenuity of the criminal gangs responsible, and why the controls your firm may have in place may no longer be secure. We joined up with the Technology Committee to host

three webinar information sessions:

- ‘How secure is your office front door?’ (31 March 2021),
- ‘Cybersecurity and the risk to client funds’ (25 March 2021), and
- ‘Cybersecurity and risk-management tips’ (10 March 2021).

(All of the above are available in the [Small Business Practice Hub Information Session](#) section.)

8 Buying and selling a practice

David Rowe (Outsource) gives a detailed, practical and concise outline of what’s involved in buying or selling a small practice, including:

- How to value a legal practice,
- Trends in buying and selling,
- Due diligence – what to look for,

YOU CAN FIND A RANGE OF GUIDES, TOOLKITS, PRECEDENTS, AND WORKBOOKS ON THE LAW SOCIETY’S SMALL PRACTICE BUSINESS HUB

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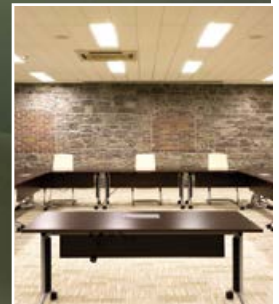
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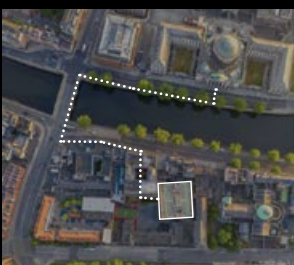
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- Implications for professional indemnity insurance, and
- Funding options.

Watch the webinar 'Buying or selling a small legal practice' (2 December 2020).



9 Firm finances and taxes

The thought of the year-end tax bill is always unsettling, but the challenges of COVID-19 add an extra layer. In this update, Michael O'Scathail (tax director at Crowe) outlines key things to consider, including:

- Funding your tax bill and reducing your liability,
- Accounting topics,
- Commencement and cessation,
- Recent Revenue initiatives, and
- The Revenue TWSS compliance programme.

Read the business update 'Small practice tax returns: tips for solicitors' (October 2020), and watch the webinars 'Legal firm finances' (13 January 2021) and 'Tips for solicitors on making a tax return' (14 October 2020).

10 Personal productivity

In our recent update, Maurice Cullen (Leadership Management Ireland) explains that each of us can develop the necessary characteristics to achieve and live a lifetime of success. This requires a focus on the principles of personal growth and development, including personal productivity and leadership styles, setting priorities to increase productivity, and investing in yourself.

Read 'Personal productivity and self-development' (May 2021) and watch the webinar of the recent information session, 'Effective personal management' (23 April 2021). [E](#)

Justin Purcell can be contacted at j.purcell@lawsociety.ie.

OTHER LINKS

You can find a range of guides, toolkits, precedents, and workbooks – along with other resources to assist you with the business of running your practice more efficiently – on the Law Society's [Small Practice Business Hub](#).

If you have any further suggestions on how the Law Society should be supporting small practices, or would like to provide feedback on existing supports, please email the Small Practice Support team at smallpractices@lawsociety.ie.

You can also [subscribe](#) to receive the business updates directly by email or view upcoming information sessions by visiting the schedule on the business hub.

Hopefully this will encourage

you to take the time to review the monthly business updates and weekly information sessions on topics of interest to you, and to join us for future events.

The Small Practice Updates are available for review on the Business Hub at:

- www.lawsociety.ie/Solicitors/Running-a-Practice/smallpracticehub,
- www.lawsociety.ie/Solicitors/Running-a-Practice/smallpracticehub/small-practice-business-bulletin.

These information sessions can be viewed on the Business Hub, located under 'Online Business Information Sessions'. See www.lawsociety.ie/Solicitors/Running-a-Practice/smallpracticehub/webinars.



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A TASTE... FOR MERGER!

Both the EU and Irish merger control regimes need regular refreshing to make sure they are both 'fit for purpose' – and the last 12 months or so have proven no exception in this regard. **Cormac Little** investigates

CORMAC LITTLE SC IS A PARTNER AT WILLIAM FRY (DUBLIN) AND CHAIR OF THE LAW SOCIETY'S EU AND INTERNATIONAL AFFAIRS COMMITTEE



THE MOTIVATION BEHIND THE MARCH GUIDANCE STEMS FROM THE RECENT INCREASE IN SO-CALLED 'KILLER ACQUISITIONS', PARTICULARLY IN THE DIGITAL AND PHARMACEUTICAL SECTORS

Merger control refers to the process whereby a regulator reviews a proposed transaction to prevent potential anticompetitive consequences. Both EU and Irish merger control rules operate in the State. The former regime is contained in the *EU Merger Regulation* (EUMR), whereas the latter regime is found in the *Competition Act 2002* (as amended).

The EUMR tends to apply to transactions involving large companies with a potential impact across several EU member states, whereas the 2002 act typically catches deals whose likely effects are national rather than international. Both laws are supplemented by various sets of guidance on key jurisdictional, procedural, and substantive issues.

EU merger control operates under the 'one-stop shop' principle. This means that a proposed merger that triggers the relevant jurisdictional thresholds under the EUMR will, in general, be reviewed by the European Commission alone rather than being subject to review under the national merger control rules of one or more European Economic Area (EEA) member states – the 27 current EU member states, plus Norway, Iceland, and Liechtenstein.

If a notification to the commission under the EUMR is not required, the merging parties should consider whether their proposed transaction triggers the national merger control rules of any EEA member state. For example, if a planned deal satisfies the turnover tests under the 2002 act, it will require pre-completion clearance from the Competition and Consumer Protection Commission (CCPC). The CCPC also allows parties to notify, on a voluntary basis, transactions that fall below the relevant thresholds.

Partly to reflect changes in competition policy due to the evolving dynamics of the marketplace and partly to react to issues that have arisen in previous cases, both the EU and Irish merger control canons are regularly revised. The last 12 months or so have proven no exception.

Article 22 of the EUMR

In March 2021, the commission published long-anticipated [guidance on the application of the referral mechanism](#) set out in article 22 of the EUMR to certain categories of cases.

While, on the one hand, the commission has jurisdiction to examine transactions that fall under the EUMR and, on the

other hand, the CCPC and other national competition authorities (NCAs) have similar rights *vis-à-vis* deals that fall under their respective national rules, there is some interplay between the relevant regimes. For example, article 9 of the EUMR allows an NCA to request the commission to refer a notified concentration to that member state. By contrast, article 4(5) of the EUMR allows the merging parties to request the commission to review transactions that trigger the national thresholds in, at least, three member states. Article 22 also allows for referrals to the commission, although this time the request should come from an NCA.

The original purpose of article 22 was to allow EU member states – which, at the time of entry into force of the EUMR back in 1990, did not have their own domestic merger-control regimes – to request the commission to review transactions that threaten to undermine competition in their respective territories. However, as more and more member states adopted their own merger-control regimes, the commission discouraged the relevant NCAs from seeking an article 22 referral if they did not have initial jurisdiction over the



PIC: ALAMY

A TYPICAL 'KILLER ACQUISITION' IN THE DIGITAL SECTOR WOULD, FOR EXAMPLE, SEE A MAJOR TECH COMPANY PURCHASE A START-UP WITH A SIGNIFICANT USER BASE OR DATA INVENTORY, THEREBY PREVENTING THE POTENTIAL EMERGENCE OF FUTURE COMPETITION

relevant transaction. The March guidance represents a U-turn. The commission now encourages and accepts referrals in cases even if the relevant EU member state(s) does or does not have ini-

tial jurisdiction over the relevant transaction. The commission hopes that the March guidance will plug an 'enforcement gap' where cross-border transactions that might have escaped scrutiny

at both EU and national level will, from now on, be reviewed in Brussels.

The motivation behind the March guidance stems from the recent increase in so-called

'killer acquisitions', particularly in the digital and pharmaceutical sectors. Such deals see companies with significant growth potential being acquired by major players, despite gener-

WHILE A TRANSACTION THAT PURPORTS TO HAVE BEEN COMPLETED WITHOUT CLEARANCE BY THE CCPC IS VOID UNDER SECTION 19(2) OF THE 2002 ACT, THE TRANSACTION'S IMPLEMENTATION IS NOT CURRENTLY A SEPARATE OFFENCE. THIS RAISES ISSUES IN THE CASE OF TRANSACTIONS THAT ARE NOTIFIED TO THE CCPC, BUT ARE COMPLETED IN THE ABSENCE OF CCPC CLEARANCE

ating minimal turnover at the time of signing. A typical 'killer acquisition' in the digital sector would, for example, see a major tech company purchase a start-up with a significant user-base or data inventory, thereby preventing the potential emergence of future competition. Moreover, it is not uncommon in the pharmaceutical sector that newer companies with innovative medicines are acquired by more established players before such products receive the relevant authorisations or are exploited commercially.

The adoption of the March guidance means that parties to a transaction with a potential cross-border impact in the EU, which does not satisfy the relevant thresholds either under the EUMR or under the 2002 act (or under any other national merger control rules within the EU), must now address the risk of an article 22 referral and the consequent suspension of the proposed deal, if it has not already closed, in their transaction documents.

Digital Markets Act

The March guidance, in its scope, is reminiscent of the *Digital Markets Act* (DMA) recently proposed by the commission. Under article 12 of the proposed DMA, gatekeepers (for example, major tech companies) are required to 'inform' the commission regarding proposed acquisitions of other digital companies, regardless of whether the relevant transaction is mandatorily notifiable either under the EUMR or under national merger-control rules.

In doing so, gatekeepers must provide relevant information on the target, including its most recent annual global and EEA annual turnover, details of its user numbers, and the rationale for the acquisition. Yet, unlike transactions notified under the EUMR, gatekeepers do not require clearance before com-



pleting relevant acquisitions in the digital space.

In summer 2020, the commission launched a public consultation to determine whether the [notice on the definition of the relevant market](#) for the purposes of community competition law (published in 1997) is still relevant and what, if any, changes should be made.

The purpose of the 1997 notice is to provide guidance on how the commission applies the concept of 'relevant product' and 'geographic market' definition in its application of EU merger control and competition law. Defining the relevant market(s) in which a particular entity operates is crucial to the relevant merger control (or, indeed, competition law) analysis.

In December 2020, the commission published a factual summary of the relevant responses. Most respondents considered that there are certain basic principles that have not changed since 1997 (for example, significant international trade supports the suggestion of a broader than national geographic market) and, therefore, these should remain the bedrock of any guidance. That said, there are certain major trends that need to be reflected in any updates to the 1997 notice. Unsurprisingly, digitalisation was viewed by nearly all respondents as having affected how many markets work. Examples of this are the prevalence of

both multi-sided platforms that create engagement between two or more customer groups (such as AirBnb and Facebook) and digital ecosystems (such as where a platform offers complementary products and services to its core service, for example, Google Search and Google Maps). Certain respondents highlighted the fact that, since many products are provided 'for free' in the digital sector, it is difficult to assess demand distribution in such circumstances.

The commission is now contemplating possible changes to the 1997 notice. It is likely to be 2022 before any revised notice is adopted.

Simplified procedure

In July 2020, the CCPC introduced a '[simplified procedure](#)' aimed at shortening review periods for notifiable transactions that do not give rise to competition concerns. If the simplified procedure is applicable, the parties are not required to complete certain sections of the CCPC's merger notification form. However, the CCPC expressly reserves the right to require full or further information at any point.

The CCPC may also revert to the standard merger notification process by issuing a formal request for information (RFI) or by declaring the notification invalid and requiring a fresh notification. In both cases, the effect would be to restart the

statutory review timeframe from day 1. Importantly, the CCPC will not issue a confirmation to parties that their transaction qualifies for the simplified procedure until after the expiry of the deadline for third-party submissions – usually two weeks after formal notification.

Potential reforms

In January of this year, the Department of Enterprise, Trade and Employment launched a public consultation on possible changes to certain merger control provisions of the 2002 act. Failure to notify a transaction that falls to be notified to the CCPC under part 3 of the 2002 act is an offence under section 18(9) of the same legislation. Currently, only the Director of Public Prosecutions may prosecute this offence, either summarily or on indictment. The department proposes to give the CCPC the power to prosecute such offences on a summary basis.

Putting a notifiable transaction into effect before clearance is the most widely understood definition of ‘gun-jumping’, including under the EUMR. However, section 18(9) of the 2002 act currently penalises only the failure to notify a notifiable transaction and the failure to supply information requested by the CCPC. While a transaction that purports


to have been completed without clearance by the CCPC is void under section 19(2) of the 2002 act, the transaction’s implementation is not currently a separate offence. This raises issues in the case of transactions that are notified to the CCPC, but are completed in the absence of CCPC clearance (or deemed clearance). The department should thus consider whether, as part of the potential reform of the 2002 act, it is appropriate to amend section 18(9) to include implementing or completing a notified transaction prior to clearance by the CCPC.

Under another proposal in the consultation, the CCPC would have the power to issue RFIs to third parties in a merger review. This change would formalise the CCPC’s current approach, whereby it requests information and/or views from the merging parties’ customers, suppliers, and competitors, or from a vendor in the case of an asset acquisition, on a voluntary basis. If a new specific power is introduced, the 2002 act should be amended so that failure to respond to such an RFI should have no impact on the statutory timeframe for clearance. This is to remove the possibility that the actions or inactions of third parties (who may well have ulterior commercial motives) could prolong the CCPC’s review timetable.

Any changes to the merger control provisions of the 2002 act are unlikely to be adopted until later in 2021, at the earliest.

Time will tell

The marketplace, particularly in dynamic industries such as the digital sector, is always likely to move more quickly than legislation/regulation. Accordingly, both the EU and Irish merger control regimes need regular refreshing to make sure they are both ‘fit for purpose’. The power and pervasiveness of the major digital companies continues to the subject of intense debate – it is not certain that the recent change to the scope of the EUMR will be particularly impactful. It also remains to be seen whether the wish to more closely examine the impact of ‘Big Tech’ and ‘Big Pharma’ will be reflected in any changes in the commission’s approach to market definition.

While the CCPC has recently implemented modest refinements to its operation of Irish merger control rules, time will tell whether it will prove to be an enthusiastic supporter of the expansion in scope of the EUMR, or whether it will use its own powers to ‘encourage’ voluntary merger notifications of potential ‘killer acquisitions’ under the 2002 act. 

CERTAIN RESPONDENTS HIGHLIGHTED THE FACT THAT, SINCE MANY PRODUCTS ARE PROVIDED ‘FOR FREE’ IN THE DIGITAL SECTOR, IT IS DIFFICULT TO ASSESS DEMAND DISTRIBUTION IN SUCH CIRCUMSTANCES

RECENT DEVELOPMENTS IN EUROPEAN LAW

ENVIRONMENTAL LAW

Case C-565/19P, *Armando Carvalho and others v Parliament and Council*, 25 March 2021

In 2018, several families from the EU and third states brought an action seeking the adoption by the EU of climate-change measures that are more severe than those provided for in a 2018 legislative package aiming to reduce greenhouse-gas emission. These

families were active in agriculture or tourism and were joined by a Swedish association representing young indigenous Samis. They argued that the current legislation should be annulled and that the court should order the council to adopt measures requiring a reduction in greenhouse-gas emissions by at least 50% to 60% compared with 1990 levels.

The legislation in question set a target of a 40% reduction.

The General Court declared that action inadmissible, as those bringing the action did not have *locus standi*. It held that the applicants were not individually concerned by the legislative package. The fact that the effects of climate change may be different for one person than they are

for another does not mean that there exists standing to bring an action against a measure of general application. A different approach would create *locus standi* for all and render the requirements of the treaty meaningless.

The court ruled that the claim that more severe measures be introduced was inadmissible.

REPORT OF LAW SOCIETY COUNCIL MEETING

16 JULY 2021

Section 150 letters

Mr Paul Keane presented a revised suite of section 150 documentation to the meeting and paid tribute to the hard work of the task force and committees, which had resulted in the production of a substantial body of work.

He explained that the aim of the work had been to present information in a structured and coherent manner, and to produce templates in areas that included PIAB, post-PIAB, defamation, debt collection, and family law.

The Council appreciated the significant work that had been undertaken and the rich resource that had been created for the profession as a result.

Education

The chair of the Education Committee, Richard Hammond, reported on the Small Practice Traineeship Grant, the new fused PPC syllabus, the recent LSRA consultation on barriers to entry to the profession, and the Legal Ambitions Summer School.

Finance


The chair of the Finance Committee, Chris Callan, reported on matters including PC and membership numbers, Budget 2022, insurances, the LSRA levy, and the renovation of the Methodist Hall.

Judicial appointments

The director general updated the Council on issues of interest in the area, which would be kept under close review, including the general scheme of the *Judicial Appointments Commission Bill*, the general scheme of the *Courts and*

Civil Law (Miscellaneous Provisions) Bill 2021, the Judicial Planning Working Group, and the award of senior counsel.

Easements

The Council again discussed the urgency in ensuring an early meeting with the Department of Justice to discuss the impending deadline. The Council was assured that work was ongoing, through various channels, to progress the matter with a view to reaching an acceptable agreement. 

PRACTICE NOTES

PRACTICE NOTES ARE INTENDED AS GUIDES ONLY AND ARE NOT A SUBSTITUTE FOR PROFESSIONAL ADVICE.
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CONVEYANCING COMMITTEE

PHASED EXPIRY OF NPPR

The Conveyancing Committee has been advised by the Department of Housing, Local Government and Heritage that there will be a phased expiry of NPPR charges, late payment fees, and the charge on property. From 1 August 2021, the amount due for same will reduce every year until the liability and charge on property expires completely on 1 April 2025. To view the details,

see the [letter](#) dated 25 June 2021 received from the department (www.lawsociety.ie/npprexpriy).

The portion of unpaid NPPR liability and charge on property in respect of:

- 2009 (€2070 due) expires after 31 July 2021,
- 2010 (€1830 due) expires after 31 March 2022,
- 2011 (€1470 due) expires after 31 March 2023,

- 2012 (€1110 due) expires after 31 March 2024,
- 2013 (€750 due) expires after 31 March 2025.

For the period from 1 August 2021 until 31 March 2025, certificates of discharge and certificates of exemption will be required for the purpose of a sale for years for which the liability and charge on property have not

yet expired and for the amount remaining liable on that date.

Local authorities have been instructed not to accept payments after 31 July 2021 in respect of 2009, and have further been instructed to refund any payments made after that in respect of 2009.

The whole of the *Local Government (Charges) Act 2009* will be repealed on 31 March 2025.



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'KNOW YOUR CUSTOMER' AND ANTI-MONEY-LAUNDERING REQUIREMENTS

Further to queries received in relation to third-party requests for AML documentation and to the *Gazette* article in April 2019, 'KYC and AML requirements of certain funds operating in the Irish market', there are a few updates to report.

In response to a query received by the Data Protection Commission (DPC) regarding an investment firm selling properties and seeking to obtain AML identification or 'know your customer' (KYC) data from the third-party purchasers, the DPC has instructed that "pursuant to the *Criminal Justice (Money Laundering and Terrorist Financing) Act 2010* (as amended), the investment firm could not be considered a 'designated person' (nor an 'obliged entity' as defined in the AML directives) to collect AML KYC documentation. This is a statutory public interest function only, proper to the purchaser's solicitor or the credit institution that is providing a mortgage or loan facility to the purchaser. Both the purchaser's solicitor and/or the lending institution are a 'designated person' under the 2010 act and, as such, each should comply with the AML requirements when ascertaining the 'customer due diligence' of their client(s) who are purchasing the property from the vendor.

"From a data-protection perspective, unless there is a proper legal justification for the collection of this KYC documentation of third-party purchasers, then the practice of seeking to collect these documents should cease immediately. Otherwise, it could potentially contravene the principles of article 5 of the GDPR."

It is clear to the committee

that the DPC has instructed that investment funds and, by implication, their associated entities and agents (including receivers), have no legal obligation under the *Criminal Justice Act 2010*, as amended, to act as a designated person to collect customer due-diligence documents on third-party purchasers who are acquiring assets on an arms-length basis from such investment funds.

The committee agrees with the DPC that the collection of this KYC and/or AML documentation from third-party purchasers (or, in the view of the committee, through their solicitors who are usually asked to furnish such information on behalf of the purchaser) should cease.

While the report says that "following DPC representations, the companies agreed to cease this practice of seeking KYC AML documentation from third-party purchasers and their representatives", it is clear to the committee that the practice appears to still be prevalent among investment funds and other parties. Practitioners are entitled to refuse such requests and, if they so wish, should continue to refer any such requests, whether made directly to the client or through their solicitor, to the DPC by way of complaint.

The committee acknowledges that solicitors have their own separate and independent KYC and AML requirements in relation to their own clients. Practitioners are referred to the regulations and the Law Society's previous practice notes and guidance dealing with these obligations.

The committee continues to receive numerous queries from practitioners in relation to letters that are being sought by or on behalf of investment funds

that create certain obligations in favour of the fund/lender in relation to KYC and AML enquiries. A number of these letters include other non-related AML and KYC queries. The view of the committee is as follows:


- Solicitors should not be asked to confirm that the firm or the solicitors therein are not subject to any disciplinary proceedings. This is not relevant to AML and KYC.
- Solicitors, whether acting for a vendor or a purchaser, should not be asked to certify that sale proceeds/purchase moneys are not the proceeds of crime. This is a matter that should only be certified by the client.
- A fund/lender is entitled to complete the usual KYC and/or the AML enquiries in respect of its own customer (the vendor/borrower), but this can be dealt with directly with their vendor/borrower client.
- Once a sale closes, the funds belong to the vendor client.
- A solicitor should not be asked to confirm that they adhere to the *Criminal Justice (Money Laundering and Terrorist Financing) Act 2010* as amended by part 2 of the *Criminal Justice Act 2013* or by the *Criminal Justice Money Laundering and Terrorist Financing Amendment Act 2018*. These are statutory obligations.

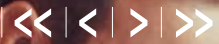
The committee is aware that some of these letters request that the solicitor hold the personal data of their client for a period of at least five years from the date of the conclusion of the proposed transaction. While solicitors have their own record-

retention duties with regard to their own clients, solicitors should not be obliged to retain data at the behest of the investment fund/lender. There is no clear rationale for doing this, and the committee is of the view that this places solicitors in potential breach of GDPR and they should not be asked to do it.

Practitioners who do, however, intend to comply with any such requests should confirm their clients' instructions and obtain any appropriate consents from their clients.

Solicitors should also be cognisant of the relevant obligations under GDPR in respect of these matters, including the following articles of [Regulation EU 2016/679](#) of the European Parliament and of the Council:

- Article 5(1)(a) – lawful, fair and transparent processing (that is, ensuring that clients are made aware of any such requests, and what data may be collected and disclosed by solicitors if they decide to comply with such requests),
- Article 6 – legal basis for processing (that is, satisfying one of the grounds for processing the data in question – for example, obtaining the consent of the client),
- Article 5(1)(b) – purpose limitation (that is, ensuring that the personal data in question is collected for specified, explicit, and legitimate purposes, and is not further processed in a manner that is incompatible with those purposes, and
- Article 5(1)(c) – data minimisation (ensuring that the data is adequate, relevant, and limited to what is necessary in relation to the purposes for which they are processed). 



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Certificate in Public Legal Education	October 2021	-
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Certificate in Trademark Law	9 November 2021	€1,650

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LSRA TASK FORCE

NEW SECTION 150 GUIDANCE AND PRECEDENTS

It is nearly two years since the commencement (in October 2019) of the new legal costs rules under the *Legal Services Regulation Act 2015*. This legislation did away with our old friend, the ‘section 68 letter’, and introduced a much more onerous regime.

Well in advance of the commencement of the new regime, the Law Society’s LSRA Task Force had prepared guidance and precedent draft notices to assist practitioners, which were made available on the Society’s website.

Based on the experience of working with the existing materials and feedback from the profession, the task force decided that it was timely to prepare a revised and expanded set of materials for the profession. We have set out to redraft both the guidance and precedent notices, while respecting the requirements of the 2015 act.

Section 150(1) of the 2015 act requires that section 150 notices are “written in clear language that is likely to be easily understood by the client”. With this

in mind, the task force has, in certain cases, avoided the words and phrases used by the statute and, instead, applied clear language that is likely to be understood, in compliance with this requirement. For example, instead of using the phrase ‘not reasonably practicable’, the draft notices contain the word ‘feasible’. Rather than using the word ‘incurred’ in the context of costs, the phrase ‘costs that apply in this matter’ has been used in the draft notices.

The suite of materials uses, as its starting point, a notice for a general non-litigation matter. In addition to fulfilling the requirements of the act, text dealing with important practical issues, such as electronic signatures and service, are provided. The suite notes that section 216 of the 2015 act requires that notices are to be provided to clients by way of personal service, ordinary post, or registered post. Thus, there is uncertainty as to the status of the service of these notices by electronic means. Additional clauses are offered that may be of use for a range of practice areas.

For litigation, there are templates for PIAB, post-PIAB, and general litigation. The regime imposes additional requirements in litigation cases. One of these is to deal with the costs associated with each stage of the case. This requirement has caused the profession particular difficulty. In order to assist, we have set out extensive guidance on the outlines of the stages in various types of litigation. These are described in both compact and long-form. It is a matter of individual choice which style is adopted.

Unfortunately, the complexity of the statute restricts the level of simplicity that one would wish to bring to such a suite. Each of the draft notices has a number of alternatives and footnotes designed to assist practitioners to tailor the draft notices to their particular needs.

It is not possible to prepare a suite of documents that can be cut and pasted without consideration of the individual circumstances of the practitioner and the matter involved.

The relative simplicity of the old section 68 requirements are

now a thing of the past. We have no choice but to address the challenges and variables specified by the new legislation. It is really important that practitioners familiarise themselves with the relevant provisions of the 2015 act.

We hope that this material will assist colleagues in addressing those challenges and act as a rich resource in complying with the act. The task force would welcome feedback and suggestions for improvement of the suite. The suite will evolve as the profession uses it and more experience is gained of how the new regime will operate in practice.

The preparation of a suite of this nature is extremely challenging and time consuming. I would like to thank Noel Guiden (legal costs accountant), Elizabeth Fitzgerald (solicitor), Simon Treganor (task force secretary), the members of the task force, and the specialist committees in the Law Society for their invaluable input to this project.

Paul Keane (chair, LSRA Task Force).

LITIGATION COMMITTEE

E-BRIEFS AND CONTENT-MANAGEMENT SYSTEMS: MAXIMISING POTENTIAL

This note should be read in conjunction with the notes published by the Technology Committee on ‘Case management systems – practical advice and potential suppliers’ (September 2019) and the follow-up note ‘Suppliers of case management systems for e-briefs’ (December 2019).

As outlined in the previous publications, there are many benefits of having a case management system (CMS), including a digital version of your file. In the present climate and from a litiga-

tion perspective, now, more than ever, the desirability for firms to utilise e-brief technology cannot be overstated.

What is an e-brief?

An e-brief is simply the standard paper-based brief, collated and forwarded electronically, primarily as a PDF document. It has been used since the 1990s in the United States, and has developed significantly in terms of technology and usability with the use of hyperlinks (links allowing one

click to a website, file, or attachment). The development in the US indicates the potential for the technology, whereby a traditional brief can be developed via multimedia – for example, where the papers reference a photo or CCTV, the reader can click to the particular photo or the critical snippet of the relevant CCTV before returning to the source page.

An e-brief is easily produced by most CMS when all documents are scanned into an e-file,

as they are received. The e-brief generated can then be sent as an encrypted PDF. Depending on the CMS, there should be a facility to update the brief. A solicitor always retains the ability to print and send a hard copy of the brief; however, that reduces the significant benefits associated with the e-brief concept.

The e-brief should essentially present the same information as the paper brief, but in a more accessible and user-friendly format.

E-briefs have the obvious benefit of:

- Being environmentally friendly,
- Avoiding the need to store a physical copy brief,
- Significant saving in terms of postage/DX charges and copying costs,
- Time saving with regard to the use of administration resources,
- Reducing the risk of copying or paginating errors,
- Updating or restructuring briefs/booklets can be completed quickly and accurately, and
- Briefs/booklets can be received instantaneously and accessed remotely.

Maximising your CMS

A number of case-management systems have a built-in facility

for e-briefs that your firm may not be utilising fully. Firms with CMS technology often collate briefs in a digital format, but print the brief rather than sharing the e-brief digitally via a sharing platform.

No CMS – no problem!

If you have not invested in a CMS, there are a number of software options available that can combine PDFs into a single document, such as the features of Acrobat Pro DC/Nuance Power PDF, outlined in the [Technology Committee's note](#) (referred to above). The key is ensuring that, when a hard-copy document is scanned into your Word folder, the OCR (optical character recognition) option on the scanner should be used, and the docu-

ment saved as a PDF.

Sharing platforms

There are a number of sharing platforms that work with cloud technology that can be utilised, such as Box, Onehub, LiquidFiles or Dropbox. Indeed, most firms will have Microsoft Office installed, which includes a OneDrive cloud-sharing folder option as standard.

Best practice and GDPR

The e-brief will contain the same sensitive material as a hard-copy brief and must be sent with the same precautions with regard to the addressee of such communications and, indeed, the determination as to who should receive the document. The 'carbon copy' or 'cc' function for recipi-

ents of emails should be treated with similar caution.

The data-sharing protocol with counsel should be adhered to, as per the practice direction '[Instructing counsel and GDPR](#)' (6 June 2019) and the protocol outlined on the GDPR and data protection on the Law Society's website (see '[New GDPR guidance](#)').

Each solicitor and barrister is responsible for implementation of technical security measures, particularly given the risks associated with email. The Technology Committee has indicated a number of data-security and data-protection considerations that should be taken into account with regard to compliance with privacy and security obligations.

TECHNOLOGY COMMITTEE

ASSISTED TECHNOLOGY IN THE LEGAL PROFESSION

It should be no surprise to anyone working in the legal profession that the number of individuals who disclose their disabilities when seeking training contracts or employment in it is extremely low. Statistics from our counterparts in the Law Society of England and Wales show that, while disclosure might be high (around 25% at university level), it sharply diminishes to between one and two percent when it comes to seeking employment.

An individual may be born with a disability or may develop one during their lifetime. A disability may be lifelong or temporary – for example, until a broken bone heals.

As an employer and in the context of running a law firm, you are obliged to make [reasonable accommodations](#) for people with disabilities, in compliance with the *Employment Equal-*

ity Acts 1998-2015. This means making changes to the tasks and structures of that person's job, or making changes to the workplace environment – which, in these COVID times, now extends beyond the four walls of the office to your employees' homes – to enable that employee to be treated equally to their colleagues, have equal opportunities for promotion, and have access to training.

An individual's disability, whenever it arises, should not be a barrier to their access to employment, either at the hiring or recruitment stage or when they arrive in the workplace. Nor should it be a barrier, from a client's perspective, to justice.

With more and more of our workplace interactions taking place online – from the hiring, decision-making stage, to engaging with our colleagues and clients on a daily basis, this is where

technology can be harnessed by law firms, big or small, to remove those barriers and bring greater accessibility and inclusion of persons with disabilities within the profession. To that end, the Technology Committee has gathered a non-exhaustive list below of software/technological solutions that are currently available and which are being implemented within some of Ireland's law firms.

You'll see that some solutions are hidden in plain sight in software systems that are most likely already in use in your firm right now. And other solutions that were initially brought in for one or two people in a firm have grown in popularity throughout the entire firm because it was found to increase efficiency.

The Technology Committee hopes that this list will be developed over time to bring about greater awareness of the

technological solutions that are out there and that can be incorporated into your firms' IT systems. The committee believes that these require minimal infrastructural change or expense, but that they can bring about an 'inclusion by design' approach to your firm, be it large or small.

- **JAWS** (Job Access with Speech) is a computer screen-reader program for Microsoft Windows that allows blind and visually impaired users to read the screen either with a text-to-speech output or by a refreshable Braille display.
- **Dolphin** provides a host of accessibility products for people with sight loss and dyslexia.
- **OmniPage Ultimate Software**: a document conversion and scanning solution for Microsoft Windows. OmniPage Ultimate brings accuracy and simplicity to business by converting paper, PDF documents, and

digital camera images into files users can edit, search, and share. Users can convert paper files into natural-sounding audio files that can be listened to in the home or office, or while on the go;

- **Windows 10 Narrator** reads aloud the text on your PC screen. It also describes events such as notifications and calendar appointments, which lets you use your PC without a display.
- **Microsoft Accessibility Checker** finds accessibility problems and lists suggestions, or you can find specific tips for making your content accessible to all. These suggestions are based on the Web Content Accessibility Guidelines (WCAG) 2.0, a set of recommendations for making web content more accessible to a wider range of people with disabilities.
- **Microsoft 365 Dictation** lets you use speech-to-text to author content in Office with a microphone and a reliable

internet connection. Use your voice to quickly create documents, emails, notes, presentations, or even slide notes.

- **Dictation for Google Docs.**
- **Microsoft Edge Immersive Reader.** This simplifies a webpage layout, removes clutter, and lets you customise your reading experience. The reader is designed to meet the needs of those with dyslexia and dysgraphia, or anyone who wants to make reading on their device easier.
- **Grammar/writing assistance:** an intelligent writing assistant. Underlines and highlights spelling and grammar mistakes, as well as flagging synonyms.
- **Dragon Pro Anywhere** is a cloud-based speech recognition solution that allows business professionals to create high-quality documentation using their voice.
- **Dragon Dictate Legal Edition** (speech to text) enables you to create, edit, and format

case files, contracts, briefs and more – all by voice – for improved efficiency, reduced transcription time and costs, and faster document turnaround.

- **Texthelp Read&Write** (text to speech, writing support): Read&Write for Work is an easy-to-use toolbar that helps employees with everyday literacy tasks.

You can search and compare alternative software packages and solutions to all of these listed [here](#).

Remember – ‘reasonable accommodation’ doesn’t mean making changes that are costly, excessive, or disproportionate. Look into the [support and grants](#) provided by the Department of Employment Affairs and Social Protection when assessing the cost of a particular accommodation.

A poignant note on the [Employers for Change](#) website says: “Rather than assuming that the costs will be high, it is criti-

cal to establish what accommodations are needed, as not all supports require financial outlay. Research shows that most accommodations cost nothing and involve task adjustments.”

With these technological solutions in place across a firm, the hope is that it will make people feel more comfortable disclosing their disabilities at the outset of their employment – and then, in turn, when people with disabilities are within your employment, their expertise and knowledge in how to improve upon this process will be for the betterment of the profession in the long term. To quote the indomitable deafblind lawyer Haben Girma: “People with disabilities are successful when we develop alternative techniques and our communities choose inclusion.”

The Technology Committee aims to update its [webpage](#) with a list of suppliers used by the profession and would welcome any feedback on other software currently being used by solicitors. [G](#)

REGULATION

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 Barry G O’Meara, a solicitor practising as Barry G O’Meara & Co, Solicitors, at Pembroke House, Pembroke Street, Cork, and in the matter of the *Solicitors Acts 1954–2015* [2019/DT67]
Law Society of Ireland

(applicant)
Barry G O’Meara (respondent solicitor)

On 10 June 2021, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he failed to ensure that

there was furnished to the Society an accountant’s report for the year ended 31 December 2018 within six months of that date, in breach of regulation 26(1) of the *Solicitors Accounts Regulations 2014* (SI 516/2014).

The disciplinary tribunal

ordered that the respondent solicitor:

- 1) Be censured,
- 2) Pay the sum of €1,500 to the compensation fund,
- 3) Pay the sum of €1,212 as a contribution towards the whole of the costs of the applicant. [G](#)



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WILLS

Burke, Patrick (Senior) (deceased), late of 1 Carna Road, Ballyfermot, Dublin 10, who was born on 31 October 1934 and who died on 13 March 2021. Would any person having knowledge of any will made by the above-named deceased please contact Johnston Solicitors, 179 Crumlin Road, Crumlin, Dublin 12; email: info@johnstonsolicitors.ie

Corry, Mary (deceased), late of 40 Martin Savage Park, Navan Road, Dublin 7, who died at Cappagh Hospital, Dublin 11, on 18 May 2018. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Stacey Wade, Doyle & Company LLP, Solicitors, 123 Cabra Road, Dublin 7; tel: 01 838 3388, fax: 822 0880, email: stacey@doyleandcompany.ie

Dourneen, Seamus (otherwise James Patrick Dourneen) (deceased), late of 5 Lorne Terrace, Kilmainham, Dublin 8, who died on 31 March 2021. Would any person having any knowledge of the whereabouts of any will made or purported to have been made by the above-named deceased, or if any firm is holding same, please contact Liston & Company Solicitors, Argyll House, 103/5 Morehampton Road, Donnybrook, Dublin 4; DX 226001 Morehampton 2; tel: 01 668 5557, email: kate@wtliston.ie

Flood, Sarah B (Sally) (deceased), late of The Promenade, Glenorney, Salthill, Galway; formerly 61 Meadowbank Park, Letterkenny, Co Donegal, and 52 Laurel Drive, Melmount, Strabane, Co Tyrone. Would any person having knowledge of the whereabouts of any will made by the above-named deceased, who died on 20 May 2021, please contact William F Semple & Company, Solicitors, Lough Corrib House, Waterside, Galway; tel: 091 567 373, email: peter@semple solicitors.ie

Foy, Carmel (deceased), late of 58 Verbena Lawns, Sutton, Dub-

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

- **Wills** – €155 (incl VAT at 23%)
- **Title deeds** – €310 per deed (incl VAT at 23%)
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ALL NOTICES MUST BE PAID FOR PRIOR TO PUBLICATION. ALL NOTICES MUST BE EMAILED TO catherine.earney@lawsociety.ie and PAYMENT MADE BY ELECTRONIC FUNDS TRANSFER (EFT). The Law Society's EFT details will be supplied following receipt of your email. **Deadline for October 2021 Gazette: 10 September 2021.**

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*.

lin 13, who died on 7 November 2019. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Niall Gaffney, Gaffney Halligan & Co, Solicitors, Artane Roundabout, Malahide Road, Artane, Dublin 5; tel: 01 831 2470, fax: 01 831 5726, email: niallgaffney@gaffneyhalligan.com

Hanley, William (otherwise Liam) (deceased), late of 1 Ardara Court, Ennis Road, Limerick. Would any person having knowledge of the whereabouts of any will made by the above-named deceased, who died on 18 September 2020, please contact Kenny Solicitors, 57 Fitzwilliam Square, Dublin 2; DX 109015 Fitzwilliam; tel: 01 640 1808, email: info@kennysolicitors.ie

Haran, Peter Noel (deceased), late of 30 Martello Court, Portmarnock, Dublin, who died on 14 May 2021. Would any person having knowledge of the whereabouts of any will made by the above-named deceased, or if any firm is holding same, please contact Aidan Haran (next of kin and agreed representative by family); tel: 086 349 1015, email: aidanharan@yahoo.com

Keogh, Marie (deceased), late of 47 Foxfield Grove, Raheny, Dublin 5, who died on 19 May

2021. Would any person having any knowledge of a will executed by the above-named deceased, or if any firm is holding same, please contact Maria Crawford, Tracey Solicitors, 16/17 St Andrew Street, Dublin 2; tel: 01 649 9900, email: mc@traceysolicitors.ie

Kerr, Hubert (deceased), late of 40 Oak Hill, Castlecomer, Co Kilkenny, who died on 24 May 2021. Would any person having any knowledge of the whereabouts of any will made or purported to have been made by the above-named deceased, or if any firm is holding same, please contact Holland Condon, Solicitors, Castlecomer, Co Kilkenny; tel: 056 444 1219, email: post@hollandcondon.com

Kett, Patrick Joseph (deceased), late of 87 Glasnevin Downs, Griffith Avenue, Dublin 11, formerly of Craggagh, Fanore, Via Galway, Co Clare. Would any person having knowledge of the whereabouts of any will made by the above-named deceased, who died on 28 June 2021, please contact Michael Sheil & Partners, Solicitors, Temple Court, Temple Road, Blackrock, Co Dublin; tel: 01 288 1150, fax: 01 288 0194, email: info@msheil.ie

McGinley, Patrick (deceased), late of 14 Castle View, Kilmacrennan, Co Donegal, who died on 17 April 2021. Would any person having any knowledge of the whereabouts of any will made or purported to have been made by the above-named deceased,

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or if any firm is holding same, please contact Crawford Gallagher Solicitors, High Rd, Letterkenny, Co Donegal; tel: 074 916 4906, email: maureen@crawfordgallaghersolicitors.ie

Moloney, Patrick (deceased), late 159 Galtymore Road, Drimnagh, Dublin 12. Would any person having knowledge of the whereabouts of any will made by the above-named deceased, who died on 4 October 2020, please contact Leo Buckley & Co, Solicitors, 78 Merrion Square, Dublin 2; tel: 01 678 5933, email: leo@leobuckleysolicitors.com

Murphy, Tadhg (otherwise Ted) Patrick Murphy (deceased), late of 10 Fingal Place, Stoneybatter, Dublin 7, D07 A2X2, who died on 24 January 2021. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Gary Keogh, Gary Keogh & Company Solicitors, 57 O'Connell Street, Limerick; tel: 061 316 511, fax: 061 316 512, email: gk@garykeogh.com

Power, Violet Roberta (otherwise Viola) (deceased), late of Tobernabrone, Piltown, Co Kilkenny, and 40 Selborne Gardens, London NW4 4SJ, who died on 25 June 2021. Would any person with any knowledge of any will made by the above-named deceased please contact Michael A O'Brien & Co, Solicitors, Lee House, Strand Lane, Carrickon-Suir, Co Tipperary; tel: 051 641 244, email: office@maobriensolicitors.ie

Russell, Liam (deceased), late of 40 Coolnevaun, Stillorgan, Co Dublin, who died on 4 January 2018. Would any person having knowledge of any will made by the above-named deceased please contact Bernard Creavin, Creavin & Co, Solicitors, 18 Lower Kilmacud Road, Stillorgan, Co Dublin; tel: 01 283 2922, fax: 01 283 2847, email: aine@creavinco.com; ref: AM/BAC/4656

Ryan, John James (deceased), late of Flat 2, 19 New Cabra Road,

Phibsborough, Dublin 7, D07 K5N6, and formerly of 30 Leinster Road, Phibsborough, Dublin 7, who was born on 11 July 1963 and who died on 27 May 2021. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Mr Des Ryan, 4 Beechdale Grove, Blessington, Co Wicklow, W91 A3X5; tel: 087 661 6099, email: desryankildare@gmail.com

Ryan, Seamus (deceased), late of Sharavawn, Bawnmore, Johnstown, Co Kilkenny. Would any person having knowledge of the whereabouts of any will made by the above-named deceased, who died on 5 June 2021, please contact Butler Cunningham & Molony, Solicitors, Slievenamon Road, Thurles, Co Tipperary; DX 40006 Thurles; tel: 0504 21857, 22315, email: info@bcmthurles.ie

Tutty, Albert (deceased), late of Island, Lisdoonvarna, Co Clare, and also 5 New Houses (otherwise known as 5 Pinnacle View, Rathdangan, Co Wicklow), who died on 9 June 2021. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Pauline O'Toole, solicitor, Main Street, Carnew, Co Wicklow; tel: 053 942 3596, email: info@otoolesolicitors.com

Rabbett, Patricia (née Conroy) (deceased), who died on 14 February 2021, and **Rabbett, Michael Kevin (otherwise Kevin Rabbett) (deceased)**, who died on 23 May 2021, both late of Aughleam, Blacksod, Belmullet, Ballina, Co Mayo. Would any person having knowledge of the existence of any will made by either of the above-named deceased please contact Tracey Murray, solicitor, Chambers House, Ellison Street, Castlebar, Co Mayo; tel: 094902 3789, email: mail@traceymurray.ie

TITLE DEEDS

In the matter of the Landlord and Tenant (Ground Rents) Acts 1967-2005 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978 – notice of intention to acquire fee simple (section 4): an application by The Dublin Loft Company Limited ('the applicants')

Notice to any person having any interest in the freehold interest of the following property: all that and those the property known as property at rear of 43 Lower Dorset Street in the city of Dublin, demised by a lease dated 19 April 1883 made between Charles Corbet of the one part and James Forrester of the other part (the 'lease') and described therein as "all that and those that piece or plot of ground particularly shown on the map thereof in the margin of these presents, which said piece or plot of ground contains in front thereof to lane at rear of Lower Dorset Street 43 feet, 6 inches, from front to rear on both sides,

50 feet, and at the rear 38 feet, bounded on the north by laneway at rear of Belvedere Road, on the south and east by a plot demised to Michael Moran, and on the west by a laneway at the rear of Lower Dorset Street, be the same admeasurements more or less, all which said premises are situate in the parish of St George and city of Dublin, together with all rights of way to proposed laneways above mentioned, members and appurtenances thereunto belonging or in any way appertaining".

Take notice that The Dublin Loft Company Limited (the 'applicants'), being the person entitled to the interest of the lessee under the lease in respect of the property described above and situate to the rear of 43 Lower Dorset Street in the city of Dublin, intends to apply to the county registrar of the county of Dublin for the acquisition of the freehold interest and all intermediate interests in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid

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property is called upon to furnish evidence of the their title to same to the below within 21 days from the date of this notice.

In default of any such notice being received, the said applicants intend 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 for such directions as may be appropriate on the basis that the persons beneficially entitled to the superior interest (including the freehold reversion) in the aforesaid premises are unknown and unascertained.

Date: 3 September 2021

Signed: Sheehan & Company LLP (solicitors for the applicants), 1 Clave Street, Dublin 2; ref: MF/EL

In the matter of the *Landlord and Tenant Acts 1967-2019* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of the premises known as 1A and 1B Taney Road, Goatstown, Dublin 14: an application by the trustees of the estate of Charles Meredith

Take notice that any person having any interest in the freehold estate or any superior leasehold estate of the following property: all that and those part of the lands at Roebuck in the parish of Taney, barony of Rathdown, and county of Dublin, more commonly known as 1A and 1B Taney Road, Goatstown, in the city of Dublin, held under lease dated 30 October 1952 made between

Philip Townsend Somerville-Large, Joyce Somerville-Large, Philip Collis Somerville-Large, and Brisbane Peter Somerville-Large of the one part, and Bernard Murray of the other part, and therein described as "all that part of the lands of Roebuck in the parish of Taney, barony of Rathdown and county of Dublin, which said demised premises are more particularly delineated and described on the map hereto annexed and thereon surrounded with red line", for the term of 99 years from 28 June 1952, subject to the yearly rent thereby reserved and to the covenants on the part of the lessee and conditions therein contained.

Take notice that the trustees of the estate of Charles Meredith intend to submit an application to the county registrar for the city of Dublin for acquisition of the freehold interest in the aforesaid properties, and any party assert-

ing that they hold a superior interest in the aforesaid premises (or any of them) are called upon to furnish evidence of the title to the aforementioned premises to the below named within 21 days from the date of this notice.

In default of any such notice being received, the trustees of the estate of Charles Meredith intend to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the city of Dublin for directions as maybe 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: 3 September 2021

Signed: Gartlan Furey Solicitors (solicitors for the trustees of the estate of Charles Meredith), 20 Fitzwilliam Square, Dublin 2

In the matter of the *Landlord and Tenant Acts 1967-2019* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of 79 Morehampton Road, Donnybrook, Dublin 4, and in the matter of an application by Mary Galvin ('applicant') by her attorney and next friend Joseph Galvin

Take notice that any person having any interest in the freehold estate of the following property: all and singular the dwelling-house, shop, and premises known as 79 Morehampton Road, together with the yard and plot of ground at the rear thereof, situate in the parish of St Mary's, Donnybrook, in the city of Dublin, together with the use of the passage or stable lane at the rear of the said premises entering on the Marlborough Road, being that part of the property that is held by the applicant under an indenture of lease dated 10 May 1900 and made between Patrick J Newport of Marlborough Road, Donnybrook, in the county of Dublin, of the one part, and Michael Cullen, 79 Morehampton Road, Donnybrook, in the county of Dublin, of the other part, for a term of

166 years from 1 May 1900, subject to a yearly rent of IR£13.6.8 but indemnified against all but IR£6.13.4 thereof, and to the covenants and conditions therein contained, and also being part of the property that was demised by an indenture of lease dated 8 April 1897 between William H Clarke, of 17 Rialto Terrace, South Circular Road, Kilmainham, in the county of Dublin, of the one part, and John Newport, 18 Marlborough Road, in the county of Dublin, of the other part, for a term of 150 years at the yearly rent of IR£20 from 1 May 1918.

Take notice that the above-named applicant intends, by her attorney and next friend Joseph Galvin, to submit an application to the county registrar for the county of the city of Dublin for acquisition of the freehold interest in the aforesaid premises, and any party asserting that they hold a superior interest, including the freehold reversion in the aforesaid premises (or any of them), are called upon to furnish evidence of title to the applicant's below-named solicitors within 21 days from the date of this notice.

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

Date: 3 September 2021

Signed: O'Hagan Ward & Company (solicitors for the applicant), 31-33 The Triangle, Ranelagh, Dublin 6

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 Dungiven Limited

Any person having a freehold estate or any intermediate interest



LEGAL EZINE FOR MEMBERS

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in all that and those the dwelling-house and premises now known as 48 Cabra Park, Phibsboro, Dublin 7, and formerly known as 24 Cabra Park, Phibsborough, held by the applicant Dungiven Limited as lessee under a sublease dated 7 September 1899 between Charles Coates of the first part, the city and county Permanent Benefit Building Society of the second part, and Francis Phillips of the third part, for a term of 199 years from 25 March 1899 at a rent of £6 per annum, which sublease is carved out of a superior lease dated 24 December 1898 between Peter Joseph Gaynor of the one part and Charles Coates of the other part for a term of 200 years from 25 March 1898 at a rent of £20.

Take notice that Dungiven Limited intends to apply to the county registrar of the county of Dublin to vest in them the fee simple and any intermediate interests in the said property, and any party asserting that they hold a superior interest in the 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, Dungiven Limited 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: 3 September 2021

Signed: LK Shields Solicitors LLP (solicitors for the applicant), 38 Mount St Upper, Dublin 2

In the matter of the Landlord and Tenant Acts 1967-2005 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978 and in the matter of 4 Mill Lane, Drogheda, Co Louth: applicant Katrina Scanlon

Take notice that any person having any interest in the freehold estate

(or any intermediate interest) of the property known as all that and those that plot of ground with the dwellinghouse and premises thereon known as number 4 Mill Lane, situate in the parish of St Peter, town of Drogheda, and county of Louth, being part of the property held under and by virtue of an indenture of lease made on 4 October 1927 between the mayor, aldermen, and burgesses of the borough of Drogheda of the one part, and Irish Fresh Meat Limited of the other part. There was demised unto the said company as lessees "all that and those the plot of ground with the buildings thereon known as 'The West Gate Mill', together with the 33 dwellinghouses adjoining thereto, situate on the south side of Trinity Street, parish of St Peter, town of Drogheda, in the county of Louth, bounded on the north by Trinity Street and property of the lessees, on the south by the River Boyne, and on the east and west by property of the lessors as the same were delineated and described on the map or the chart hereon endorsed to have and to hold the said demised premises with the rights, members, and appurtenances thereunto belonging or in any wise appertaining unto the said lessees, their successors, and licensed assigns from 25 March 1927, for the term of 75 years then ensuing, fully to be completed and ended, the said lessees, their successors, and licensed assigns yielding and paying therefor and thereout yearly and every year during the said term unto the said lessors, their successors and assigns, the yearly rent or sum of £25, to be paid by two even and equal half yearly payments on 25 March and 29 September in each year and every year during the terms thereby granted, the first payment thereof to be made on 29 September next ensuing the date of these presents".

Take notice that the applicant intends to submit an application to the county registrar for the county of Louth for the acquisition of the freehold interest in the aforesaid property, and any party asserting that they hold a superior interest in the property (or any

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of it) are called upon to furnish evidence of the title to the aforesaid property to the below-named solicitor 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 Louth for directions as may be appropriate on the basis that the persons beneficially entitled to the superior interest including the freehold reversion in respect of the of the aforesaid property is unknown or unascertained.

Date: 3 September 2021

Signed: Markey Minogue Coyle (solicitor for the applicant), 1 South Quay, Drogheda, Co Louth

In the matter of an action brought in the Dublin Circuit Court by Ferngate Designs Ltd against persons unknown and unascertained (record no 2021/002994) and in the matter of 3A Rostrevor Terrace, Macken Street, Dublin: in the matter of part III of the Landlord and Tenant (Amendment) Act 1980

Take notice that Ferngate

Designs Ltd has commenced the above action by landlord and tenant civil bill issued on 2 June 2021 and has, pursuant to order of the court dated 28 June 2021, issued a notice of motion returnable for 18 October 2021 at 10.15am in Court 22, Áras Uí Dhálaigh, Inns Quays, Dublin 7, seeking final orders determining that it is entitled to a reversionary lease in the above lands and fixing the terms thereof and (if necessary) appointing a court officer to execute the same on behalf of the unknown and unascertained owners of the said lands, which application is grounded on an affidavit sworn by Tanya Nyegaard on 5 August, 2021 and the exhibits referred to therein.

Take notice that the court has directed that the said civil bill, notice of motion, affidavit and exhibits be served by the publication *inter alia* of this notice and that any party claiming to be a successor in title of the original lessor or to hold any other superior interest and wishing to obtain copies of the said documents should apply to the undersigned.

Date: 3 September 2021

Signed: O'Leary Maher Law Firm (solicitors for the applicants), 191 Howth Road, Killester, Dublin 3



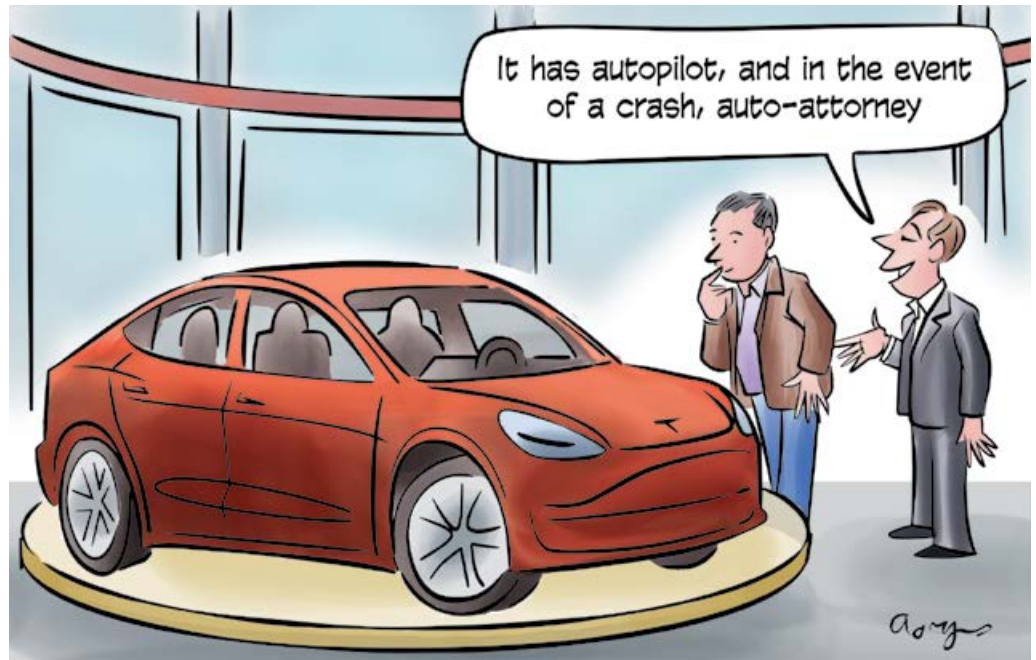
PRO BONOBO

'AUTOPILOT' ERROR TARGETS FLASHING LIGHTS

The US government is to investigate Tesla's driver-assistance system (known as Autopilot) after a series of collisions with parked emergency vehicles, according to *The Guardian*.

The investigation covers 765,000 vehicles – almost everything Tesla has sold in the US since 2014. Of the crashes identified, 17 people were injured and one was killed. In 11 crashes since 2018, Teslas on Autopilot have hit vehicles at scenes where first responders used flashing lights, flares, or other illumination warnings.

Autopilot has frequently been misused by Tesla drivers, who have been caught driving drunk or even riding in the back seat.



'LEGO GUN' WITHDRAWN

A US gun company has halted sales of a Lego-themed pistol kit, after facing a backlash from the public and a request from the Danish toymaker to remove the product.

With the colourful 'Block 19' pistol kit, owners would have

been able to use Lego to customise their very own Glock 19, *NPR* reports.

When the company revealed the design, it said "Here's one of those childhood dreams coming to life!"

But the kit provoked an

intense reaction. Within the gun-owner community, some said that it amounted to baiting gun-control advocates. "This, if real, is the most irresponsible gun modification I have seen in a long time," a commenter on *The Firearm Blog* said.

AND, IN OTHER NEWS...

Aliens will land on earth this summer and kick off some star wars, says a "time traveller from 2714". *The Mirror* reports that a TikTokker (apparently that's now a thing) says that aliens will land on earth during a meteor shower.

The anonymous time traveller (username 'aesthetictime-warper') insists they are from the year 2714, and said that "something amazing" will happen – but it will lead to an intergalactic war in 2025. No change, so. Mr TimeWarper has previously predicted that Atlantis will be found in 2022, aliens will infiltrate the world's governments in 2023, and the colonisation of Mars will begin in 2028. Or that could be just the Sky TV schedule of a Thursday evening.

EXIT, PURSUED BY A BEAR

A California man has filed a lawsuit after he was injured trying to run from a bear that surprised him in a dumpster, *The Guardian* reports. What the man was doing in the dumpster is unclear.

Apparently, when he opened the dumpster, John Donaldson was startled by the bear, and he stumbled, twisting his ankle. His suit alleges that the latch on the bin was defective and that it did not shut automatically, giving bears access.



"Tell him to grin and bear it"

CPD Cluster Events 2021

The 2021 Law Society Finuas Skillnet clusters are run in collaboration with the regional bar associations and will provide essential practice updates on key issues relevant to general practitioners. Topics, speakers and timings vary for these training events and all offer a mix of general, regulatory matters and management and professional development CPD hours. In order to enable access for all, these events will be available to attend as webinars with live Q&As. All materials will be sent to delegates in advance.

9 Sept **Essential General Practice Update Kerry 2021** in partnership with Kerry Law Society

4 Nov **Connaught Solicitors' Symposium 2021** in partnership with the Mayo Solicitors' Bar Association

11 Nov **General Practice Update 2021** in partnership with the Carlow Bar Association, Kilkenny Bar Association, Wexford Bar Association and Waterford Law Societ

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DATE	EVENT	CPD HOURS	DISCOUNTED FEE*	FULL FEE
7/8 September	Understanding Unconscious Bias** Understanding Unconscious Bias Workshop, delivering engaging diversity and inclusion learning Online via Zoom Webinar	3 Management & Professional Development Skills (by eLearning)	€135	€160
15 September	Personal Effectiveness for Legal Support Staff Online via Zoom Meetings	2.5 Management & Professional Development Skills (by eLearning)	€55	
28 September	Handling Difficult (Critical) Conversations Online via Zoom Meetings	3 Management & Professional Development Skills (by eLearning)	€135	€160
30 September	Business Law Update 2021 Online via Zoom Webinar	3.5 General (by eLearning)	€160	€186
12 October	The Business of Wellbeing Summit	2.5 Management and Professional Development Skills (by eLearning)	Complimentary	
13 October	Communications Skills Training Workshop Online via Zoom Meetings	3.5 Management and Professional Development Skills (by eLearning)	€135	€160
14 October	In-House and Public Sector Annual Conference 2021 Online via Zoom Webinar	2 General and 1.5 Management & Professional Development Skills. (by eLearning)	€160	€186
21 October	Property Law Update 2021 Online via Zoom Webinar	3 General (by eLearning)	€160	€186
Online, on-demand	Anxiety Awareness Course with Caroline Foran	1 Management & Professional Development Skills (by eLearning)	Complimentary	
Online, on-demand	Depression Awareness Course with Alastair Campbell	1 Management & Professional Development Skills (by eLearning)	Complimentary	

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