



Bring it on home

Cristina Stamatescu speaks to the Gazette about being an Irish solicitor from Romania



Good times, bad times

Examinership can be an attractive option for insolvent companies



No quarter

New research looks at the effect of mental stress on family-law practitioners

gazette

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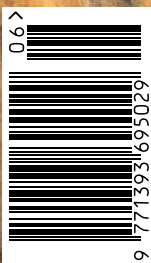
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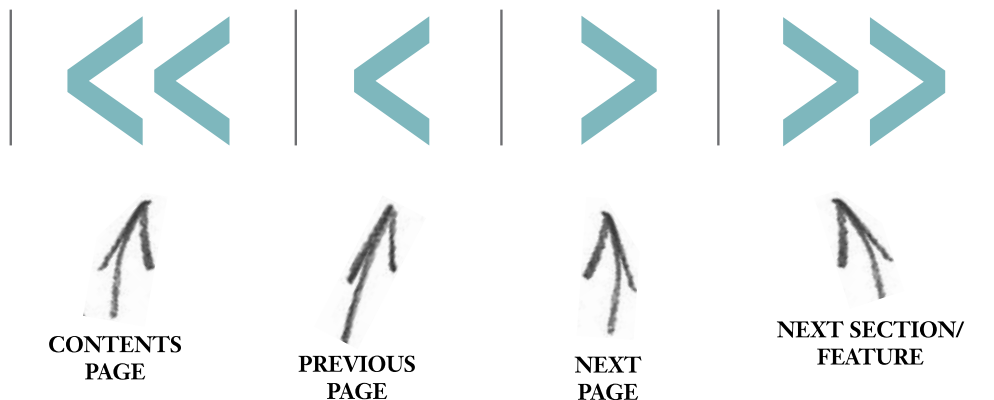
The nightmare of 'secondary traumatic stress'



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CASE STUDIES



SURESKILLS™

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Eugene F Collins embraces a different approach to IT in collaboration with SureSkills

EUGENE F COLLINS

Established more than 120 years ago, law firm Eugene F Collins (EFC) has moved with the times. In 2015, it implemented a practice management system, PracticeEvolve, which is now the beating heart of the firm, handling its document management, client accounts, client management and case management in one application.

Drive for efficiency

When the firm's internal IT infrastructure was due for upgrade, EFC issued a highly detailed Request for Tender. This set out the firm's requirements but also allowed the flexibility to propose a novel solution that was innovative in its format and delivery.

A radically different model for IT

SureSkills, who ultimately won the tender, proposed a radically different model from the other service providers who submitted proposals: using the 'Infrastructure as a Service' concept, SureSkills proposed retaining ownership of the equipment, then monitoring and maintaining it on behalf of EFC. This was a very attractive option to Rory Clerkin, IT Manager with EFC.

"Our role as an IT function in this firm focuses strongly on end user support. We're working with legal professionals who need to respond to their clients' needs in a timely manner. The SureSkills option also stood out for us as it freed up our IT staff to continue to provide user support and focus on other projects," he says.

SureSkills also placed a dedicated resource on site during the rollout of the infrastructure. Although it's possible to do much of this work remotely, this allowed the firm to handle any technical questions quickly as they arose. "Having a project engineer on site helped, not only to move the project on efficiently but also helped cement the working relationship with Sureskills through face to face interaction.", says Clerkin.

As part of the project, SureSkills also managed EFC's email migration and upgraded its disaster recovery platform. The nature of the legal profession means that documents are exchanged at a fast pace, and since 2010, EFC's email volumes had grown from 300GB to 2TB. It can now manage this growth easily. The firm also adopted Disaster Recovery as a Service through SureSkills, significantly improving its ability to restore operations while also removing the expense and delay

of having offsite backups to tape. Now, in the event of a major systems outage, the firm can make its systems available again to users within a short timeframe

Flexibility to grow

The project was "a complete success", with minimal staff impact as EFC moved from its older hardware to the new IT model. "The new infrastructure at EFC is flexible, so we can easily add more storage or computing power needed as our data volumes grow. Another benefit of the as-a-service model is that it's priced as a fixed monthly cost, rather than as a large upfront investment", adds Clerkin.

We've built up our relationship with the technical team in SureSkills over time. One of the benefits we've had from this, is that the team at SureSkills have always been available to provide design guidance and technical knowledge. They've wanted to enrich the relationship as much as we have and that has really made them stand out among other providers

Rory Clerkin, IT Manager

Long before this project, EFC had established a strong working relationship with SureSkills which involved pro bono technology discussions. "We've built up our relationship with the technical team in SureSkills over time. One of the benefits we've had from this, is that the team at SureSkills have always been available to provide design guidance and technical knowledge. They've wanted to enrich the relationship as much as we have and that has really made them stand out among other providers. We know them and we trust them, and we knew from that history that we could expect very high-quality delivery from a technology point of view, and that whatever they presented would work as described, if not better," Clerkin says.

PRESIDENT'S MESSAGE

KEEPING AN OPEN MIND

We welcome the uplifting mood throughout the country that the vaccination programme has brought. The lack of personal contact has caused difficulties for all of us, and created challenges for the Law Society's Council.

Zoom meetings have been effective and have kept business moving. However, the lack of physical presence and the mingling and networking that occurs, for example, both before and after in-person meetings, has been sorely lacking in virtual meetings. Given that such meetings are now very much part of doing business, we cannot lose sight of the fact that, as social beings, we need face-to-face interaction.

Council review

Council has embarked on a review of its leadership and effectiveness. The main purpose of the review is to seek to identify the issues and processes that are either supporting or hampering its workings and its leadership. The review is also considering the manner of appointment of committee chairs and committee members. Council members are, to a large degree, embracing the process.

The solicitors of Ireland are well ahead of other professions, with circa 360 volunteers sitting both on Council and committees. No other professional body in the country comes near to matching this. There are more applicants than there are places on committees. I believe that more committees can be established to harness their diverse talents and skills in niche areas.

Serving on Council

Council elections tend not to be overly competitive. However, serving on Council is a much bigger commitment in terms of voluntary effort than, for instance, serving on a committee.

It is very easy to get nominated, and I would earnestly ask you to consider doing so, or to

encourage and support a colleague in so doing. It is a democratic organisation, but the worst-case scenario would arise if there were fewer members willing to serve than the number of seats available. This would lead to seats being filled without an election – or leaving vacant seats unfilled.

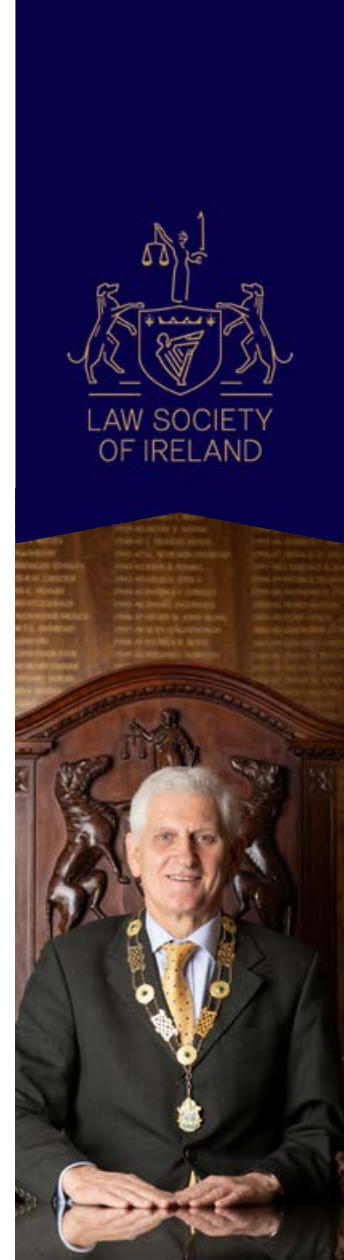
Serving on Council has provided me with a great education, and has been a very rewarding experience. So, do please give the matter your serious consideration.

Different views

The Law Society has a policy of diversity, inclusion and respect. Diversity also includes listening with an open mind to those with different views, which takes patience and time. I recently came across the book *Why Dissent Matters*, by Canadian lawyer William Kaplan. However, as I know that most solicitors are time poor, you may prefer to take a look at his 22-minute interview on [YouTube](#).

DIVERSITY INCLUDES LISTENING WITH AN OPEN MIND TO THOSE WITH DIFFERENT VIEWS

The 'Dignity Matters' survey is being undertaken, on behalf of the Law Society by Crowe, into bullying and sexual harassment in the workplace. If *only* those who have been affected respond, we will not have a representative, balanced result. It is critical that a broad spectrum of the profession completes the survey. On 6 May, Deirdre O'Reilly of Crowe provided us with the link to the survey, with a request that completed surveys be submitted in June 2021. You can contact her at deirdre.oreilly@crowe.ie. [E](#)



James Cahill

JAMES CAHILL,
PRESIDENT

FIG. ALAMY



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HAVE YOU MOVED? Members of the profession should send change-of-address details to: IT Section, Blackhall Place, Dublin 7, or to: customerservice@lawsociety.ie

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THE BIG PICTURE

AN EYE FOR AN EYE

Smoke rises after an Israeli airstrike on Gaza City on 12 May. A ceasefire agreed on 21 May paused Israel's devastating 11-day bombardment of the overcrowded Palestinian coastal enclave that, according to the Gaza health ministry, killed 254 Palestinians, including 66 children, and wounded more than 1,900 people. Hamas rockets claimed 13 lives in Israel, including two children.

On 26 May, the Dáil passed a motion condemning the "de facto annexation" of Palestinian land by Israel. Tabled by Sinn Féin, the motion passed after receiving cross-party support.

Foreign Minister Simon Coveney stated: "The scale, pace and strategic nature of Israel's actions on settlement expansion and the intent behind it have brought us to a point where we need to be honest about what is actually happening on the ground ... It is de facto annexation ... it reflects the huge concern we have about the intent of the actions and of course, their impact"



PICTURE: MAJDI FATHI/NURPHOTO/SHUTTERSTOCK

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SOUTHERN FAREWELL TO COUNTY REGISTRAR AFTER 35 YEARS OF SERVICE



Tributes were paid to retiring Cork County Registrar Deirdre O'Mahony at the 26 April sitting of Cork Circuit Court in Washington Street. Deirdre's appointment almost 35 years ago was a significant step forward for women. In the presence of Judge Seán Ó Donnabháin, Southern Law Association President Juli Rea made a presentation on behalf of her solicitor colleagues. She expressed her thanks to Deirdre for her many years of dedicated service to the legal profession and the general public. Among those present were Ms Justice Miriam O'Regan (High Court), Judge Olann Kelleher and Judge Mary Dorgan (District Court), as well as staff and colleagues from the Courts Service

ISIP RESTRUCTURES WITH NEW NAME



The Irish Society of Insolvency Practitioners recently changed its name to Restructuring and Insolvency Ireland (RII) to reflect the extent of restructuring work that its members carry out. Pictured are Mark Woodcock (chairman) and members of RII's elected council



Anne O'Dwyer



Robin McDonnell



Shane McAleer



Gareth Steen



Judith Riordan



Jim Stafford



Stephen Scott



Gavin Smith

DOHERTY: 'PASS ON INSURANCE SAVINGS'

■ Sinn Féin TD Pearse Doherty has challenged the insurance industry to pass on to consumers – “euro for euro” – the savings they will make from reduced insurance payouts.

Mr Doherty told the Oireachtas Joint Committee on Finance, on 19 May, that he had no faith that insurers would pass on the savings that were now resulting from reduced claims payouts following the introduction of the *Personal Injuries Guidelines* on 24 April – but he hoped he was wrong.

Appearing before the committee were representatives of FBD Insurance, Zurich, and Aviva, who were there to answer questions on the new guidelines and their effect on premium levels; business-interruption insurance for businesses that had remained closed during the pandemic; and reports that people were being denied mortgage-protection policies due to COVID.

Pocketing the benefits

Doherty asked why insurance costs had not yet been reduced, given that the guidelines now meant that payouts had reduced by up to 60%. The public wanted to see significant reductions in the cost of premiums, he said.

Now that the Judicial Council had approved the guidelines, Doherty said that he was con-



PICT: ROLLINGNEWS/IE

cerned that the insurance industry would “pocket much of the benefit from it”. Figures from the National Claims Information Database (NCID) show that, over the past decade, the cost of claims has reduced by 9% and the number of claims by 45%, but that premiums had risen by 35%, he said.

Insurance-industry representatives had been “begging and screaming” for this reduction, but had not, over the past three weeks, delivered reductions in the cost of renewal premiums. Mr Doherty cited as evidence a number of cases of flat or increased cover costs.

Declan O’Rourke (Aviva) responded: “Insurance is not a ‘three-week game’. We are committed to passing on the savings and, in our view, we have passed

on a lot of that already.”

Doherty asked the industry representatives when premiums would actually reduce, given the pledge to do so.

‘Signalling’ danger

“I have to be very careful about using numbers here today,” Anthony Brennan (Zurich) told the committee, adding that answering clearly about planned reductions could be seen as ‘signalling’ to the market. He said that Zurich was working to reduce costs for all its customers. Brennan said that percentages drawn from the NCID in 2019 would still apply on motor claims, but said he could not signal to the market the actual level of reductions.

On liability insurance, the same level of savings was not

coming through, he said, because the types of injury that fed into employers’ and public-liability insurance were of a moderate to severe level and did not have the same level of reduction. Under the new guidelines, in some cases, this was down by less than 50%, he said.

Mr Doherty challenged the Zurich executive, saying that he was “changing the tune, after the fact”, given that payouts for minor soft-tissue injuries had now reduced by 60%.

Doherty survey

The TD said that he had surveyed 1,000 people and, of those, only 20% had seen a reduction in premiums, 60% had experienced increases, while 20% were broadly the same as the previous year. Brennan responded that he was surprised at these figures, since Zurich had imposed a 4% reduction in premium costs during the first quarter, compared with the same period last year.

The TD said that insurance firms were pocketing huge amounts of money as a result of premiums being written in the last three weeks, as they know “damn well” that the claims or awards paid out will be significantly reduced.

“When are you and your company going to pass on these reductions to policyholders?” Doherty pressed.

IT’S ELEMENTARY, MY DEAR WATSON!

■ One of the country’s largest firms, Holmes O’Malley Sexton LLP, has launched ‘Holmes’ – a new sub-brand that will continue to cater for the firm’s growing portfolio of corporate, insurance, and public-sector clients.

The move marks an evolution in the 50-year-old firm. It now boasts a team of 140 staff, with offices in Dublin, Limerick,

Cork and London, all offering a full suite of legal services.

Harry Fehily (managing partner) says: “Our firm has a long-standing culture of heritage, integrity and quality, but also one of innovation.

“We don’t resist change, we embrace it. The launch of Holmes reflects how we adapt to the needs of our clients, provid-

ing a more tailored and specialist level of service.”

He went on to say that the firm’s strong corporate client base would benefit from its strong knowledge infrastructure in the financial services, insurance, construction, pharma and technology sectors.

“Our public-sector portfolio has also greatly increased,” he

said, “with large universities and city councils among our clients.

“Whether advising State, semi-State, large-scale multinationals or regional stakeholders, we always aim to deliver practical solutions to complex problems. As a firm, we are very much focused on continued business growth from these markets.”

MOVE YOUR CAREER TO THE NEXT LEVEL

■ The Law Society is inviting applications for this year's Women in Leadership mentoring programme. Applications are invited from both mentors and mentees on a countrywide basis, and from all areas of practice. The programme is presented in collaboration with Law Society Finuas Skillnet, which will provide both mentor and mentee training activities.

The programme aims to empower and support women in advancing their careers to a senior level. As a mentee, you may be wondering how you can progress to your next role, need help in developing a new skill that you find difficult, or be seeking guidance through these turbulent times. As a mentor, passing on your experience and knowledge can be highly rewarding, and it is a great way to support colleagues in the legal profession.



What's next?

- June 2021: complete the online [mentor](#) or [mentee application form](#), both of which can be found at [lawsociety.ie](#). Applications should be submitted by Friday 25 June for a chance to be matched in this year's programme.
- July 2021: matching takes place.
- August 2021: applicants (mentors and mentees) are informed via email whether they have been successfully matched. Where a match has been secured, applicants will be contacted with access details to the Law Society Finuas Skillnet mentor and mentee self-paced online courses. These courses must be completed in advance of the one-hour Zoom training session in September.
- September 2021: one-hour Zoom follow-up training session in best-practice mentoring techniques. All online learning will be via self-paced courses and are eligible for CPD hours. Following successful completion of training, applicants are informed of the match details.
- October 2021: the mentoring relationship begins.
- May 2022: the mentoring relationship concludes.

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- October 2021: the mentoring relationship begins.
- May 2022: the mentoring relationship concludes.

Queries about the programme should be emailed to lw@lawsociety.ie and queries about training to finuasskillnet@lawsociety.ie. More information can be found in the Women in Leadership section at [lawsociety.ie/womeninleadership](#).

DIGNITY MATTERS SEEKS VIEWS

■ Last month, the Law Society launched the Dignity Matters survey. Its goal is to provide an objective assessment of the current work environment as it relates to bullying, harassment, and sexual harassment in the solicitors' profession.

The confidential survey is being carried out with the help of external consultants Crowe (Ireland) and has been emailed to everyone on the Roll of Solicitors who has ever practised in Ireland. Trainees have also been invited to participate. If you have not received an email with a link to the survey, please email Deirdre O'Reilly at deirdre.oreilly@crowe.ie. She will reissue the survey to you via email.

Once all survey submissions have been received, and after the analysis and evaluation phase is complete, Crowe will deliver a final report with recommenda-



tions to the profession on how to tackle bullying, harassment and sexual harassment, and how to best prepare for challenges ahead, as guided by [international research](#) carried out by the IBA on these issues. A change programme to implement the recommendations will follow upon approval by the Law Society Council. You can find out more about this project at www.lawsociety.ie/dignitymatters.

The Law Society wishes to

express its thanks to everyone who has completed the survey to date. By participating, you will contribute to evidence that will influence a change programme for the profession. Julie Breen (Professional Wellbeing Project coordinator) is managing the roll-out of the Dignity Matters survey. If you have feedback or questions, you can contact Julie at professionalwellbeing@lawsociety.ie.

NOTICE – SBA AGM

■ Notice is hereby given that the 157th annual general meeting of the Solicitors' Benevolent Association will be held remotely by video conference on Monday 21 June 2021 at 11.30am.

It will consider the directors' report and financial statements for the year ending 30 November 2020, elect directors, and deal with other matters appropriate to a general meeting. A copy of the directors' report and financial statements can be found at www.solicitorsbenevolentassociation.com.

Any member intending to join the meeting should send their email address to the association's secretary, Geraldine Pearse, at contact@solicitorsbenevolentassociation.com. They will receive an email with the link to join the meeting.

ENDANGERED LAWYERS BERNARD COLLAERY, AUSTRALIA



PIC: SHUTTERSTOCK

Bernard Collaery (76) is a former attorney general of the Australian Capital Territory and is the principal of Collaery Lawyers, a Canberra-based law firm. Collaery represented the interests of the people of Timor-Leste over a long period of time, acting as legal advisor to the National Congress for Timorese Reconstruction in the period leading up to formal independence in 2002.

In 2013, Collaery alleged that two agents from the Australian Security Intelligence Organisation raided his Canberra office and seized electronic and paper files. At that time, Collaery was representing a witness in a case brought by the Timor-Leste Government against the Australian Government over the bugging of the Timor-Leste Cabinet offices during the negotiations for a petroleum and gas treaty in 2004.

In 2018, he and his client (a former intelligence officer known as 'Witness K') were arrested and charged with breaching secrecy laws. The bugging has not been accepted by successive Australian governments, which have maintained a 'neither-confirm-nor-deny' stance. Both nations signed a revised energy treaty in 2018.

A major feature of the Collaery and 'Witness K' cases is that they have been held in secret in accordance with the *National Security*

Information (Criminal and Civil Proceedings) Act 2004.

In mid-May, Collaery's appeal against an ACT Supreme Court decision upholding a secret trial was heard by the High Court (the federal supreme court) – the appeal itself was heard *in camera*. To successfully prosecute Collaery, the government will likely have to admit that the spying took place, but does not wish to admit this publicly. The circle can only be squared by holding the trial behind closed doors.

This ongoing prosecution has led to calls for reform of the *NSI Act* to better safeguard the principles of openness and transparency. The high cost of the trial to date has been deplored, and there are many calls for the prosecutions to be discontinued, citing the chilling effect, among other reasons.

Long-promised reform of the federal whistleblowing legislation, the *Public Interest Disclosure Act 2013*, is also being called for. In relation to that act, two other prominent whistleblower prosecutions are ongoing: against defence whistleblower David McBride and tax-office whistleblower Richard Boyle.

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

MINISTER SEEKS INPUT ON FAMILY- LAW REFORM

■ The Department of Justice's consultation on the future of the family-justice system remains open only until 11 June. The consultation hopes to draw on the experiences of legal practitioners and family court users to find ways to modernise and improve the system.

Minister of State Hildegard Naughton said: "The establishment of a family court and a transformed family-justice system is one of the major elements of *Justice Plan 2021*. This consultation process will support the Family Justice Oversight Group, which is chaired by the Department of Justice, as it drafts a family-justice strategy to help us bring about these much-needed reforms."

The next stage of consultation will take place later this summer



Hildegard Naughton: 'Help us decide what a future family-justice system might look like'

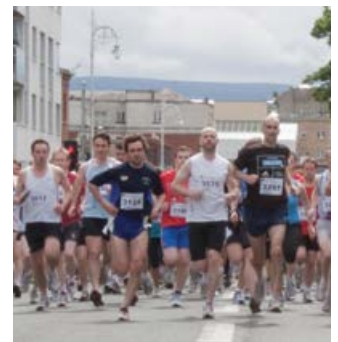
and will, for the first time, seek the views of children and young people. The public consultation (which opened on 17 May for four weeks) can be accessed at www.justice.ie (search for 'Open Consultation on the Future of Family Justice').

READY, STEADY, CALCUTTA RUN!

■ The virtual Calcutta Run will be opening for registration in June, so check with your firm for details and keep an eye out for more news at calcuttarun.com, in the *Gazette*, and on gazette.ie.

The virtual run is scheduled to take place from 17-26 September. If COVID-19 restrictions ease over the coming weeks, however, and it becomes possible to organise a run or scaled-back event at Blackhall Place, the organisers will keep you updated.

It's vital that the legal profession continues to support the benefit charities – the Peter McVerry Trust and The Hope Foundation – in order to assist those experiencing homelessness in Ireland and Kolkata. The



charities have been struggling with funding during the past year, so the plan is to reach the same target as in recent years.

To be kept updated on developments, visit www.calcuttarun.com and sign up for the newsletter at the bottom of the home page.

IRISHWOMAN NEW LEADER AT GLOBAL GIANT LINKLATERS

■ Global law firm Linklaters LLP has elected Monaghan-born Aedamar Comiskey as its new senior partner. The 1990 UCD BCL graduate, who currently serves as the firm's global head of corporate, will take up her five-year term on 1 July, succeeding incumbent Charlie Jacobs.

Jacobs said: "The Linklaters partners have chosen a terrific next senior partner. I have known Aedamar for her whole career at Linklaters. I have so much admiration for her client focus, strategic thinking, and leadership skills, not to mention her energy and passion for our people, culture and communities. I know she will lead the firm with confidence and distinction, and I shall follow with great interest the direction in which she takes the firm during her term."

Comiskey said she was hugely



Aedamar Comiskey

proud to have been elected: "I want Linklaters to stand out as the law firm with the best minds in the business, from truly diverse backgrounds, contributing different perspectives to solve the complex challenges facing business and society today."

Comiskey joined the firm as a trainee in London 29 years ago and was elected partner in 2001.

GONG FOR DIPLOMAS

■ The Law Society's Diploma Centre has won *Public Sector Magazine's* education support category at this year's Excellence in Business Awards. Now celebrating its 20th year, the Diploma Centre offers an impressive portfolio of over 80 postgraduate courses, from certificates and diplomas to master's programmes. During the pandemic, all courses have been delivered entirely online. The technology can record, stream, and replay courses, providing flexible learning options. In non-COVID times, participants also have the option of on-site learning at the modern Blackhall Place campus.

Accepting the award, Claire O'Mahony (acting head of the Diploma Centre) said: "We are delighted with the recognition for



Claire O'Mahony

our programmes. We are committed to providing courses that reflect value, relevance and practicality, and that serve the needs of the public sector. Congratulations to the entire Diploma Centre team, which works tirelessly to deliver excellent, flexible legal education."

IRLI IN MALAWI CASH BONDS THAT PENALISE THE POOR



FIG: MACDARA Ó DRISCEOIL

In Malawi, suspects granted bail frequently continue to remain in prison for extended periods because of extreme poverty. Bail is often granted by the court on condition of payment of an unaffordable cash bond. Families struggling to raise the necessary money may have no choice but to sell their most expensive possessions, such as land or a goat, to secure the release of a family member. The law states that no suspect with bail should be forced to remain in prison because of poverty. Despite this, many judges continue to impose cash bonds that penalise the poor.

The courts will generally require that two family members act as sureties before a suspect is released on bail. Sureties, who often live in isolated and inaccessible villages, must travel to be examined at court. Families often struggle to locate transport money, with sureties in one case setting off from their village at 3am to travel 90km on an old bicycle to the court in Lilongwe. IRLI supports such cases, often meeting family members in the shade of a mango tree in front of court, where they are orientated by a

paralegal before being examined by the court.

If there is a risk of mob justice, the community may not want the accused to be released on bail. The law states the court may only refuse bail in exceptional circumstances because of a risk of retaliation. Community distrust in the legal system sometimes leads to mob violence. It is, therefore, crucial to ensure that the suspect has a safe place to live if released.

The community may believe the accused is guilty of the offence and may not understand the difference between an acquittal and release on bail pending trial. The slowness of the legal process reinforces the community's misconception that bail is indistinguishable from an acquittal.

In many cases, people will gather together to discuss the case before deciding whether or not to welcome the suspect back to the community. IRLI's role in sensitising communities on human rights is, therefore, a crucial aspect of the rule of law in Malawi.

Macdara Ó Drisceoil is IRLI's legal aid bureau programme lawyer.



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THE CRITICAL VOICE IN MY HEAD

Q Recently, I have noticed a very critical voice in my head. I feel like I do not deserve or shouldn't be in the role I have. I presume that everything I do in work is wrong and that I am not good enough. How can I prevent these thoughts from occurring?

A As humans, we can often downplay our success, accrediting it to sheer good luck or being in the right place at the right time, instead of the likely truth – which is that our success is due to our skillset, knowledge and experience, which is why we were likely hired in the first instance.

Like any good lawyer would do, the first step is to look at the factual evidence we have to support our claim. I suggest that you look at the factual evidence that underlies the idea that you

are undeserving of the role, or that everything you are doing is wrong. It is often a difficult task to find factual evidence to support these thoughts. The thoughts we have are quite normal and can sometimes spring from how we feel about ourselves and our self-esteem.

It can also show up in the form of what is commonly referred to as 'imposter syndrome' (IS). IS generally refers to someone who believes they are undeserving of the role they are in, or feel incompetent, or not good enough for it. To put it plainly, you may feel like a phony in the role, or playing at the title you have been given.

Contrary to what you might think, this is quite a common experience among professionals at all levels and backgrounds, regardless of status, position or education. IS can

hit each one of us at different times. When this happens, it can distort our confidence and self-esteem. One way of tackling it is to challenge the self-limiting beliefs you have about yourself and counteract them with empowering beliefs.

Empowering beliefs must be factual and realistic, whereby you discover that your self-limiting beliefs are usually a story that you have been telling yourself that you believe to be true. A starting point could be challenging the belief that 'everything I do is wrong'. Ask yourself whether that's a factual statement or whether it is your own thought about the situation. Remember: our thoughts are not always factual.

An empowering belief to counteract this could be: 'I am learning a new task and have done things correctly in the past.' Begin to challenge each

one of these negative beliefs you have about yourself, and you will begin to see how many are factual, somewhat factual, or not at all – and reinstall some empowering beliefs.

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

This question and answer is hypothetical and was written by Ursula Cullen, solicitor and certified life and executive coach. Any response or advice provided is not intended to replace or substitute for any professional, psychological, financial, medical, legal, or other professional advice.

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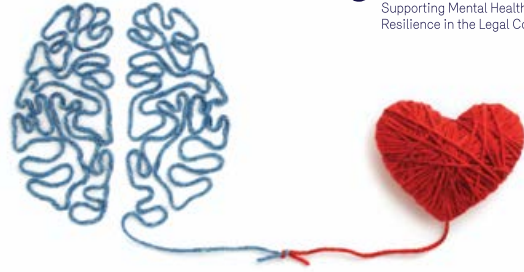
- Providing a forum for consideration and discussion of Insolvency matters.
- Promoting best practice in the area of Insolvency.
- Liaising with Government agencies and making recommendations on legislative reform governing Insolvency.
- Promoting the study and learning of Insolvency practice.

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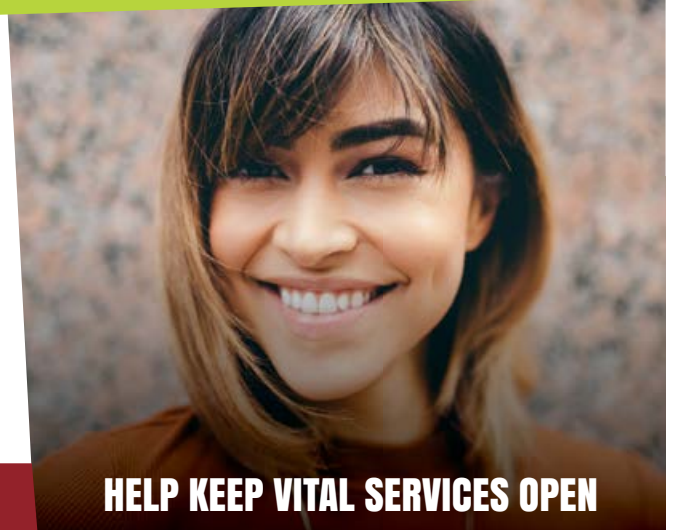
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HELP KEEP VITAL SERVICES OPEN

KEY CONSIDERATIONS IN RESPONDING TO AUDITORS' QUERIES

From: Mary Tobin, Meagher Solicitors, 8 Exchange Place, IFSC, Dublin 1

It is tempting to view the job of replying to audit requests as an inconvenient, time-consuming and thankless one. However, this work can become less onerous through the implementation of internal procedures for responding to auditors' requests that reflect the delineation of the roles and responsibilities of officers of the client company versus those of solicitors. A clear policy balancing the client's auditors' requirement for information with the client's right to confidentiality would minimise the practice-management risk inherent in replying to audit requests.

I suggest that in developing appropriate procedures, the following matters would be taken into consideration:

a) *Is the format of the audit request acceptable?* Check whether it goes beyond the 'standard' request agreed between Chartered Accountants Ireland and the Law Society of Ireland and the Law Society of Northern Ireland to confirm whether, in the solicitor's opinion, the estimated provisions provided the company directors are reasonable (see the Business Law Committee guidance on responses to audit queries in the May 2021 *Gazette*, p62)

If the audit request is non-standard, then consider the potential practice-management risks of providing an unqualified response.

b) *Has the audit form been completed by the company directors?* Resist any attempt by the client to shift the burden of completing the audit request to the solicitors – the solicitor's job is to confirm the reasonableness of the estimated provisions.

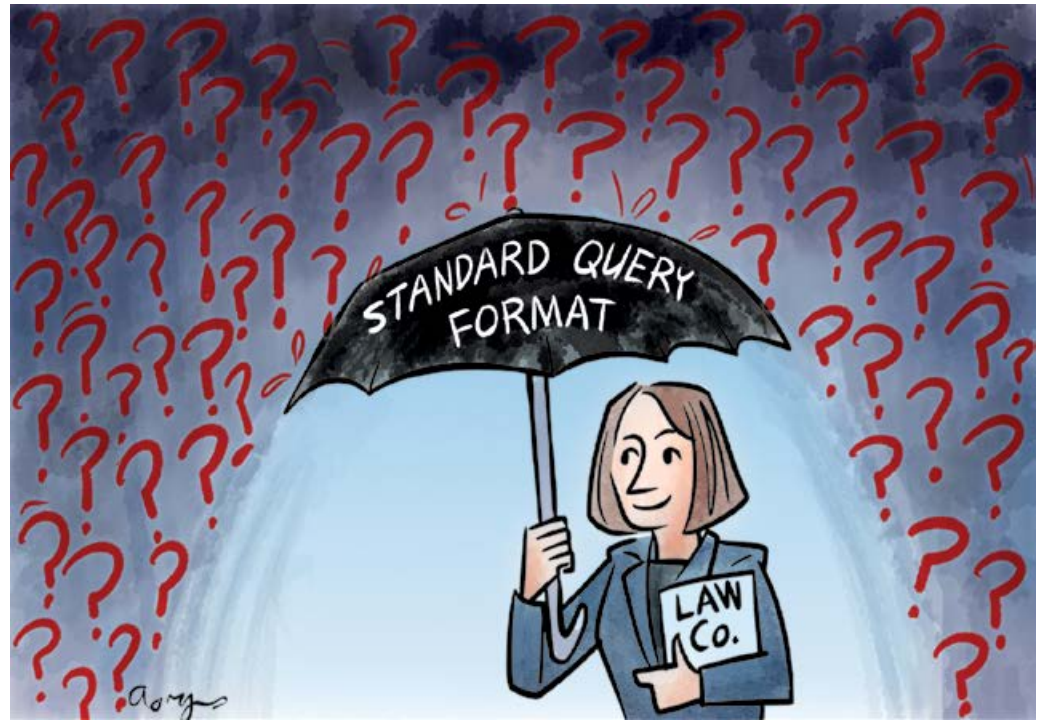
Insist that the directors of the company complete the audit

request, listing the relevant items, and making estimates, and specifying any outstanding or threatened claims in compliance with their statutory obligations to do so (see section 330 of the *Companies Act 2014*).

Alongside their legal responsibility to complete the audit request, the company directors are afforded some statutory protection against negligence or default in the act of completion, in that a court may grant relief to officers of a company if they acted honestly and reasonably (see section 233 of the *Companies Act 2014*).

No such safety net extends to solicitors.

c) *Does the audit form include a 'non-standard' request to answer non-specific questions?* For example, does the audit form ask whether there are any other material claims made/threatened against the company of which the solicitors are aware or, if there are, to specify them?



Arguably, solicitors could not reasonably be expected to have access to the necessary information to enable them reply fully to such questions. If solicitors were to take on the burden of replying to such general queries, and they were to omit an outstanding claim in which another solicitor in the practice had been consulted and which had been omitted from the client's list, they could potentially be guilty of negligence, or in breach of contract.

Also, replying to such non-specific questions would require solicitors to form judgements as to the materiality of claims, which would seem to be an intrinsically risky step to take, as they would not be qualified to do so.

Consider whether it would be appropriate to disclaim detailed knowledge of matters listed, and qualify the reply.

d) *Has the client authorised the reply to the audit request?* Because communications between the

client's auditor and the client's solicitor do not benefit from legal professional privilege, solicitors should consult with their client and obtain their client's express authority prior to disclosing information to the auditor, which then arguably loses its privilege and could be disclosed by the auditors to third parties.

The solicitor's right to withhold information from replies to audit requests on the grounds of privilege is recognised in the *Companies Act* (section 392(7) of the 2014 act), which provides that no one may be compelled to disclose any information to the auditors that a person would be entitled to refuse to produce on the ground of legal professional privilege.

Finally, in view of the value to the client of this important work, and the risk element involved in replying to audit queries, consider making specific provision in the section 150 legal costs letters to charge for it. [g](#)



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CAPITAL TAX ACTS 2021

Michael Buckley (editor). Bloomsbury Professional (2021), www.bloomsburyprofessional.com. Price: €125 (incl VAT).

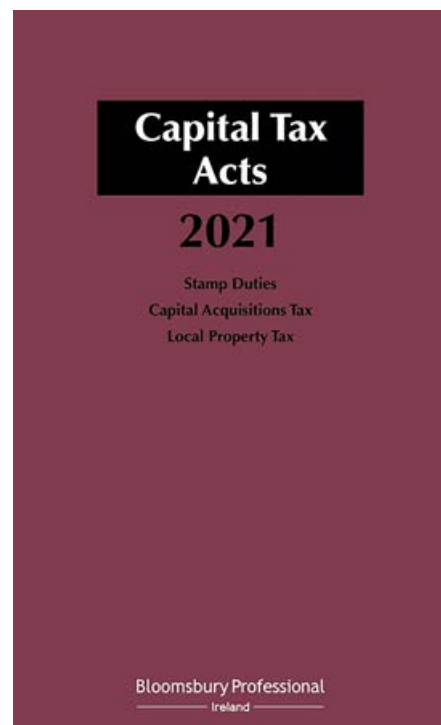
This book, now in its 29th edition, was first published in 1989. This is a definitive reference book on capital taxes, edited by Michael Buckley of the Revenue Commissioners.

An explanation as to how to use the book, and the *Taxpayers' Charter of Rights*, is covered in the preface. The book is divided into three parts: capital acquisitions tax, stamp duty, and local property tax.

It sets out the consolidated versions of the *Stamp Duties Consolidation Act 1999*, the *Capital Acquisitions Tax Consolidation Act 2003*, and the *Finance (Local Property Tax) Act 2012*, together with legislation, regulations, and orders relevant to each tax head. This edition incorporates the *Finance Act 2020* changes, together with recent case law.

The book is extensively, but concisely, cross-referenced and annotated to a high technical level, identifying to the reader amendments, case law, Revenue practice and material, narrative references, and Tax Appeal Commission determinations. A useful table of cases, a table of statutory references, and a destination table are provided. Where only the subject matter is known to the reader, a helpful index is provided.

At 1,729 pages, this book is voluminous but, due to its well laid-out structure, is easy to navigate. How useful it is to have in one place a comprehensive and up-to-date publication covering capital acquisitions tax, stamp duty, and local property tax! The editor has painstakingly annotated the legisla-



tion in a single, convenient publication and, in so doing, has carried out a real service for solicitors working in this area. This book will prove to be of immeasurable value to practitioners, policymakers and academics alike. My version is already tagged with sticky notes – a mark of its utility.

Ruth Higgins is a solicitor and CTA with Gerrard L McGowan LLP.

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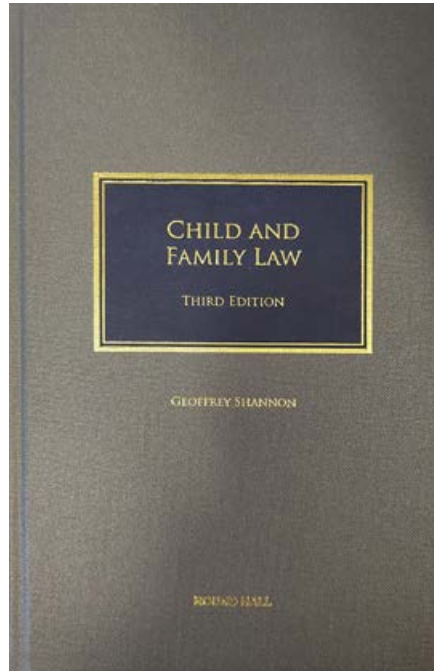
CHILD AND FAMILY LAW (3RD ED)

Geoffrey Shannon. Round Hall (2020), www.roundhall.ie. Price: €365 (incl VAT).

Over three decades, Prof Geoffrey Shannon has established himself as one of Ireland's leading experts in child and family law. A powerhouse of wisdom and expertise in this important area, Prof Shannon has made an immensely positive contribution to this field, not least in this book, *Child and Family Law*.

The third edition of this impressive text offers a wide-ranging and thorough account of all aspects of child law. It opens with an illuminating critique of the overarching constitutional framework addressing children's rights, followed by a very useful review of multiple topics as they relate to children, including citizenship law, contract law, torts, succession, marriage, and employment law. The text also offers detailed analysis of relevant EU law measures and international conventions, as well as a very informative chapter on education and the law.

There is a strong focus throughout the book on child safeguarding, welfare, and protection, with care proceedings and options for children in care featuring prominently. An entire chapter addresses the prevention of, detection of, and responses to child abuse. In addition, the text explores the law relating to child refugees, asylum-seekers, and separated minors, as well as the legal position of children with disabilities. The law relating to children in the criminal justice system, both as alleged perpetrators and as victims, is also



covered – as is the experience of children, generally, in the courts system.

The text comprehensively examines the topics of adoption, guardianship, custody, access, and maintenance, as well as child abduction. The closing chapter fittingly looks to the future of child law, with some thought-provoking detail on medical aspects of child law, assisted-reproductive technologies, and

on the protection of children in the digital environment.

It is genuinely difficult to do justice to this most impressive text, this *tour de force* contribution to the field of Irish child law. The book is both broad in scope and immensely detailed in its coverage. Throughout, the author marries a high-level constitutional and international legal analysis with a keen eye for the fine detail of legislation and the nuance of case law.

Characteristically clear, precise and readable, the text not only addresses the content of the law, but also provides illuminating context and critical analysis that greatly contributes to the reader's understanding. Policymakers will find the content especially invaluable in shaping further reform of the law, but *Child and Family Law* will also prove to be a superb resource for practitioners, child professionals, academics, and students seeking a comprehensive expert account of child law.

This edition continues the text's outstanding contribution to the field of child law. It will be a most welcome addition to the bookshelves of anyone engaged in, or interested in, exploring all aspects of this important area of law. [E](#)

Dr Fergus Ryan is senior lecturer in the Department of Law, NUI Maynooth.

LEGAL EZINE FOR MEMBERS

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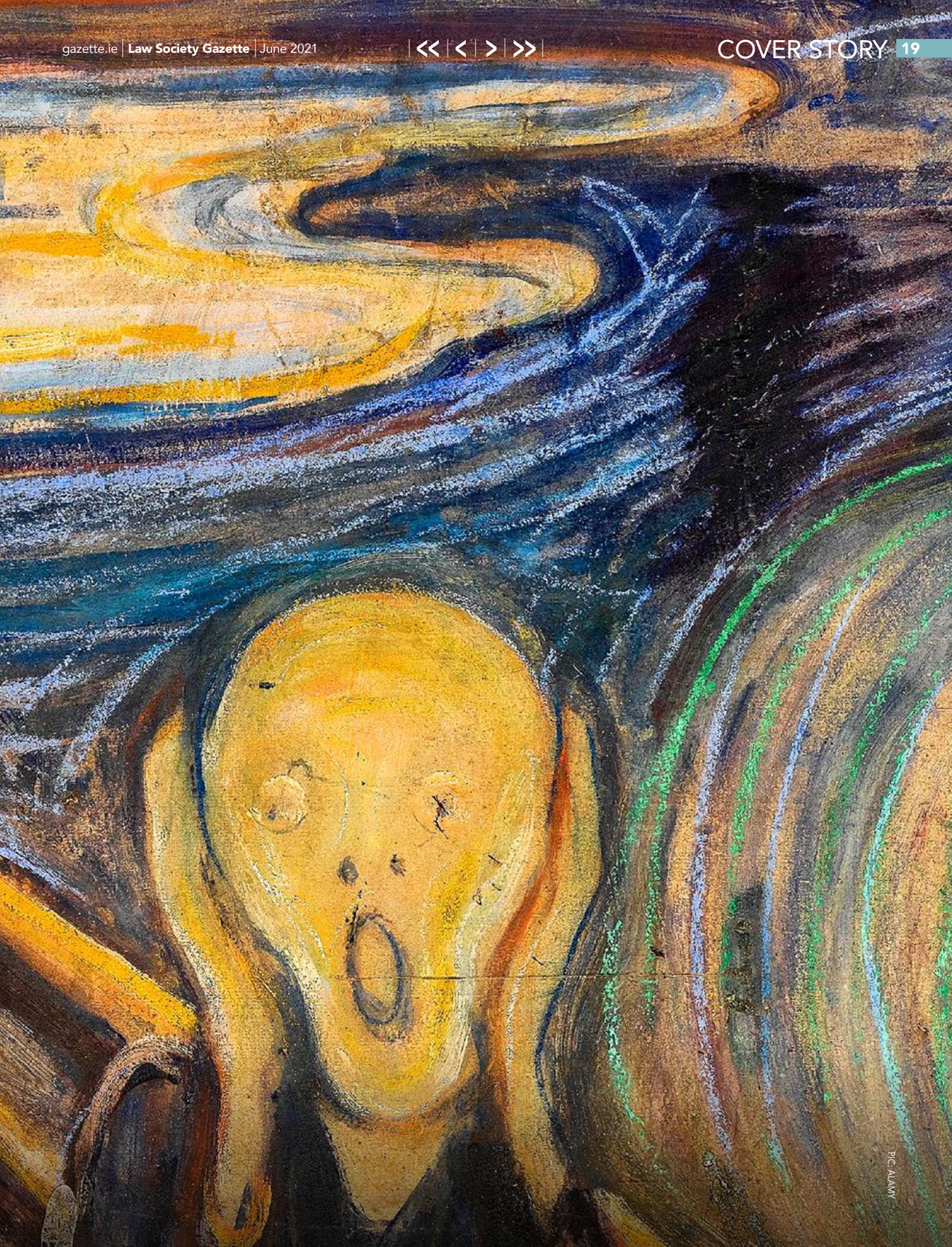




SILENT WITNESS

It has taken society a long time to recognise that those who witness the horrors inflicted on our most vulnerable citizens are affected by what they see and hear, writes **Tony Bates**

DR TONY BATES IS A CLINICAL PSYCHOLOGIST, ADJUNCT PROFESSOR OF PSYCHOLOGY, A WRITER AND BROADCASTER



≡ AT A GLANCE

- In the family and criminal courts, judges, solicitors, barristers and Courts Service staff encounter the darker side of human nature
- Those who come into continued close contact with trauma survivors may also become indirect victims of that trauma
- 'Secondary traumatic stress' applies to most people who are exposed to traumatic experiences that come before the courts



In 2016, a British High Court judge cried during a hearing. Later that year, a second judge became tearful in similar circumstances. Both had been listening to testimonies of unspeakable sexual violence. The popular press had a field day. The credibility and competence of both men were called into question. None of the media reportage bothered to ask why it had happened.

At the time, the Lord Chief Justice was Sir Thomas of Cwmigedd. Concerned for his colleagues and annoyed at the short-sightedness of the press, he issued a strong public statement: "Few people have any idea of the sheer depravity to which people can sink, and a judge often has material in front of him which cannot but distress people." He added as a note of caution: "The difficulty we face at the moment is that the rise in sexual offending is continuing."

Darkness visible

In the family and criminal courts, judges, solicitors, barristers and Courts Service staff encounter the darker side of human nature. Our potential for cruelty and exploitation of the most vulnerable citizens is on display in graphic detail every day. It has taken society a long time to recognise that those witnessing these



P.C. SHUTTERSTOCK

FEW PEOPLE HAVE ANY IDEA OF THE SHEER DEPRAVITY TO WHICH PEOPLE CAN SINK, AND A JUDGE OFTEN HAS MATERIAL IN FRONT OF HIM WHICH CANNOT BUT DISTRESS PEOPLE

horrors in the course of their daily work are affected by what they see and hear.

We have struggled to find language to describe this. Terms such as ‘compassion fatigue’, ‘burnout’, and ‘vicarious trauma’ have failed to capture the lived experience of shock and distress that exposure to these horrors can provoke. Lately, the preferred

language for how we are affected by witnessing the impact of trauma in the lives of others is ‘secondary traumatic stress’.

Whatever words we use, what we’re talking about is the vulnerability of those who care about the suffering of others.

Trauma refers to what happens inside us when we experience a distressing event.

When our feelings become intense, and when we can neither fight against what is happening nor escape, we freeze. We lock the intense emotions that have been provoked in us into our muscles and tissues. And only when we feel safe are we able to release our pent-up shock and make sense of what has happened.

In plain sight

But sometimes it's not easy to acknowledge what we have experienced. We are left in a twilight zone where we can't take it in, and we can't ignore it. We can't move on. We become frozen in time. We do what we can to avoid thinking or talking about what has happened.

Our blocked emotions give rise to physical symptoms, feelings of anxiety, helplessness and anger, and unwanted intrusive thoughts. When these persist over time and compromise a person's ability to function, we describe a person as having post-traumatic stress disorder (PTSD).

The term 'secondary traumatic stress' (STS) refers to the observation that people (such as family, friends, and human-services personnel) who come into continued close contact with trauma survivors may also become indirect victims of that trauma. Charles Figley (1999) defined STS as "the natural, consequent behaviours and emotions resulting from knowledge about a traumatising event experienced by a significant other. It is the stress resulting from helping or wanting to help a traumatised or suffering person."

Beyond guilt

In legal settings, when we listen to traumatic events being replayed in detail, we become a 'witness' to rape, child abuse, domestic violence, and death. We collect bits and pieces of these accounts, which can leave us with pictures in our mind or intense feelings running through our body. It is normal to be affected by such experiences. It is not surprising that we feel outraged, horrified,



PIC: SHUTTERSTOCK

shocked, saddened, or vulnerable.

STS includes symptoms that parallel those experienced by people who suffer the consequences of direct exposure to trauma – unwanted intrusive imagery about what has been witnessed, emotional numbing, attempts to avoid anything that might trigger memories of the event, and a constant feeling of being 'on edge'.

Like PTSD, STS reactions can persist well beyond exposure to some horrific incident, and can compromise one's ability to function. The term 'secondary traumatic stress disorder' (STSD) is used to refer to the situation where symptoms persist and interfere with one's work, close relationships, and peace of mind.

A very important Irish survey conducted by barrister Jennifer Bulbulia (2019) – commissioned by the DPP because of concern for the wellbeing of her staff – revealed that almost 60% of staff in that department suffered from exposure to the

distressing details of the cases they dealt with on a routine basis. The most distressing cases were those involving graphic details of child abuse and road-traffic accidents, especially when they involved photographic and video evidence.

Nearly a fifth of the DPP staff were found to 'frequently or very often' use medicines or non-prescription medicines to cope with the stress of their jobs, while a similar proportion relied on alcohol. Others reported trouble sleeping or experiencing a heightened degree of fear for their own children's safety as a result of dealing with child sex-abuse cases. Fewer than 5% of the 106 people who completed the survey had sought professional assistance. Fewer still had looked for any support from management in dealing with the emotional impact of their work.

In a lonely place

In 2016, my colleague Micheline Egan and I were invited by the Learning and Development Department in the Courts Service to run a series of one-day workshops to help staff understand and cope with STS. These training days were run on a regular basis over three years, throughout Ireland, and were always fully subscribed. Participants were those who played a critical supportive role to the Courts Service.

One man described the many hours he had to spend in family courts listening to accounts of domestic violence where children were implicated. He described himself as a "silent witness", adding: "I am invisible in court settings. I sit quietly and listen to everything, but I can't react. Some

IN THE FAMILY AND CRIMINAL COURTS, SOLICITORS, BARRISTERS AND COURTS SERVICE STAFF ENCOUNTER THE DARKER SIDE OF HUMAN NATURE. IT HAS TAKEN SOCIETY A LONG TIME TO RECOGNISE THAT THOSE WHOSE JOB IT IS TO WITNESS THESE HORRORS ARE AFFECTED BY WHAT THEY SEE AND HEAR

THE LIKELIHOOD OF EXPERIENCING SECONDARY TRAUMA IS INCREASED WHEN THERE IS A STRONG PERSONAL IDENTIFICATION WITH THE VICTIM. UNTIL WE RECOGNISE THIS, NO ORGANISATION CAN BEGIN TO DEAL WITH IT PROPERLY

days, I take it all in my stride and I think it's not affecting me. But then I go home, and when my head is on the pillow, everything hits me."

Typical symptoms of STS that participants have reported include muscle pain, abdominal disturbances, sleep difficulties, 'zoning out' on the job, developing a fixed gaze that draws comments from co-workers, difficulty absorbing new information, and self-medicating (food and alcohol). The most common reaction was to feel 'ashamed' for reacting as they did. Many kept their problems a secret for fear of being seen as 'weak'.

One of our own

Similar to the findings of Jennifer Bulbulia's research, we encountered particular distress in parents who had listened to testimony of sexual abuse and violence to children who were the same age as their own. Previous experience of issues that emerge in the courts also make a person more vulnerable. One woman working in the Family Court described how "every day I'm in there watching children who've been abused, it triggers me".

People can and do recover from the harmful effects of trauma, whether experienced directly or indirectly (through hearing or reading evidence). What enables this to happen is being able to acknowledge what has happened, and how distressing it has been for them. When people feel heard and experience the support of colleagues and friends, they can make sense of what has happened, feel compassion

for all concerned – including themselves – and move on with their lives.

Recovery does not mean that we forget what has happened, or that we don't have strong emotions about abuses we have witnessed. But we accept that really bad things happen, and we channel the energy of our empathy and outrage in whatever way we can.

STS can become a problem where a person is unable – or not allowed – to acknowledge their distress in response to work-related atrocities that they witness. For such a person, getting back to business as usual may require that they shut down what they feel and try hard not to think about the images they've been left with. When that person shuts down painful feelings and memories, they find it hard to be present with others. They may appear withdrawn. Their close relationships may become troubled. Unprocessed emotional distress also compromises their immune system. People are more prone to illness, and they develop physical symptoms that they often assume are unrelated.


A time to heal

Our workshops with the Courts Service met with genuine appreciation that the unique stresses they experienced on the job were being recognised. Sharing personal reactions to painful exposures in the courts 'normalised' them and created solidarity between staff members. Senior staff members proved to be an invaluable resource for junior staff. They freely shared coping strategies that they had refined over many years. Building their resilience was as important as debriefing.

Factors promoting resilience include the ability to acknowledge the gravity of what is encountered, knowing how to take care of oneself in the aftermath of shock, and having access to real relationships where we can reflect safely on what we've experienced.

The strongest message that participants in these training days left us with was the need to recognise that STS applies to most people who are exposed to traumatic experiences that come before the courts. The likelihood of experiencing secondary trauma is increased when there is a strong personal identification with the victim. Until we recognise this, no organisation can begin to deal with it properly.

The resources people need are largely informal: sensitivity and checking-in by supervisors; opportunities to access informal mentoring from more experienced colleagues; education and training in how to manage distressing images, feelings and physical symptoms; and what responsible self-care means. Certain staff may need access to professional therapeutic help, and this should be facilitated in a way that protects their privacy and dignity.

Never underestimate the silent witness. 

If you have been affected by any of the issues raised in this article, you can find support through LegalMind. LegalMind is an independent and confidential mental-health support available to solicitors and their dependants, 24 hours a day, and can be contacted at 1800 814 177. Find out more on www.lawsociety.ie/legalmind.



IMMIGRANT SONG

Cristina Stamatescu speaks to **Mary Hallissey** about the challenges of working as an Irish solicitor from Romania, dealing with aggressive clients, and the loneliness of the long-distance sole practitioner

ALL PICS: CIANN REDMOND

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

A woman with dark hair, wearing a bright red coat and black tights, is sitting on a wooden garden chair. She is gesturing with her hands as if speaking. The background is a stone wall with two arched windows, and there are green plants and trees around her.

R

Romanian-born, Irish-trained solicitor Cristina Stamatescu has worked hard on her self-esteem. Being the first Romanian lawyer ever to qualify as a solicitor in Ireland (in March 2014) has not been without significant challenges.

While Cristina often receives positive and motivating feedback for her work

in immigration law, she sometimes has to deal with a backlash after failed applications. In order to continue doing the work, and to help her cope with the verbal abuse she has been subjected to, Cristina needed to attend regular therapy sessions. She says that the counselling only worked because she attended weekly meetings and diligently did her 'homework'.

"I took this as a challenge. I worked very

I'VE LEARNT TO BE ABLE TO SAY, 'I'M FROM ROMANIA!' WITH PRIDE, BUT IT'S BEEN A JOURNEY OF TEACHING MYSELF TO ACCEPT ME AS I AM, AND NOT TO ALLOW OTHERS TO PUT ME DOWN BASED ON THEIR DISCRIMINATORY APPREHENSIONS

hard on getting outside my comfort zone, trusting my therapist, and believing in the work I was doing," she explains. Cristina says that the rewards are priceless.

"I am still in contact with this amazing spiritual mother of mine, and am forever grateful to her for believing in me and bringing me on the correct path to the best version of myself," she says.

How many more times

The disrespect that Cristina experienced was usually upfront, but sometimes unspoken, and generally related to her Romanian heritage.

Her nationality isn't immediately obvious from her accent, and some acquaintances

initially advised her "in good faith" not to disclose her Romanian origins.

"That's what I experienced, in my first few weeks and months in Ireland," she recalls. "It's not an issue that I have, but it's the reaction of people when I say I'm from Romania. There are so many good Romanians in Ireland and all over the world, but people don't get to know them," she points out.

"I've learnt to be able to say, 'I'm from Romania!' with pride, but it's been a journey of teaching myself to accept me as I am, and not to allow others to put me down based on their discriminatory apprehensions."

Family members, friends, acquaintances, clients, and even translators have, at times,

disrespected her, but she has learned to confront that and say 'please don't speak to me like that', or 'I will not allow you to treat me like this (anymore)'."

Communication breakdown

Cristina has also had to halt consultations with translators when it was evident that her words were not being conveyed correctly to clients. Some translators have become aggressive, rude, abusive and defensive when any such interjection has been made.

"It is difficult, as all of this happens in the presence of the client, who often does not fully understand what is happening," Cristina explains. She has often been brought to tears at the treatment. In one case, neighbouring office colleagues came to her aid after an onslaught from a highly aggressive translator.

Cristina has security in the building of her office to protect her and the staff in her Smithfield, Dublin 7, premises.

"We are front-liners, but many lawyers will not wish, or cannot afford, to show their vulnerability, as the nature of the job obliges us to be strong," Cristina says. "I've learned that incidents like these are part of the job. I've done the work on myself to be able to deal with these situations. It's tough dealing with abusive clients and not a lot of people talk about this. For me, it's part of my life and I've learned to deal with it. It's also a cultural difference.

"It is very hard, when working with a lot of people from all over the world, to be a female young person telling someone they have to get certain documents or proofs, in





IN ROMANIA, I FELT I HAD DONE EVERYTHING I COULD HAVE, PROFESSIONALLY, AND I WASN'T HAPPY – SOMETHING WAS MISSING. SO, I PACKED UP MY LIFE

order to strengthen their case. Or giving clients legal advice that they may prefer not to hear or pursue, or to tell them that they don't have a case, or to demand from a translator to properly translate what you are saying. It's tough as a female to deal with people with different values and cultures – to be the boss, to be in charge.”

The battle of evermore

Cristina often hears ‘amazing’ background stories in her immigration law client consultations, which are not then followed through with the required support documents. “I have noticed a misunderstanding of our solicitor role, where a client engages legal services and believes that's all that is required at their end, with no need to do anything else and no need to provide up-to-date instructions, or even to attend court.

“As a result, the application is likely to fail, and you get an upset client that might take a personal vendetta against you as the lawyer and express such grudges by emails, phones, texts, social media, unfounded complaints, and so on. We have to learn to deal with such occasional aggression.

“I can deal with what's in front of me. I take cases based on what is presented to me and whether I believe that clients have an

arguable claim. But sometimes it's out of my hands.

“I take cases I believe in, on the premise that the client is honest with me and gives me all the information. I always emphasise, and strongly advise how important it is, that the client is providing me with the truth, and through me, the different departments where the application is processed, or the court.

“I don't think we can change people or change the world, but it's a battle within ourselves to be ready and prepared in ourselves to deal with unpleasant and challenging things.”

Achilles last stand

“I have Romanian clients who say: ‘I'm just coming to you for a consultation – I need advice about this or that. But I'm going to go to an Irish solicitor’. And I tell them, ‘I am an Irish solicitor!’ I always get the same reply, ‘But you know what I mean, one of theirs’.”

New clients have even gestured to a male member of Cristina's support staff and said: ‘I want an appointment with him!’

“I can't put on a moustache and start wearing male clothes,” Cristina laughs. “It's absolutely not from everyone, or the majority, but it happens.”

Despite all of this, Cristina has a strong connection with both the Romanian Embassy and the Romanian community in Ireland.

Most of her work comes through word-of-mouth referrals. She has represented clients of all nationalities, successfully, and at all jurisdiction levels, including two successful cases that came before the European Court of Justice: *Eugen Bogatu v Department of Social Protection* and *Neculai Tarola v Department of Social Protection*.

Around half of Cristina's work is in international protection, immigration, human rights law and judicial review, with many cases involving EU law and constitutionality challenges, children's rights and vulnerable people's rights.

It can be arduous, with often a four or even five-year delay between taking on a case and her fees being discharged. Sometimes there is lost contact, with clients leaving the State during the processing of their case, and Cristina is left unpaid, despite extensive work on their files.

Cristina came to Ireland in 2008, just before the financial crash. She was in her early 20s, a law graduate who came top of her class, and a fully qualified lawyer under

Romania's civil-law system, which has no case law and no precedents.

In Romania, Cristina once considered a career as a journalist. She produced and presented a weekly radio show about accomplished managers and a TV discussion programme on legal developments.

She says, however, that she never felt 'at home' in Romania, but instantly so in Ireland, where she discovered a calmer way of living: "I found peace the minute I came to Ireland, the minute I stepped out of the airport. There's a calmness and a silence, even the weather is more peaceful.

"In Romania, I felt I had done everything I could have, professionally, and I wasn't happy – something was missing. So, I packed up my life."

Over the hills and far away

So why Ireland, rather than any other EU country?

"First of all, it was an English-speaking country. Secondly, it was not too far and not too close," Cristina explains. "Ultimately, it was a choice between Ireland and England."

What swung the decision towards Dublin was a live webcam at that time on O'Connell Street, which Cristina watched from afar with fascination. "That webcam was my first experience and knowledge of Ireland. It was the 'life' part, that you don't read in a magazine," she says. "That, and a YouTube video with images of a sunny Ireland and U2's *Beautiful Day* as soundtrack!"

As an only child, it was tough for her



to move away from her roots, but her gut instinct prompted her to push ahead.

Now married to an Irishman (Derek, whom she met at a speed-dating lunch) with whom she has a 15-month-old daughter, Cristina realises the enormity of her decision on her family to migrate.

"I'm terrified at the thought that our daughter might choose to do the same," she says wryly.

When the levee breaks

Cristina is also conscious of lacking the deep roots and network that come from living and working in one's own country. She is upfront about the enormous challenge of running her own practice, while having no childcare due to the closure of creches and no family support nearby.

At the onset of the pandemic, Cristina attended High Court hearings remotely while breastfeeding her baby of a couple of weeks. "We just had to adapt. What I thought was going to be the beginning of my maternity leave turned into more than the normal day of work. We survived. I can work at night. Also, when the baby is sleeping during the day, I can also write my letters and do consultations. I thought sole practice was tough before I had the baby. Now it is really tough!"

Cristina must fit a demanding work schedule in between the non-stop needs of a toddler running around the house. "How many times I wished I had a job where I could call in sick if I needed to! I don't have that option. I never had it, and I don't see how any person who runs their own business, in terms of a small or medium-sized firm, has that option," she says.

"No matter how much you are told it's going to be tough, I don't think anyone can actually understand it, or pre-empt how tough it's going to be. I'm not pulling the foreign card, but not having family support changes the whole dynamic of living."

Your time is gonna come

Cristina ended up in sole practice eight years ago because she found it difficult to get reasonable employment, despite her impressive qualifications. She also had to study for her Law Society Qualified Lawyers Transfer Test, which she took over a period of three years, and was admitted to the Roll of Solicitors four-and-a-half years after her arrival in Ireland.

SLICE OF LIFE

Biggest influence?

■ My counsellor, as it feels that my spiritual and emotional side have been brought back to life. I have a chance at living while enjoying all the good in my life – accepting myself without judgment.

Favourite book?

■ *Of Mice and Men*, by John Steinbeck – "Tell me about the rabbits, George".

Favourite film?

■ *The Silence of the Lambs* – I discovered my love for philosophy and Marcus Aurelius because of it.

Favourite getaway?

■ A beach holiday is ideal for me. Cocktails by the beach, in the sun! I also love Curracloe Beach in Wexford, and the west of Ireland where we used to travel often.

Favourite band?

■ *Led Zeppelin*.

Current box set?

■ *Schitt's Creek*.

Cats or dogs?

■ Dogs! I adored a German Shepherd I had from puppyhood, which was my childhood friend.

YOU GET AN UPSET CLIENT THAT MIGHT TAKE A PERSONAL VENDETTA AGAINST YOU AS THE LAWYER, AND EXPRESS SUCH GRUDGES BY EMAILS, PHONES, TEXTS, SOCIAL MEDIA, UNFOUNDED COMPLAINTS, AND SO ON



“When I came to Ireland in 2008, I still needed a work permit, so I ended up registering as self-employed, as Romania was a part member of the EU at the time, joining fully in 2012.”

She gravitated towards immigration, asylum, human rights, EU law, and personal injury. As a Romanian-born lawyer with an Irish qualification, she had a niche appeal and a steady stream of inquiries.

It was tough, however, to find an insurer to take on a newly qualified sole practitioner. A lot of hard work, plus a loan from her

parents, solved the question of how to get insurance to set up her own business, and pay for her first practising certificate.

“I felt that I could do it. It was one of those times where I had to make the call. There was no easy way. My gut told me ‘do this’. It turned out to be the right thing to do.”

It’s hard, hard work to make a living, especially waiting between three and five years for payment in most of the cases she takes. And since the pandemic, business has very much decreased, in part because fewer

people are coming into the country. Also, with people staying at home, and not getting into accidents, little new business has come in in terms of personal-injury work. “In a way, that’s great, because people don’t need a lawyer anymore because they don’t have problems. I don’t know how I will be in a year or two, based on the work that’s coming in,” Cristina reflects.

Though she has scaled back the size of her office, she is proud to be still in business, and has great hopes of getting back to the busy times, pre-COVID – and even expanding one day in the future. [E](#)

STRESS TEST

Dealing with complex family-law situations without adequate support puts family-law practitioners at a higher risk of poor emotional, psychological and physical wellbeing. **Caroline Kinneen** and **Sharon Lambert** investigate

CAROLINE KINNEEN IS A TRAINEE EDUCATIONAL AND CHILD PSYCHOLOGIST AT UNIVERSITY COLLEGE CORK, AND DR SHARON LAMBERT IS CO-DIRECTOR OF THE MA PROGRAMME IN APPLIED PSYCHOLOGY AT UNIVERSITY COLLEGE CORK

≡ AT A GLANCE

- Research at University College Cork has looked at the impact of psychological stress on family-law practitioners
- The practitioners reported a lack of support structures in place to help them
- Additionally, they noted that child-care cases were particularly distressing, leading to emotional exhaustion and ruminating about cases outside of work hours



PIC-ALAMY

In a follow-up to the *Gazette's* 'Crash and burn' article in 2018, research completed at University College Cork's School of Applied Psychology looked at the impact of psychological stress on family-law practitioners.

With the ongoing pandemic and lockdown restrictions, more families in vulnerable situations are being left in precarious situations. The mental-health implications for these families – and, in turn,

the professionals who support them – are becoming more apparent, and the need for appropriate support for all parties is becoming more evident.

The role of a family-law practitioner can be misconstrued as simply working with marital breakdowns (Weaver, 2013). In reality, family law focuses on many systemic and complex relationships, hosting many legal issues, including child visitation and support, child abuse



PIC: SHUTTERSTOCK

THE EMOTIONAL EXHAUSTION BROUGHT ABOUT BY THE ROLE OF BEING A FAMILY-LAW PRACTITIONER EMERGED AS A CONSEQUENCE OF DIFFICULT CASES IN THIS RESEARCH

and neglect, and criminal law (Fines, 2012). Dealing with these complex situations without adequate support has the potential for family-law practitioners to be more at risk of poor emotional, psychological, and physical wellbeing (Morgillo, 2015).

Professionals in the ‘helping professions’ are trained in secondary traumatic stress and are aware of how their clients’ traumatic situations can have an impact on their own psychological wellbeing. On the other hand, solicitors are trained to see their client’s situation through the eyes of the law (Silver et al, 2015). What does this mean for family-law practitioners, whose role is spread over both a helping profession and the legal profession?

What the research is revealing is that family-law practitioners need to embed the role of a counsellor within their role and

learn how to manage client emotions and expectations, in addition to having a large amount of legal knowledge about the family-court system (Fines & Madsen, 2007; Parker, 2007). Additionally, levels of secondary traumatic stress and burnout are very high in family-law practitioners due to a lack of supervision, training of client’s emotions and expectations, and working long hours.

The Irish context?

In 2018, the **IDEA Project** looked at practitioners working in child-care proceedings across five countries. A total of 66 Irish practitioners, consisting of solicitors, barristers, guardians, and social workers were interviewed. No training, support, or guidance relating to the management of the negative impact experienced while working on child-care cases were reported in 79% of the participants.

When asked about the impact, they spoke about how draining and stressful the work can be, and how this takes an emotional toll. In addition, solicitors described the feelings of guilt surrounding their clients’ circumstances, and found it difficult to stop thinking about cases outside of work.

The findings of this study were the first attempt to understand family-law practitioners’ experiences in Ireland. The study was not exclusive to legal professionals, with the inclusion of guardians and social workers. The aim of the study that followed was to look at a focused population through a psychological lens in order to explore the experiences of family-law practitioners in Ireland.

In-depth understanding

For this research project, eight family-law practitioners were interviewed to gain an in-depth understanding of their experiences

FOR THIS RESEARCH PROJECT, EIGHT FAMILY-LAW PRACTITIONERS WERE INTERVIEWED TO GAIN AN IN-DEPTH UNDERSTANDING OF THEIR EXPERIENCES IN IRELAND. THE INTERVIEWS WERE ANALYSED USING THEMATIC ANALYSIS TO IDENTIFY EMERGENT THEMES ABOUT THEIR EXPERIENCES

in Ireland. The interviews were analysed using thematic analysis to identify emergent themes about the experiences of participants and what they argued would help family-law practitioners in future. Ethical approval was granted by the School of Applied Psychology's Ethics Committee at UCC before recruitment began.

The analysis of the interviews resulted in five main themes: 'A day in the life', 'Common characteristics and attributes', 'Knock-on impacts', 'Confronting the challenge', and 'Concerns surrounding professional training'.

Participants spoke about the intensity of their roles and how they can feel that they perform multiple professional roles when working with clients: "Family law is intense. There isn't any real quick fix ... so I think it is intense, it is difficult at times, and there are times you do feel like the parish priest or, you know, like a psychologist and a professional and a solicitor. But again, the main important thing, I think, is to know that these people are human too."

However, with this experience of feeling like they are engaged in multiple professional roles comes the awareness of how challenging the experiences of their clients can be: "The courts can be very difficult. You can be working for a very long time towards something, and your client might lose, and you have to deal with that. You have to deal with what happens to the clients in court. You have to deal with the anger, with the frustration, with the crying."

Family-law practitioners can take on their

clients' emotions, adding to the intensity of working in the legal profession. This can lead to emotional exhaustion, which was described as follows: "Where sometimes you kind of feel like you're just going to ... you just need to burst into tears, to just say, right I need to get this out of my system, it's too much, you need to walk away from it."

Emotional exhaustion

The emotional exhaustion experienced by some family-law practitioners, allied with the lack of training around how to handle this exhaustion, can lead to rumination about work.

What is interesting about the following quote is that the participant had sought out professional supervision, and was able to articulate the experience and employ strategies to help process the exhaustion: "You know, these thoughts creep into your mind whenever I felt that my home life, or my thoughts, or my time away from work was being weighed upon, or leaned upon, by something at work. Then I'll try to figure out why is this happening to me. And I'll also look to my supervisor, to say what am I doing, what's happening here, that this is bearing down on me."

The lack of training surrounding client management was evident in the interviews throughout the research project. Participants commented on how they learned through experience as time went on: "I certainly didn't receive any education about that – client management, trauma management, anything like that. It's just something you kinda teach yourself as you go through the experience in dealing with people."

When asked about additional training that should be given to help with client management, one participant detailed how family-law training could be adapted at undergraduate level to benefit both practitioners and clients: "My personal view on family law is that it needs to be taught differently from a very early stage ... I go back to undergraduate level and how the module of family law is taught. And I think it needs to be taught in a different way. Because I think, and again this is just my personal view, to achieve the best outcomes from families or anybody in a family-law situation, I think you need to have a 'resolution focus', and a 'resolution focus' that sits outside of the courts system, ideally."

Lack of support structures

The practitioners in the study reported a lack of support structures in place to help them. Additionally, they noted that child-care cases were particularly distressing, leading to emotional exhaustion and ruminating about cases outside of work hours.

Additionally, participants felt a need for counselling, debriefing training, detaching and resilience, and mindfulness. Furthermore, the practitioners in this study spoke about a need for professional supervision, mentoring, and education focusing on the personal impact of working in this field. Many of these findings had been reported in the *Gazette's* 'Crash and burn' article.

What this study additionally found was that family-law practitioners reported that they built resilience by employing

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professional and mental barriers of their own, over time. Noteworthy was the admission that just one participant spoke about seeking professional supervision to help with secondary traumatic stress and burnout.

For both practitioners' and clients' wellbeing, training in stress and coping mechanisms, as well as education about the mental implications of adopting a 'counsellor' role, is regarded as crucial. This could be done via the introduction of routine supervision.

Job satisfaction

Supervision that aids the development of emotional wellbeing tools may support job satisfaction, which would combat compassion fatigue and burnout. Kriti et al (2012), found that job satisfaction in the legal profession can be negatively influenced by emotional exhaustion, depersonalisation, and work overload. Low job satisfaction can lead to compassion fatigue and burnout (Norton *et al*, 2016; Pasyk, 2019).

Platsidou and Salman (2012) found that emotional intelligence played a crucial role in protecting lawyers from burnout and job dissatisfaction. The emotional exhaustion brought about by the role of being a family-law practitioner emerged as a consequence of difficult cases in this research.

Bearing this in mind, participants spoke about the need for change in how family law is taught – and the current dearth of training, which emerged as a predominant theme. On the topic of 'Concerns surrounding professional training', participants referred to the need for more specialised training for family-law practitioners and the importance of ensuring that training at both undergraduate and postgraduate level was more resolution-focused and separate to the courts system.

The lack of training in client management and trauma was a concern for participants, and an area in which they felt they needed greater support.

Training crucial

An important outcome of this study is the expressed need for better training and support for family-law practitioners.

O'Callaghan (2018) concluded that support in the form of interdisciplinary structures can provide a safe and confidential space for practitioners to discuss and process difficult cases, and the emotional impact of them.

Furthermore, practitioners suggested



PICT: SHUTTERSTOCK

training in development of resilience and coping mechanisms. Debriefing during traumatic cases would help support family-law practitioners in managing stress and avoiding burnout.

Despite the shortfalls in support, family-law practitioners were insightful in relation to supporting clients, despite the lack of professional support and training. Their self-assuredness helps them support clients

through some of the most traumatic moments of their lives.

With the impending consequences of COVID-19 lockdowns around the corner and the well-documented sharp increases in domestic-violence cases, it is time for targeted interventions, training and support for family-law practitioners, allowing these professionals to do what they do best – support their clients. [E](#)

LOOK IT UP

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☰ AT A GLANCE

- A widely publicised December 2020 judgment focused on the case of a mentally ill man seeking transfer from a remand prison to the Central Mental Hospital
- The applicant sought an order of *habeas corpus* for failure to provide appropriate medical treatment
- The court ruled that if 'egregious' cases might still reach the standard for unlawful detention, it had not been met in this case, mainly because SM continued to receive treatment by prison in-reach

BRIDGING THE GAP



If a client in custody becomes mentally ill, has no next of kin, and requires urgent care, how should the solicitor proceed?

John Feaheny and Seán Smith cross that bridge

JOHN FEAHENY IS PRINCIPAL OF JOHN FEAHENY AND CO, SOLICITORS, AND DR SEÁN SMITH IS A TRAINEE SOLICITOR

In December 2020, a widely publicised High Court case – *SM v Governor of Cloverhill Prison* – brought to light the case of a mentally-ill man seeking transfer from a remand prison to the Central Mental Hospital (CMH) in Dundrum. With six people ahead of him on the waiting list, he failed in his bid.

The result, which again highlighted the lack of beds in the CMH, raises rather than relieves questions for solicitors working in this area. Can courts bring relief to applicants in these cases? In *SM*, for instance, the result suggests that court outings may not be the best way of helping a

client. Yet what other steps can be taken, and what guidance exists for the profession?

Answers to these questions are not at the practitioner's fingertips. Yet to begin to answer them, the extent of the crisis needs to be laid out.

Song for everyone

It is no exaggeration to say that the *SM* case underscores a wider crisis in our health and penal systems. The first problem is that Irish prisons are inadequately resourced when it comes to caring for mentally unwell prisoners. The number of people presenting in this group can be startling: in 2019, a total





PIC. SHUTTERSTOCK

RESULTS LIKE THE OUTCOME IN SM KEEP SOLICITORS IN THEIR ROLE AS ACTIVISTS, IN THE FACE OF AN UNACCEPTABLE RESOURCES PROBLEM THAT THE COURTS ARE ESSENTIALLY POWERLESS TO RESOLVE

of 887 new referrals across 11 prisons were made to prison in-reach, mental-health teams.

After a visit to Cloverhill prison's D2 Wing (the country's largest unit for holding mentally-ill prisoners), the Council of Europe's Committee for the Prevention of Torture reported that the unit was "overflowing, with seven prisoners having to sleep on mattresses on the floor". According to the [report](#), which was published in November 2020, medical staff confirmed this was a "regular feature for the landing".

The second, related, issue is that the Central Mental Hospital – home to the country's only forensic mental-health service – currently has no room to relieve this inadequacy. A very insightful perspective on this came from the latest report published by [prison chaplains for Cloverhill Prison](#), who highlighted that it "takes weeks or months to divert a [mentally-ill] man to his local hospital or to the CMH" once imprisoned. The reasons for this are unsurprising. The CMH only has 102 beds – a number that does not compare favourably internationally.

A [2019 report by the HSE](#) disclosed that Ireland has only two secure forensic beds per 100,000 population, while most modern European states have in excess of ten. Outside the CMH, the mentally ill in custody are cared for by in-reach teams who, it must be said, do the best they can with limited resources.

Rusty cage

Given these facts, criminal solicitors may more frequently have to resolve capacity issues in the future. Yet the legal landscape is

also in flux. With the enactment of the *Assisted Decision-Making (Capacity) Act* in 2015, the law has properly evolved from a black-and-white view of capacity to one that recognises a spectrum – although the bulk of this act has yet to be commenced.

Still, the degrees of capacity that it recognises fully translate into the custodial context. On one hand, some clients in custody engage with solicitors from prison, even if diagnosed of unsound mind. On the other, some deteriorate to a level where contact with their solicitors stops entirely. We should add, however, that for this group, contact often just becomes indirect because a phone call or email may still issue from prison health services and, when this occurs, solicitors on record may require guidance on their options.

There is currently no *ad hoc* guidance for solicitors called to assist the mentally ill in custody, so practitioners must start with general guides. The *Guide to Good Professional Conduct for Solicitors* is an especially important resource, but it still only offers broad principles for dealing with mentally unwell clients.

A few Law Society practice notes add particular guidance: for example, the December 1998 note on advising clients of unsound mind suggests taking “reasonable steps to ensure the client’s interests are protected”. The note then suggests contact with relatives, medical professionals, and the Wards of Court office – although it ominously concludes that the “solicitor’s duties are at an end” once this is done.

Just what these ‘reasonable steps’ may entail, and whether withdrawal is even ethical for a solicitor in the context of a mentally-ill client in custody, are just two of the questions that arise from the 1998 note, but there is also a sense that the law has moved on considerably since. For example, pursuant to the *Mental Health Acts*, legal representatives are now specifically authorised to *act on behalf of clients* on Mental Health Tribunals, although this is hardly analogous to representing a detained person. In another area, some solicitors are not infrequently asked to act as *guardians ad litem* in ward-of-court proceedings, and there they take on the role of being a voice of the intended ward.

Time of the preacher

Specific guidance is needed, because the general guides currently fail to take account of the unique characteristics of detainees as clients.



PICTURESTOCK

The chaplains of Cloverhill Prison express it well: “Many of the [detainees] grew up in the care system, spent their lives living in homeless accommodation or psychiatric hospitals, and have no appropriate support in addressing their social needs.”

Therefore, in cases where the mentally-ill person in custody is homeless and without any next of kin, the solicitor on record may be that person’s only advocate outside the prison walls. If that prisoner’s health declines urgently, prison nurses and doctors may have nobody else to call.

In the absence of specific guidance, charting a course if that call comes means that solicitors rely on a mixture of existing professional principles, legal knowledge and, it must be said, their own creativity as conscientious citizens.

It goes without saying that the solicitor should always attempt to take instructions as a first step. After all, the detainee’s mental capacity may fluctuate, and he or she may possess sufficient capacity for some instructions. Obviously, however, in cases of significant decline, giving instructions may be impossible. Added to this is the fact that, in the current health emergency, taking instructions with clients in custody presents unique challenges. Of course, family members may be able to assist but, as noted, homeless detainees may often be without any worldly moorings.

Where instructions are sparse, the most common reflex for criminal practitioners is to go to court. However, options tend to change depending on urgency and prisoner status. In non-urgent cases, and where the prisoner is on remand, we have found that it is best to inform the court of trial as soon as possible. For example, if a client has a pending matter in the Circuit Court, it is recommended to have the matter listed for mention in early course. In such cases, the court will routinely make

recommendations for appropriate care in prison; and psychiatric reports between court appearances and beyond. The necessity of a fitness-to-plead hearing may then arise, although we cannot, in this brief article, explore that particular avenue.

In this river

In urgent cases, these steps may not be enough. If a remand warrant is in place, the possibility of bail may then be recommended. The problem here is that, if a court is minded to grant bail, it is our experience that, depending on the level of incapacity, it will usually expect some arrangements for the prisoner’s psychiatric care in the community to be in place.

Yet the viability of this option is much in question. Firstly, if a client is homeless and without family, this requirement puts an enormous amount of pressure on the solicitor to find a therapeutic placement. More pointedly, release into the community may not actually do much good. As the Council of Europe committee worryingly reported: “Many of the persons coming to [the D2 Wing] could be granted bail by the courts but, because of their homeless status, they are excluded from Health Service Executive (HSE) community mental-health team services, so they are left to languish in prison.”

Solicitors advising in these cases are also dealing with an absence in community-care places. We asked Fr Peter McVerry (whose services provide invaluable help to criminal solicitors and their clients) to comment, and he had this observation: “Prison is a place of punishment and is not an appropriate environment for mental-health treatment. However, I think some judges get exasperated at the lack of community mental-health care and send people to prison in the belief that they will get better care there.”

Magic carpet ride

More creative court outings may be the next step, but they are not magic solutions either. Indeed, where a prisoner is serving a sentence, avenues narrow considerably.

Take this scenario: a client becomes gravely mentally unwell in prison while serving a sentence, but refuses to take medication. In Ireland, there is currently no possibility of involuntary medication in prison. Therefore, the only option becomes entry into the CMH, which may have a

IRISH PRISONS ARE INADEQUATELY RESOURCED WHEN IT COMES TO CARING FOR MENTALLY UNWELL PRISONERS. THE NUMBER OF PEOPLE PRESENTING IN THIS GROUP CAN BE STARTLING: IN 2019, A TOTAL OF 887 NEW REFERRALS ACROSS 11 PRISONS WERE MADE TO PRISON IN-REACH, MENTAL-HEALTH TEAMS

lengthy waiting list. Yet, can a court order this specific relief?

The High Court confronted that possibility in the *SM* case, although the facts were slightly different to our scenario above. There, the applicant brought a challenge under article 40.4 of the Constitution, seeking an order of *habeas corpus* for failure to provide appropriate medical treatment and transfer to the CMH.

SM's personal history shared many of the characteristics of the prison population identified above. Initially remanded to D2 wing on a charge of murder, *SM* was a young man with a history of psychiatric illness and homelessness. This did not move the court, however. Refusing relief, the court accepted that if “egregious” cases might still reach the standard for unlawful detention, it had not been met in this case, mainly because *SM* continued to receive treatment by prison in-reach (although there was evidence this was insufficient).

Spoonful


SM is a consequential judgment, which we cannot fully analyse here. However, a relevant extract of the court's judgment is worth quoting.

After finding that an order of the kind sought would permit *SM* to “leapfrog” those ahead of him in the queue, Ms Justice Hyland warned that it might also “have the effect of putting pressure on the executive of expending resources to increase the number of beds in the CMH”. This the court was not prepared to do: “It is inappropriate that courts make orders that require, either directly or, as in this case, indirectly, the

executive to expend resources or to interfere with the operation of hospitals.” Affirming this decision on 1 April 2021, the President of the Court of Appeal remarked that this was a “resources case”, which was not properly brought under article 40.4.

This brings us to our final point. Whether intended or not, results like the outcome in *SM* keep solicitors in their role as activists, in the face of an unacceptable resources problem that the courts are essentially powerless to resolve. Part of the job of assisting clients now entails exerting pressure on those branches of Government with power to remedy acute situations. For example, we have found persistent correspondence with relevant Government departments and national health authorities to be equally, if not more beneficial, to some clients' needs – a reminder that raising voices with Government can sometimes be more useful than voicing arguments in court.

Both in terms of resources and the legal landscape, we appreciate that positive developments are afoot in some areas. The expected opening of the new National Forensic Mental Health Service Hospital (with 170 beds) in Portrane offers some hope – although this has apparently been delayed.

The Minister for Justice has also just established a new taskforce to examine the mental-health and addiction needs of prisoners, both during and after their detention. Nevertheless, when it comes to solicitors representing mentally-ill clients in custody, there remains a measurable gap in guidance. 

LOOK IT UP

CASES:

- *SM v Governor of Cloverhill Prison* [2020] IEHC 639; [2021] IECA 102

LEGISLATION:

- *Assisted Decision-Making (Capacity) Act 2015*
- *Mental Health Acts*

PRACTICE NOTES:

- ‘Clients of unsound mind’, *Law Society Gazette*, December 1998, p33
- ‘Legal representation at the Mental Health Commission, guidelines for solicitors – second edition’ (November 2020)

LITERATURE:

- *Cloverhill Chaplaincy Service Annual Report 2019*
- European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (2020), *Report to the Government of Ireland* (on the visit to Ireland carried out by the CPT from 23 September to 4 October 2019)
- *Guide to Good Professional Conduct for Solicitors* (3rd edition)
- HSE Mental Health Service (2019), *Delivering Specialist Mental Health Services 2019*
- Irish Penal Reform Trust (2020), *Progress in the Penal System: Assessing Progress During a Pandemic*
- *Wheatfield Chaplain's Report 2019*



FINAL

EXAMINATION

≡ AT A GLANCE

- Examinership and the proposed summary rescue process could be valuable tools in helping insolvent businesses post-COVID
- Till now, a relaxed approach has existed as regards the enforcement of debt – but change is on the way
- Legislation provides for far-reaching powers, which permit the examiner to recommend the writing-down of creditors' debts within this scheme

As the pandemic fallout continues, examinership can be an attractive option for insolvent companies, with the potential to offer widespread relief to many businesses.

Graham P Kenny locks and loads

GRAHAM P KENNY IS PRINCIPAL OF KENNY SOLICITORS, FITZWILLIAM SQUARE, DUBLIN 2

As the pandemic continues to devastate large and small businesses alike, solicitors across the country are considering the role of examinership and the eagerly awaited summary rescue process in order to assess how they may help their clients' businesses to survive.

While many businesses are limping along on Government supports, attention is now turning to what will happen when 'normality' returns. For now, banks, the Revenue Commissioners, and



PIC: ALAMY

OF COURSE, SUCH DRACONIAN POWERS COME WITH A SERIES OF CHECKS IN ORDER TO ENSURE THAT CREDITORS ARE NOT BEING 'UNFAIRLY PREJUDICED'

landlords have displayed a relaxed approach to the enforcement of debt, but it is only a matter of time before this forbearance ends and more formal restructuring is required.

Primal impact

The history of examinership reads like the script from an unlikely Hollywood thriller.

On 2 August 1990, rogue dictator Saddam Hussein invaded Kuwait, setting in motion a series of events that would dramatically change Irish company law. By the late 1980s, millionaire beef baron Larry Goodman controlled over 40% of the Irish beef market. However, due to the hostilities in

the Persian Gulf, the business was in peril. With an eye-watering £72 million deficit in its finances, the Goodman group looked certain to go under.

However, the Fianna Fáil government considered that the strategic importance of the Goodman group to the Irish economy was such that it would have to be saved. On 24 August, Taoiseach Charles Haughey – during what would be his final term in office – recalled the Dáil from its summer recess. The *Companies (Amendment) Act 1990* was passed, and the examinership procedure was brought into law. The rest, as they say, is history.

Basic verdict

Examinership was an entirely new process whereby a company could apply to the court for protection from its creditors while it attempted to restructure its debt. The overriding rationale of such a process was not designed to help shareholders whose investment had proved unsuccessful, but rather to seek to save enterprise and jobs (see *Re Traffic Group Ltd*).

The effects of court protection brought in by the 1990 act were dramatic, and will appeal to many companies suffering the stresses of the pandemic today. For example, for as long as the company is under the

protection of the court:

- No proceedings for the winding-up of the company may be commenced,
- No receiver can be appointed to the company,
- No action can be taken by a creditor to enforce its security (for example, a bank trying to enforce a mortgage), and
- Any new proceedings that a party wishes to bring against the company can only be brought with the express consent of the court.

In effect, therefore, [section 520](#) of the *Companies Act 2014* places a total embargo on creditors acting against the company while it is under this protection. Arising from the delays caused by COVID-19, the period of protection under the act has been very considerably extended, and now lasts up to 150 days.

However, not all insolvent companies may avail of the court's protection. [Section 509\(2\)](#) guides the court in exercising its jurisdiction and requires that a company demonstrates that it has a "reasonable prospect of survival ... as a going concern". This requirement is usually achieved by the company instructing an accountant to produce what is referred to as an 'independent expert's report'. Such a report will confirm that, if the company is given the opportunity to restructure its debt, it will have a reasonable prospect of survival.

An examiner (who is normally an accountant) will then be appointed by the court, and the real work begins. In the normal course, the examiner does not run the company. The directors continue in their usual role and carry out their executive functions.

This is often a hugely attractive feature for clients who are considering taking the brave leap into examinership, but who are reluctant to relinquish control of their company.

The examiner is charged with conducting a full examination into the affairs of the company and reporting to the court. Once such an examination has been completed, the examiner will then move on to formulate proposals for what is termed a 'scheme of arrangement' under [section 534](#).

Jagged instinct

This scheme is the blueprint for the company's pathway out of debt. The act provides for far-reaching powers, which permit the examiner to recommend the writing-down of creditors' debts within this scheme. Of course, such draconian powers come with a series of checks in order to ensure that creditors are not being "unfairly prejudiced", and the burden of proving this is placed upon the examiner (see *Re McInerney Homes Ltd*).

The court will assess whether a creditor's objections amount to unfair prejudice by considering how they would likely fare on liquidation (or receivership, if applicable) and further consider their treatment *vis-à-vis* other creditors and the members. If the examiner's scheme is approved, the court will impose the harsh reality that there is simply not enough money to repay all the company's debts. As every solicitor who has ever had to negotiate with a disgruntled creditor knows, such a reality is very often difficult to accept, and the court process is of immeasurable assistance in this regard.

There is, however, one notable exception to the compromising of creditor claims. This

exception is of particular relevance to companies struggling during the pandemic. [Section 544](#) prohibits the reduction in the level of rent due to a landlord under a lease once the scheme has been approved (unless, of course, the landlord consents during the process).

There is, therefore, a very important distinction between debts owed under a lease before and after the company went into examinership. Historical rent arrears arising *before* the presentation of the petition for court protection are capable of being written down within the scheme. This may be of huge significance to those companies whose outlets were closed during the pandemic, but who continued to amass rent demands from landlords during such time. However, once the scheme has been approved, the existing rent must be paid and the lease cannot be compromised in this regard.

Sudden edge

It may also be of considerable significance to struggling companies that the courts have found that leases can be repudiated under [section 537](#) (see *Linen Supply of Ireland Ltd*).

While the court has discretion in this regard, a company can seek to repudiate a lease, which in turn will relieve the company of the obligation to pay further rents. This may be of particular significance where a retail store has a number of outlets, with differing degrees of footfall arising from the effects of the pandemic.

The case of *Re New Look Retailers (Ireland) Ltd*, however, should serve as a cautionary tale for any company rushing into examinership within the coming months. New Look

DUE TO THE INEVITABLE SURGE OF
INSOLVENCIES ARISING FROM THE PANDEMIC,
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RESCUE PROCESS'

THE CASE OF RE NEW LOOK RETAILERS (IRELAND) LTD, HOWEVER, SHOULD SERVE AS A CAUTIONARY TALE FOR ANY COMPANY RUSHING INTO EXAMINERSHIP WITHIN THE COMING MONTHS

sought the protection of the court during the pandemic in August 2020. The company proposed the reduction of its rents and the repudiation of some of its 27 leases. Four of the landlords expressed the concern that the company had sought to “contrive” an examinership for the purpose of reducing its long-term liabilities.

Mr Justice McDonald said that, while the company did not have to wait until it reached “the edge of the precipice”, it should first invoke “an alternative and obvious route available to the company and seek to deal with its landlords – namely negotiation”. The judge refused, therefore, to put the company into examinership on the basis that the application was premature.

Personal attraction

Another intriguing feature of examinership that will be of interest to many directors in these times is the position of personal guarantees set out in [section 550](#). It is regularly the case that directors have guaranteed the company’s debt, and have legitimate concerns that they will remain personally liable for such debt once the company has exited examinership.

Solicitors should remember two key points in this regard. If the debt that is guaranteed by a director is written down in a scheme, the director will still remain personally liable for the full amount under their guarantee. However, it is critical to point out that the creditor must offer their vote in respect of the proposals for a scheme of arrangement to such director, or the guarantee will become unenforceable (see *Re Eylewood Ltd*).

One of the repeated criticisms of examinership has been its cost. While this

is undoubtedly a valid concern, it is worth pointing out that the costs of the examinership are regularly paid from new investment under the scheme, and not from the company’s own existing reserves. It is certainly arguable that creditors, and not the company, bear the brunt of costs, as their dividend is regularly reduced by such payment.

It is also noteworthy that [section 509\(7\)](#) now permits an application to appoint an examiner to be taken in the Circuit Court. This amendment was made with a view to reducing costs for smaller companies and permitting them access to court protection. As Government supports lift, particularly in the hospitality and retail sectors, this is certainly a provision that many solicitors may wish to consider with their clients who operate smaller companies.

Executive heat

Due to the inevitable surge of insolvencies arising from the pandemic, the Government is presently considering another form of streamlined examinership, known as the ‘summary rescue process’. Small and micro enterprises account for the majority of companies in Ireland and support somewhere in the region of 788,000 jobs, and so the new legislation is eagerly awaited.

While no concrete details of this process have emerged just yet, it is thought that this process would be commenced by the directors themselves and would be concluded within a shorter period than that of examinership. A notable distinction of the summary rescue process is that no court application would be required, and the new process would be overseen by an insolvency

practitioner, as opposed to the court.

It remains to be seen how such new legislation might work, and there would inevitably be challenges from creditors whose debts would now be written down without the oversight of the court. This new process is not envisaged to take over from examinership, however, and would operate as a separate procedure.

As the fallout from the pandemic continues in the months ahead, examinership is, therefore, still a very attractive option for insolvent companies and has the potential to offer widespread relief to many businesses. [g](#)

LOOK IT UP

CASES:

- *Bestseller Retail Ireland Ltd* [2010] IEHC 155
- *Eylewood Ltd* [2010] IEHC 57
- *Linen Supply of Ireland Ltd* [2010] IEHC 28
- *McInerney Homes Ltd* [2011] IESC 31
- *New Look Ireland Ltd* [2020] IEHC 514
- *Traffic Group Ltd* [2007] IEHC 445; [2008] 3 IR 253

LEGISLATION:

- *Companies (Amendment) Act 1990*
- *Companies (Miscellaneous Provisions (COVID-19) Act 2020*
- *Companies Act 2014* (Part 10 – Examinerships)
- *Order 53A, Circuit Court Rules*
- *Order 74A, Rules of the Superior Courts*

SOUND THE ALARM

The Law Society has expressed alarm about the possible exclusion of solicitors from the Judicial Appointments Commission. **Mary Hallissey** reports

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



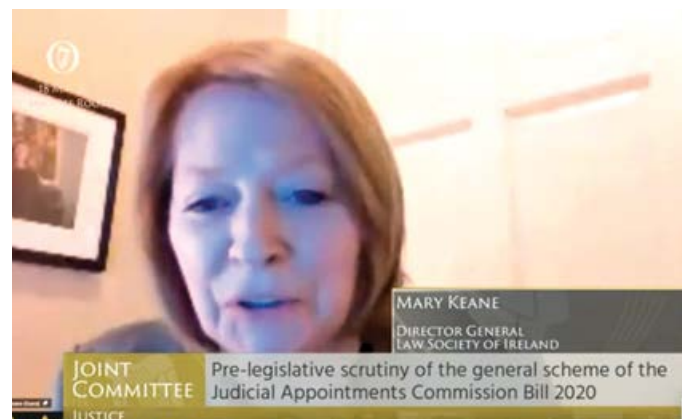
WE FOUND IT QUITE EXTRAORDINARY – WE DON'T LIKE IT ONE BIT. THE THINKING BEHIND THE EXCLUSION WAS NOT EXPLAINED TO THE LAW SOCIETY, THOUGH A COPY OF THE SCHEME WAS RECEIVED. WE WERE ASTONISHED

In an address to the Joint Oireachtas Committee on Justice on 18 May, Law Society President James Cahill and the director general, Mary Keane, expressed deep concern about the proposed exclusion of the profession from the JAC. The president pointed out that the provision that a practising solicitor be a member had not been retained in the general scheme. “It is critically important that a representative from each branch of the profession is appointed to the commission,” President Cahill stressed.

“After 25 years of faithful service to the Judicial Appointments Advisory Board, we get sent outside the door on the proposed JAC?” Mary Keane said. The Society retained substantial expertise, she continued, having served on the JAAB since its establishment.

The director general noted that solicitors are subject-matter experts across a broad range of areas and, as the largest branch of the legal profession, are expert users of the courts system. The profession operates at every level of seniority, dealing with every conceivable matter before the law, with first-hand experience of the impact of the courts system on the public.

“We don’t embrace the reduction in [JAC] numbers to nine if it means that the representatives of the practising professions are excluded,” Keane said. She added that the bid to embrace



diversity must include solicitor expertise in judicial appointments: “Diversity is being invited to the party, but inclusion is being asked to dance,” she commented. “We’d like to see more solicitors being asked to dance!”

Of 90 judicial appointments made to the superior courts from 2002 (when solicitors became eligible for appointment) to 2016, only eight were solicitors.

Mary Keane added: “Diversity is meaningless without

inclusion. More diversity and inclusion would better reflect society. You can have all the diversity you want in terms of eligibility, but if people aren’t actually appointed, then diversity becomes meaningless.

“We’d like diversity and inclusion, please! And we’d like to see more solicitors and more people of different backgrounds being ‘asked to dance’ – and [the Bench becoming] more reflective of society. Nowadays, one is no good without the other.”



President Cahill told the committee that the JAC’s credibility would be greatly enhanced by “a solid start”, adding that the Society was making its third submission on the matter, with a number of areas requiring further careful consideration during the drafting process.

The director general told the committee that it was not correct to suggest that there would be equal numbers of legal and lay members sitting on the JAC, since the JAC proposal was for equal numbers of *judicial* and lay members. “We found it [the exclusion of a solicitor representative] quite extraordinary – we don’t like it one bit,” she stated. The thinking behind the exclusion was not explained to the Law Society, though a copy of the scheme was received, Keane said. “We were astonished.”

Dual function

In addition, the scheme of the bill provides that the Attorney General would participate in the JAC as a non-voting member.

In its submission, the Society affirmed its long-held view that it would not be appropriate that the AG should have a dual function in the judicial appointment process – both at the JAC and at Cabinet.

The Law Society has also previously cautioned against creating a commission that would be top-heavy in terms of senior members of the judiciary at the expense of judicial representatives of the courts of local and limited jurisdiction.

The scheme of the bill provides that:

- A Judicial Council nominee will chair the JAC in the absence of the Chief Justice,
- The chair of the Procedures Committee will be the Chief Justice, or a Judicial Council nominee determined by the Chief Justice,
- When the JAC establishes any other committee to assist it or the Procedures Committee, the chair of any such committee will be the Chief Justice, or a Judicial Council nominee determined by the Chief Justice.

“These substantial responsibilities surely raise a question as to whether the Judicial Council nominees are more likely to be senior, long-standing members of the judiciary,” the president warned. “If so, their experience of legal practice – as court users rather than as members of the judiciary – will be at a considerable remove from their present workday experience.”

Lay members

The Law Society welcomed the participation of lay members on the JAC in the manner proposed, Cahill continued. He added that lay members would mitigate the risk of self-replication by judicial members. The judiciary serves all of society, and that should be reflected in the process of judicial selection, he commented.

In the Society’s view, the Procedures Committee could be regarded as the ‘engine room’ of the judicial appointments process. It would be critically important to ensure that sufficient expertise would be available to the committee to enable

AFTER 25 YEARS OF FAITHFUL SERVICE TO THE JAAB, WE GET SENT OUTSIDE THE DOOR ON THE PROPOSED JAC?



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it to draft and deliver to the JAC comprehensive ‘statements of procedures’ and ‘statements of relevant skills and attributes’ in respect of each class of court business and every area of law.

The expanse of that task should not be underestimated, the Society stated.

Increasing the pool

On the question of determining the suitability of a proposed judicial candidate, the Law Society commented that the JAC should carefully reflect on the range of skills it wished to consider when addressing the ‘merit’ of an applicant for appointment. Extensive European Commission work on judicial training and education in EU law must also be factored in.

In relation to the diversity particularly reflected in the solicitors’ branch of the legal profession, the Law Society proposed that a comparable approach to that adopted to enhance gender diversity in judicial appointments should be taken, in order to increase the number of solicitors being appointed to the bench.

Similarly, removing the four-year threshold for appointing appropriately qualified legal academics to the JAC would provide greater diversity in eligible candidates for judicial appointments, President Cahill told the Committee on Justice.

Mary Keane warned that the present requirement could be seen as a barrier to entry: “The broadest range of legal professionals should be able to access consideration for appointment; therefore, the four-year requirement should be removed,” she said. “There is a particularly compelling argument for the appointment of academics to multi-judge courts, such as the Court of Appeal or the Supreme Court.”

Interviewing process

The Law Society also urged that the practice of submitting references from sitting or previous




Committee chair – Jennifer Carroll-MacNeill



Senator Michael McDowell

members of the judiciary should cease.

Senator Michael McDowell told the committee that he found the whole proposed interviewing process for sitting judges “problematic”, since sitting High Court judges were currently entitled to ‘act up’ and were eligible to serve on the Court of Appeal and the Supreme Court.

“What is the purpose of an interview? What questions are going to be put to them? Is it purely to find out is the person pleasant, or to find out how they have functioned as a judge?” Questions about the independence of the judiciary are “lurking in the back of my mind”, the senator said, specifically in terms of the questions that lay members might put to them. 

WE DON'T EMBRACE THE REDUCTION IN JAC NUMBERS TO NINE IF IT MEANS THAT THE REPRESENTATIVES OF THE PRACTISING PROFESSIONS ARE EXCLUDED

LET'S GET IT ON

What are the options for getting divorce or separation cases listed more quickly for hearing in the Dublin Family Circuit? **Keith Walsh** examines the procedures

KEITH WALSH IS A DUBLIN SOLICITOR AND AUTHOR OF *DIVORCE AND JUDICIAL SEPARATION PROCEEDINGS IN THE CIRCUIT COURT: A GUIDE TO ORDER 59*, PUBLISHED BY BLOOMSBURY



A 'LEAPFROG' OPTION WAS INTRODUCED (IN DUBLIN ONLY), WHICH PERMITTED BOTH PARTIES, BY AGREEMENT, TO BYPASS CASE PROGRESSION AND MOVE THE CASE DIRECTLY TO THE LIST TO FIX DATES BY APPLICATION TO THE COURT OFFICE

The Circuit Courts have been sitting and dealing with urgent matters throughout the pandemic, and many separation and divorce cases have been dealt with, while priority was given to domestic-violence cases. However, in the Dublin Circuit, there remains a significant backlog of family-law cases for hearing, motions to be listed, and case-progression hearings to be allocated dates – whether new case progressions that date from February 2020, or case-progression hearings that started prior to that date but were adjourned during the pandemic.

On 7 May 2021, the Courts Service announced that family-law business in the Dublin Family Circuit was restarting. A three-day list to fix dates was held over 5, 6 and 7 May, which allocated dates for hearing in the Trinity and Michaelmas terms, as well as some dates outside those terms. Case-progression hearings commenced from 12 May, and motions before the county registrar started on 20 May.

All of these sittings are taking place in person. A further list to fix dates will be scheduled during the Trinity term, which will allocate dates for the Michaelmas term. It is likely that this list to fix dates will take place in early July, which means that steps should be taken now to make sure that cases are ready to be listed for hearing.

Leapfrog option

Until 14 June 2017, the procedure for having a case listed for case progression was the same in all circuits. However, new *Circuit Court Rules* were introduced by SI 207 of 2017, which consolidated and reorganised order 59 and changed the procedure for case progression in Dublin only.

Three main changes were made to the case-progression system in Dublin:

- A 'leapfrog' option was introduced, which permitted both parties, by agreement, to bypass case progression and move the case directly to the list to fix dates by application to the court office,
- The manner in which cases were listed for case-progression hearings was changed (it ceased to be automatic),
- Where a case was in case progression, but the parties had complied with all outstanding matters, then the case could be transferred to the list to fix dates, on application to the court office.

Bypassing case progression

In Dublin Circuit only, a case-progression hearing is not required after the filing of a defence where both parties (a) agree, and (b) have certified completion of pre-case-progression steps (order 59, rule 38). A notice to fix a date for trial can be filed without the necessity for case progression where a defence has been filed and both

parties have certified compliance with the pre-case-progression steps using the appropriate forms (Form 37X and 37W), as contained in the new rules. The applicant can serve the notice any time after the defence and the appropriate form has been filed and served.

The respondent can file the notice if the applicant has not done so within ten days of filing and service of the defence, and provided both parties have certified completion of pre-case-progression steps (order 59, rule 39).

A notice to fix a date for trial is not a notice of trial, and so the date on the notice to fix a date for trial will be the date of the list to fix dates in Dublin. The notice to fix a date for trial must be issued and served on the other side and, where pension relief is sought, on the trustees of the pension scheme. The minimum notice for a notice to fix a date for trial is ten days.

Listing matters (Dublin Circuit)

In Dublin, once a defence is filed, a case-progression summons does *not* automatically issue fixing a date for a case-progression hearing within 70 days. In all circuits except Dublin, the filing of a defence triggers the automatic issuing of a summons for case progression from the court office.

Instead, the following options are open to parties in Dublin:

- Where both parties have lodged a duly signed joint certificate of completion of the pre-case-pro-



PIC: WIKIMEDIA COMMONS

gression steps, as set out in Form 37W, then the county registrar must list a case-progression hearing and issue a case-progression summons (Form 37L) for the next available date, or

- Where one party has lodged a certificate of completion by that party of the pre-case-progression steps in Form 37W and has given the opposing party not less than 14 days' written notice of his completion of the pre-case-progression steps, and his intention to apply for a case-progression hearing, and calling on that party to complete the pre-case-progression steps, then the county registrar must list a case-progression hearing and issue a case-progression summons (Form 37L) for the next available date following the expiry of 21 days from the date of issue of the summons. The most common method used to commence case progression in Dublin has been by using Form

37W and the 14-day notice, rather than the joint certificate of completion.

- If neither party has caused the case-progression summons to issue, within six months after the date for filing by the respondent of his defence, his affidavit of means, and (where required) his affidavit of welfare, the proceedings shall be listed before the court for an explanation of the delay in proceeding with case progression, and the court may make such orders and give such directions as it considers appropriate, which may include striking out the proceedings, including any counterclaim, or directing the issue of a summons for case progression by the county registrar.

Where (during the course of case progression) both parties – not less than seven weeks before any adjourned case-progression

hearing date – jointly certify completion of the pre-case-progression steps (in Form 37W) and compliance in full with all orders made and directions given in case progression and readiness for trial by completing the new Form 37X, and attaching copies of every order made and direction given in case progression, the proceedings shall be listed before the county registrar to fix a date for hearing, notwithstanding that the case-progression hearing is adjourned to a later date.

The county registrar must, save in exceptional circumstances to be identified in any order made, fix a date for the hearing by the court of the proceedings and vacate any adjourned date for the case-progression hearing.

Addressing backlog

One other way of getting your case listed in the 'list to fix dates' is to request the Circuit family judge to transfer any case before

it for a motion or other application, to transfer the case directly to the list to fix dates. This transfer is usually only done where both sides agree.

The measures introduced by the Courts Service will address the backlog of family law cases in the Dublin Circuit as restrictions ease, but much activity and work will be required to move cases on in the coming weeks and months.

The procedures for having cases listed for hearing without the need for case progression, where all the vouching and other preparatory work has been done, should be used where possible. In addition, as cases can be allocated dates for hearing directly from case-progression hearings, the sooner a case is put into case progression, the sooner it will ultimately get resolved.

Solicitors should check the legal diary and the Courts Service website regularly for updates.

THE INDEFINITE ARTICLE

The transposition deadline for the EU *Copyright Directive* is fast approaching. However, it now seems likely that only a handful of member states will meet the deadline.

Dr Mark Hyland uploads content

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



ARTICLE 17(4) SUFFERS FROM RATHER VAGUE WORDING. FOR EXAMPLE, THE TERM 'BEST EFFORTS' IS USED IN ALL THREE CONDITIONS. BUT WHAT EXACTLY DOES THIS TERM MEAN IN PRACTICAL TERMS?

The 27 EU member states have until 7 June to transpose the provisions of *Directive 2019/790* on copyright and related rights in the digital single market into national law. The last significant revamp of the EU copyright regime occurred 20 years ago, when the *Information Society Directive* (2001/29/EC) was adopted.

If the legislative process for this directive proved challenging, the transposition process has been no less eventful. In May 2019, Poland brought a legal challenge to certain aspects of the directive's article 17. A postponed opinion from Advocate General Saugmandsgaard Øe on this challenge means that the actual CJEU judgment in the case will also be delayed, possibly until 2022. Naturally, the timing is anything but ideal, as member states grapple with the transposition of article 17, one of the most complex and debated provisions in the directive. Further complicating this situation is the failure by the European Commission, up to now, to publish its eagerly awaited formal guidance on the application of article 17. This delayed guidance was due to be published in early 2021.

None of these things are assisting the transposition process. While the member states are navi-

gating the transposition at different speeds, it now seems likely that only a handful will meet the transposition deadline.

Harmony central

The subject matter and scope of the *Copyright Directive* are set out in article 1. The directive lays down rules that aim to further harmonise EU law applicable to copyright and related rights in the framework of the internal market, taking into account (in particular) digital and cross-border uses of protected content. The directive acknowledges the need for modern copyright rules fit for the digital age.

Three important objectives of the directive are:

- More cross-border access to content online,
- Wider opportunities to use copyright materials in education, research and cultural heritage, and
- A better functioning copyright marketplace.

Recital (3) of the directive describes the overall context of the new law, referring to the challenges of “rapid technological developments” and the emergence of “new business models” and “new actors”. It also acknowledges the need for copyright leg-

islation to be future-proof, so as not to restrict technological development.

Importantly, the directive contains mandatory exceptions to the reproduction and extraction rights. These exceptions cover text and data mining for the purposes of scientific research, the digital use of works in cross-border teaching activities, and the preservation of cultural heritage. In short, these exceptions will facilitate greater access to protected works, albeit in certain limited cases.

Gordian knot

Article 17 is a key provision in the directive. It is a significant, much-needed and well-intentioned provision, but it suffers from some rather poor drafting and internal tensions.

The objective of article 17 is to recalibrate the EU's digital economy to ensure that rights-holders (creators, musicians, video-producers, photographers, etc) are fairly remunerated. This recalibration can occur by addressing the so-called ‘value gap’ in the digital market. This refers to the mismatch between the economic benefits flowing to online service providers, and the economic benefits flowing to the actual copyright holders. It has





PIC: SHUTTERSTOCK

ONLINE CONTENT-SHARING SERVICES PROVIDE ACCESS TO A LARGE AMOUNT OF COPYRIGHT-PROTECTED CONTENT UPLOADED BY THEIR USERS. FOR MANY INTERNET USERS, THE ONLINE PLATFORMS REPRESENT THEIR MAIN SOURCE OF ACCESS TO CONTENT ONLINE

resulted in a funnelling of value away from creators and into the hands of the online platforms. Generally, the online service providers do considerably better, commercially speaking, than rights-holders and one of the key aims of the *Copyright Directive* is to resolve this commercial unfairness, thereby ensuring that creators receive fair payment for their work.

Article 17 is a complex provision that requires online content-sharing service providers (OCSSPs) to obtain an authorisation from copyright holders in order to communicate to the public, or make available to the public, copyright-protected works that have been uploaded by users of OCSSP services. Where an OCSSP fails to obtain the authorisation, it will be liable for acts of copyright infringement. However, the OCSSP may be able to obtain an exemption from liability if it complies with three conditions specified in article 17(4).

The *Copyright Directive* defines an OCSSP as “a provider of an information society service of which the main, or one of the main purposes, is to store and give the public access to a large amount of copyright-protected

works or other protected subject matter uploaded by its users, which it organises and promotes for profit-making purposes”. The types of companies covered by this definition include YouTube, Daily Motion and Vimeo.

Polish challenge

Article 17 has been the subject of heated debate ever since it appeared in the draft directive (as article 13) in September 2016. The debate surrounding article 17 continues unabated during the transposition process, and will inevitably continue beyond the transposition deadline.

Aspects of article 17 are currently subject to a legal challenge by Poland in *Case C-401/19 Republic of Poland v European Parliament and Council of the European Union*.

Frustratingly, Advocate General Saugmandsgaard Øe’s opinion on the challenge was recently postponed, from 22 April to 15 July. This means that the opinion will be published subsequent to the transposition deadline, thereby depriving the 27 member states of an initial indication as to how they should reconcile the conflicting obligations contained in article 17. The postponement will also have consequences for the actual CJEU

judgment – it will be pushed back, and may not be delivered until sometime in 2022.

Market sharing

Recital (61) of the directive provides the rationale behind article 17. It refers to the growing complexity of the online content market and the fact that online content-sharing services provide access to a large amount of copyright-protected content uploaded by their users. For many internet users, the online platforms represent their main source of access to content online. The recital goes on to refer to copyright-protected material being uploaded by internet users “without prior authorisation” (from copyright holders) and the challenges that that poses to the individual rights-holders.

Recital (61) highlights the importance of fostering the development of a licensing market between rights-holders and OCSSPs. The licensing agreements arising from such market should be “fair and keep a reasonable balance between both parties”.

Importantly, the recital also recommends that rights-holders should “receive appropriate remuneration for the use of their works or other subject matter”. Recital (61) concludes by reiterat-

ing the importance of contractual freedom. In other words, copyright holders are entirely free to give (or withhold) authorisation and, separately, conclude (or not conclude) a licensing agreement with an OCSSP.

Obtaining authorisation

Article 17(1) is of particular importance. It requires member states to provide that OCSSPs perform an act of communication to the public or an act of making available to the public when it gives the public access to copyright-protected works or other protected subject matter uploaded by its users.

Article 17(1) goes on to require OCSSPs to obtain an authorisation from the rights-holders (for instance, by concluding a licensing agreement) in order to legally communicate protected works to the public or to make them available to the public.

Article 17(4) concerns a situation where no authorisation is granted by the rights-holder. In such a situation, the OCSSP will be liable for unauthorised acts of communication to the public, and unauthorised ‘making-available’ to the public of copyright protected works.

An exemption from the liability mechanism is built into article 17(4), and that is where things start to get complicated!

Despite no authorisation being obtained from a copyright holder, the OCSSP may be exempt from liability where three cumulative conditions are satisfied. The OCSSP must demonstrate that they have:

- a) Made best efforts to obtain an authorisation, and
- b) Made, in accordance with high industry standards of professional diligence, best efforts to ensure the unavailability of specific works and other subject matter for which the rights-holders have provided the service providers with the relevant and necessary information, and in any event,

c) Acted expeditiously, upon receiving a sufficiently substantiated notice from the rights-holder, to disable access to, or remove from their websites, the notified works or other subject matter, and made best efforts to prevent their future uploads in accordance with point (b).

Article 17(4) suffers from rather vague wording. For example, the term ‘best efforts’ is used in all three conditions. But what exactly does this term mean in practical terms? How many attempts must an OCSSP make to obtain authorisation from a copyright holder before the condition is satisfied?

References to ‘high industry standards of professional diligence’ and to act ‘expeditiously’ are also rather woolly. It is almost inevitable that some or all of these terms will end up being challenged in national courts (following transposition), or being the subject of an [article 267 TFEU](#) preliminary reference from a national court to the CJEU.

Commission guidance

Article 17(10) requires the European Commission, in cooperation with the member states, to organise stakeholder dialogues to discuss best practices for cooperation between OCSSPs and rights-holders.

When discussing best practices, special account must be taken (among other things) of the need to balance fundamental rights, and of the use of copyright exceptions and limitations. This provision requires the commission to consult with all the relevant stakeholders, take account of the results of the stakeholder dialogues, and issue guidance on the application of article 17, in particular regarding the cooperation referred to in article 17(4).

Between October 2019 and February 2020, six such stakeholder dialogues took place, involving representatives of rights-


holders, OCSSPs, consumers, users, and fundamental-rights organisations. On 27 July 2020, the commission published a 19-page [final consultation paper](#) titled ‘Targeted Consultation Addressed to the Participants to the Stakeholder Dialogue on Article 17 of the Directive’.

Participants were then given a final opportunity to submit their written views until 10 September 2020, with a view to the European Commission finalising its guidance by the end of last year. But, at the time of writing, the commission has yet to publish this important guidance. Moreover, there is no clear indication as to when the guidance might be published.

Copyright prognostications

The *Copyright Directive* will certainly have a very significant and positive impact on the copyright landscape within the EU. While it adapts and supplements the existing EU copyright framework, the directive also ensures that a high level of protection of copyright and related rights is maintained.

Article 17 ensures that there is a legal framework for the use of copyright-protected content in the context of information society services. By imposing on OCSSPs the obligation to obtain authorisation from rights-holders, the directive helps to recalibrate the EU’s digital economy. By fostering the increased use of licensing agreements between individual copyright holders and OCSSPs, the directive addresses the value gap and the associated commercial unfairness.

It is regrettable that we are still waiting for the European Commission’s guidance on the application of article 17. Equally regrettable is the fact that the CJEU judgment on the Polish challenge to parts of article 17 may not be handed down for quite some time. Both issues make an already challenging transposition process even more challenging for the member states. 

THE COPYRIGHT DIRECTIVE ADAPTS AND SUPPLEMENTS THE EXISTING EU COPYRIGHT FRAMEWORK AND ALSO ENSURES THAT A HIGH LEVEL OF PROTECTION OF COPYRIGHT AND RELATED RIGHTS IS MAINTAINED

CPD Cluster Events 2021

The 2021 Law Society Finuas Skillnet clusters are run in partnership 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.

17 Jun **North West Practice Update 2021** in partnership with the Donegal Bar Association and Inishowen Bar Association

2 July **Essential Solicitors' Update 2021** in partnership with the Clare Bar Association and Limerick Bar Association

To register please visit www.lawsociety.ie/cpdcourses

DATE	EVENT	CPD HOURS	DISCOUNTED FEE*	FULL FEE
3 June	Intellectual Property Law Seminar 2021: Copyright, Patents and Trade Marks - Online via Zoom Webinar	3 hours General (by eLearning)	€160	€186
9 June	Registration of Easements – A Ticking Clock Online via Zoom Webinar	2 General (by eLearning)	€135	
10 June	Current and Emerging Trends in Financial Services Regulation - Online via Zoom Webinar	1 hour General (by eLearning)	€95	
22 June	Dealing with Challenging Clients & Situations** Online via Zoom Meetings	3 Management & Professional Development Skills (by eLearning)	€135	€160
29 June	Personal Effectiveness** Online via Zoom Meetings	3 Management & Professional Development Skills (by eLearning)	€135	€160
30 June	The Older Client – the Role of the Solicitor in Resolving Conflict - Online via Zoom Webinar	2 General (by eLearning)	€135	
Online, On Demand	Negative Interest Rate Charges and Solicitors' Accounts	1 Regulatory Matters (Accounting & AML Compliance) (by eLearning)	Complimentary	
Online, On Demand	BrexEd Talks	Varies depending on modules attended	€160	€186

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REPORT OF LAW SOCIETY COUNCIL MEETING

7 MAY 2021

PII renewal

PII Committee chair Barry McCarthy reported that a PII webinar for Council members would be held in June to consider members' experiences of the last renewal process and to discuss potential enhancements to the process.

Joint statement on China

The Council agreed to issue the following joint statement:

"The Law Societies of Northern Ireland, Ireland, and Scotland unreservedly condemn the recent announcement by the Government of the People's Republic of China of sanctions against lawyers for providing legal advice on the human-rights violations in the Xinjiang region of China.

"The actions of the Chinese Government constitute an attack upon the rule of law and the independence of the legal profession, and should be rescinded immediately."

EAST recommendations

The Council approved a number of recommendations of the Environmental and Sustainability Task Force (EAST) in respect of:

- Remote attendance at meetings of the Society, post-COVID-19,
- The Society's Digital Transformation Project,
- The development of a charter and practice guidelines on environmental sustainability, and
- The establishment of a new non-standing committee dedicated to the practice area.

Banking charges on deposits

Task force chair Maura Derivan updated the Council on the issue and confirmed that work was underway on developing a webinar to provide further information to members.

Mental-health law

Chair of the Mental Health and Capacity Task Force Áine Hynes

informed the meeting that a submission had recently been made on the *Mental Health Act*.

In conducting the work, the task force expressed particular concern about a serious gap that arises in circumstances where children between the ages of 16 and 18 could be deemed to be voluntary patients on the basis of parental consent, when they themselves were not consenting.

Education

New committee chair Richard Hammond reported to the Council on the new PPC syllabus design and the inaugural 'Becoming a solicitor' symposium.

Finance

Chair of the Finance Committee Chris Callan reported issues that included PC numbers, the impact of charges on deposits on the Society's funds, and the audited financial statements.

Family and child law

Chair of the Family and Child Law Committee Helen Coughlan informed the meeting that significant family-law developments were ongoing, which, it was hoped, would bring about substantial change in the practice area and alleviate ongoing issues of concern around access to justice.

Prescriptive easements

Having been provided with a detailed memo on the issue of prescriptive easements by the Conveyancing Committee, the Council discussed the upcoming deadline in respect of prescriptive easements and how best to ensure that solicitors were protected. The Council noted that a submission had been made to the Department of Justice that sought an extension to the deadline, and that further contact would be made with the department in respect of the issue. [E](#)



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PRACTICE NOTES ARE INTENDED AS GUIDES ONLY AND ARE NOT A SUBSTITUTE FOR PROFESSIONAL ADVICE.
NO RESPONSIBILITY IS ACCEPTED FOR ANY ERRORS OR OMISSIONS, HOWSOEVER ARISING

— GUIDANCE AND ETHICS COMMITTEE —

TEN STEPS TO A MORE COSTS-COMPLIANT FIRM

1) The law

Sections 149-61 of the *Legal Services Regulation Act 2015* were commenced on 7 October 2019. These provisions replace solicitors' obligations under section 68 of the *Solicitors (Amendment) Act 1994*.

2) The notice

Under section 150 of the act, a solicitor is obliged, on receipt of instructions, as soon as it becomes practicable to do so, to give the client a notice setting out the legal costs to be incurred or, if not practicable, to set out the basis on which the legal costs will be calculated.

Costs in contentious matters cannot be a percentage/proportion of damages or moneys recovered, other than in debt-collection cases. In every case where a solicitor becomes aware of a matter that is likely to significantly increase the costs above those indicated in the notice, then the solicitor is required, as soon as becoming aware, to provide the client with a new notice.

Every time there is a change in instructions, or an additional matter has to be dealt with, then a new notice must also be provided to the client.

The notice should contain:

- The legal costs incurred at the date of the notice; the legal costs of a fixed nature or that are certain to be incurred; and the legal costs likely to be incurred,
- The basis of calculation of the legal costs, explained by reference to paragraph 2 of schedule 1 of the *Legal Services Regulation Act*,
- A statement to say that, if the solicitor becomes aware of any factor that might result

in significantly greater fees, a new notice will be provided to the client,

- That the solicitor can suspend providing legal services pending receipt of confirmation from the client that they wish the solicitor to continue to provide legal services in the matter (the suspension period applies to subsequent notices), and
- The amount of VAT chargeable.

Where clarification in relation to a notice is sought by a client, this must be provided as soon as reasonably practicable.

3) Law Society templates

The Society has issued [template notices and guidance](#), which are available on the Law Society's website. The templates deal with general matters, including litigation and personal injuries, together with a draft bill of costs and guidance notes. The notice should be written in clear language that is easily understood.

4) Office procedure

Make sure you have procedures in place to ensure a notice is issued to the client as soon as is practicable after instructions are received. Consider adopting an office system where, when first opening a file, you have a separate folder dealing with compliance/regulatory matters, including your letter of engagement, AML compliance, the notice, and [terms of business](#).

5) Litigation

There are extra obligations for solicitors with regard to notices for litigation matters. The solicitor is obliged to set out an outline of the work to be done at each

stage of the litigation process, and the statement of the likely costs or basis of costs of engaging counsel, expert witnesses, or such other services. Client approval is required before engaging any such persons.

The client must be advised of the possibility of being responsible for, not only their own legal costs, but the other side's legal costs and, where a case is discontinued, that the client may be required to pay the legal costs of other parties to the litigation. When instructing a barrister, the barrister must provide a notice, which must be approved by the client in advance.

6) Contract for fees

A solicitor and client can make a contract concerning fees, the amount, and the manner of payment, pursuant to section 151 of the act. In such a case, a notice is not required, but the contract must contain all the information that a notice should contain. Where such a contract exists, it will constitute the entire agreement, and no other moneys/fees are recoverable.

7) Bill of costs

A signed bill of costs (BOC) must be provided to the client as soon as practical after concluding the provision of legal services (section 152 of the act). The BOC must contain a summary of the legal services provided to the client in connection with the matter concerned; an itemised statement of the amounts in respect of legal costs in connection with legal services; VAT registration number; where time is a factor in calculating legal costs, the time spent dealing with the matter;

where damages or other money are recovered, details of that amount; and the amount of legal costs recovered on behalf of the client, including costs recovered from another party or an insurer on behalf of another party to the matter concerned. The BOC must, further, be in such form (if any) as may be specified in the rules of court.

8) BOC dispute procedure

Along with the BOC, the solicitor is obliged to provide to the client an explanation in writing of the procedure available to the client should the client wish to dispute any aspect of the BOC, and it must contain the following information: that the client may discuss the matter with the solicitor; that the client is obliged to communicate to the solicitor as to the existence of any dispute on any aspect of the BOC, and the date by which, and the means by which this is to be communicated; that the solicitor is obliged to attempt to resolve the dispute by informal means, including mediation; that the client may have the dispute referred to mediation; that the client may apply for adjudication of legal costs, and it must provide contact information for the Office of the Legal Costs Adjudicator, and the potential cost to the client of seeking an adjudication of the BOC; and the date on which the solicitor may make application for adjudication in the event the BOC remains unpaid (see [section 152\(3\)](#) of the act).

9) Time limits

The time limits for referring the BOC for adjudication start from the date the bill is issued. The time limit for a client referring the BOC for adjudication

is the earlier of three months from the date of payment, or six months after giving the BOC to the client. For the solicitor, it is between 30 days and 12 months from the date on which the BOC was provided to the client.

10) Sanctions

The notice and BOC must contain all the information required under the act. Failure to include the required information could result in not being paid, or it could be held to be misconduct. In cir-

cumstances where the BOC is being adjudicated by a legal costs adjudicator (LCA), the LCA does not have the authority to confirm a charge that was not included in the notice, unless the LCA is of the opinion that to disallow the

charge would create an injustice between the parties. Failure to comply with the act may constitute misconduct where the act or omission consists of a breach of the act. Seeking excessive fees may also be considered misconduct.

PII COMMITTEE

IN-HOUSE SOLICITORS AND PRO BONO WORK

In-house solicitors in the private and public sectors who wish to carry out *pro bono* work should ensure that they meet their statutory regulatory requirements with regard to the *Solicitors Acts 1954-2015*, professional indemnity insurance (PII), and practising certificates.

Pro bono work cannot be provided by in-house solicitors to third parties under the title of their employer. Bodies corporate are prohibited under the *Solicitors Acts* from acting as a solicitor, and in-house solicitors may only provide legal services to their employer, not to third parties.

Section 64 of the *Solicitors Act 1954* prohibits bodies corporate, their directors, or servants from doing any act of such nature or in such manner as to imply that the body corporate is qualified, or recognised by law as qualified, to act as a solicitor. Contravention of this section is a criminal offence.

Under section 59 of the *Solicitors Act 1954*, solicitors are prohibited from acting as an agent for an unqualified person (including bodies corporate) so as to enable that unqualified person or body corporate to act as a solicitor. Solicitors are prohibited from permitting their name to be made use of, in business carried on by the solicitor as a solicitor, upon the account of or for the profit of an unqualified person or body corporate. Contravention of this section is professional misconduct.

As such, in-house solicitors who wish to provide legal services (which constitute any services of a legal or financial nature) to third parties, including *pro bono* legal services, must provide such services through the structure of a solicitor firm or independent law centre. The Society must be notified of such work to ensure that you are

linked to the firm or independent law centre. This can be arranged by providing the Society with a letter or email from the firm or independent law centre confirming that you also provide legal services through that entity, and are covered by their PII.

This confirmation can be sent to the Law Society by email to pc@lawsociety.ie.

In-house solicitors providing *pro-bono* legal services to third parties should ensure that they are covered by the PII of the solicitor firm or independent law centre through which they are providing the legal services, especially if they are not an employee of the firm or independent law centre. Any cover provided by a body corporate does not meet the statutory PII requirements in this jurisdiction, as such cover must be provided by a solicitor firm or independent law centre.

Solicitors are required to have a current practising certificate in place in order to provide legal services of any kind.

A solicitor in the full-time service of the State ('State solicitor') is defined under the *Solicitors Acts 1954-2015* as a solicitor required to devote the whole of their time to the service of the State as a solicitor and is remunerated in respect of such service wholly out of moneys provided by the Oireachtas.

State solicitors are not required to hold a practising certificate so long as they only provide legal services to their employer, the State.

If a State solicitor wishes to provide legal services, including *pro bono* legal services, to third parties, they are required to obtain a practising certificate and have the necessary PII cover extended to them by the firm or independent law centre.

CONVEYANCING COMMITTEE

DIGITISATION OF THE CONVEYANCING PROCESS

Practitioners are reminded of the practice note issued by the Conveyancing Committee and the Technology Committee in the July 2019 *Gazette* (p58) – 'Sharing conditions of sale and title documents in electronic form'.

Recognising that, during the COVID-19 lockdown, many solicitors are working from home, practitioners are advised that:

- It is good practice to issue copy

title and related documents in digital format (with hard copies to follow where requested) at the outset of a transaction, where possible.

- When sending documents in hard copy, the cover letter should indicate if the enclosures were previously sent digitally to the recipient. This will save duplication of scanning efforts and recognises that many solic-

itors won't see the post until it has been processed (scanned) by administrative staff.

- During this period, practitioners are encouraged to communicate with colleagues by email as appropriate and to avoid sending hard-copy letters, unless it is necessary to do so.

The committee also wishes to highlight that it is good

practice that:

- All correspondence includes the file reference of the recipient,
- Emails should be sent to the designated email address of, or for, the person with whom they are corresponding, and
- As ever, great care should be taken when opening attachments to emails received from external sources.

CONVEYANCING COMMITTEE

CERTIFICATE-OF-TITLE SYSTEM AND AML OBLIGATIONS

The committee would like to remind conveyancing practitioners that there is no obligation on the borrower's solicitor in the Law Society's certificate-of-title system for residential mortgage lending to carry out a lender's AML obligations on its behalf.

The committee was recently made aware that a lender introduced such a requirement as a condition of a loan because of a perceived difficulty of meeting with clients during the COVID pandemic. By requiring the borrower's solicitor to

collect the bank's AML requirements, the bank merely passed its COVID-related risks on to the solicitor, which is not acceptable practice.

A lender is not entitled to withhold issue of loan funds for this reason. The committee under-

stands that the lender has since ceased this practice. If practitioners continue to encounter this matter in practice, they should let the committee know, for the purpose of the committee taking up the matter with the relevant lending institution.

CONVEYANCING COMMITTEE


POWER OF ATTORNEY IN CERTIFICATE-OF-TITLE SYSTEM

The Conveyancing Committee is aware that some lenders include a power of attorney form in their loan packs going out to solicitors. The committee was recently made aware that one lender sought to withhold issue

of loan funds until the borrower's solicitor had the power of attorney form executed by the borrower in advance of drawdown.

The committee confirms that it is not part of the certificate-of-title agreement with lenders par-

ticipating in the Society's certificate-of-title system that a power of attorney form will be executed. A lender is not entitled under the system to withhold issue of loan funds on the grounds that such a power has not been signed.

If practitioners continue to encounter this matter in practice, they should let the committee know, for the purpose of the committee taking up the matter with the relevant lending institution. 



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In the matter of Michael Keane, solicitor, Flynn & McMorro, Solicitors, Bridge Street, Carrick-on-Shannon, Co Leitrim, and in the matter of the *Solicitors Acts 1954-2015* [2018/DT21 and High Court 2020 no 21 SA] *Named client (applicant) Michael Keane (respondent solicitor)*

On 15 December 2020, further to the determination of the applicant's appeal of the decision of the Solicitors Disciplinary Tribunal, the High Court found

the respondent solicitor guilty of misconduct in respect of the following complaint, as set out in the applicant's affidavit: failed and continues to fail to use his best endeavours to recover [the applicant's] fees in respect of any, some, or all of the cases listed by the applicant.

The High Court ordered that:

- 1) The respondent solicitor stand censured,
- 2) The respondent solicitor pay 50% of the applicant's legal costs, to be adjudicated in default of agreement. 

NOTICE: THE HIGH COURT

In the matter of Patrick McGonagle, a solicitor practising as McGonagle Solicitors, No 1 Main Street, Dundrum, Dublin 14, and in the matter of the *Solicitors Acts 1954-2015* [2021 no 6 SA] *Law Society of Ireland (applicant)*

Patrick McGonagle (respondent solicitor)

Take notice that, by order of the President of the High Court made on 26 April 2021, it is ordered that:

- 1) Pursuant to section 18 of the *Solicitors (Amendment) Act 2002*, no bank shall, without leave of the court, make any payment out of McGonagle Solicitors' client account, and that
- 2) Patrick McGonagle be suspended from practising as a solicitor until further order.

Registrar of Solicitors, Law Society of Ireland, May 2021

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WILLS

Baker, Jeremiah (deceased), late of 3 Bettystown Avenue, Raheny, Dublin 5, and Drombane, Thurles, Co Tipperary, who died on 1 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, or if any firm is holding same, please contact Patrick J O'Meara & Co, Solicitors, Liberty Square, Thurles, Co Tipperary; tel: 0504 22333, email: amosborne@pjom.ie

Daunt Smyth, Stuart (deceased), late of 35 Ballybeg, The Bank, Rathnew, Co Wicklow. Would any person with any knowledge of a will executed by the above-named deceased, who died on 12 December 2020, please contact Mairead Leyne Solicitor, 3 Park House, Greystones, Co Wicklow; DX 205003 Greystones; tel: 01 287 3483, email: maireadleyne.solicitor@gmail.com

Gallagher, Stephanie (deceased), late of 172 Killester Avenue, Killester, Dublin 5, who died on 4 April 2020. Would any person having knowledge of a will made by the above-named deceased please contact Direct Law Solicitors, 10 Skerries Point Shopping Centre, Skerries, Co Dublin; DX 151002 Skerries; tel: 01 849 4226, email: sdowling@directlaw.ie

Gray, Anne (otherwise Áine Gray) (deceased), late of 14 Louvain, Roebuck Road, Dublin 14. Would any person having knowledge of the whereabouts of any will made by the above-named deceased, who died on 15 January 2021, please contact Gartlan Furey Solicitors, 20 Fitzwilliam Square, Dublin 2; DX 51; tel: 01 799 8000, email: info@gartlanfurey.ie

Hyland, Anthony (otherwise Tony) (deceased), late of 7 Burgess Hill, Ballylooby, Cahir, Co Tipperary; formerly of Lower Gormanstown, Ardfinnan, Clonmel; Ballybacon, Ardfinnan, Clonmel; and Garryduff, Ardfinnan, Clonmel, Co Tipperary. Would any person having knowledge of the whereabouts of any will made

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

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- **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.kearney@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 July 2021 Gazette: 16 June 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*.

by the above-named deceased, who died on 16 November 2020, please contact Dermot B O'Dwyer & Co, Solicitors, The Square, Cahir, Co Tipperary; tel: 052 744 5958, email: dermot.odwyerlaw.com

McDonald, James (deceased), late of Farnese, Tinahely, Co Wicklow, who died on 19 August 2019. Would any person having knowledge of the whereabouts of any will made or purported to have been made by the above-named deceased, or if any firm is holding same, please contact Michael O'Flaherty of Crean & O'Flaherty Solicitors, Mill Wood, Carrigduff, Bunclody, Co Wexford; tel: 053 937 7938, email: michael@creanandco.ie

McKeon, Richard (deceased), late of Hazeldean, Hazelhatch Road, Newcastle, Co Dublin, who died on 14 April 2021. Would any person having any knowledge of the whereabouts of any will made by the above-named deceased, or if any firm is holding same, please contact Hayes Solicitors LLP, Lavery House, Earlsfort Terrace, Dublin 2; email: oburke@hayes-solicitors.ie

McManamon, John (deceased), late of Drumgallagh, Ballycroy, Westport, in the county of Mayo, who died on 3 November 1996. Would any person having knowl-

edge of the whereabouts of any will made by the above-named deceased, or if any firm is holding same, please contact Patrick J Durcan and Company, Solicitors, James Street, Westport, Co Mayo; DX 53002 Westport; tel: 098 25100, email: admin@patrickjdurcan.ie

Ray, Ellen (deceased), late of 34 Walkinstown Crescent, Walkinstown, Dublin 12, who died on 18 February 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

Rose, Joshua James (deceased), late of Donadea, Naas, Co Kildare, who died on 3 March

2021. Would any person having knowledge of the whereabouts of a will by the above-named deceased please contact Powderly Solicitors LLP, Finnerty House, Maynooth, Co Kildare; tel: 01 601 6390, email: barry@powderly.solicitors.ie

Ryan, John Patrick (known as Paddy) (deceased), late of Vandeleur Street, Kilrush, Co Clare. Would any person having knowledge of the whereabouts of any will made by the above-named deceased, who died on 24 March 2021, please contact Bowen & Co, Solicitors, Pound Street, Sixmilebridge, Co Clare; tel: 061 713 767, fax: 061 713 642, email: gwen@bowensolicitors.ie

Sheridan, Vincent (deceased), late of 157 Graham Road, Hack-

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ney, London E3, and Elm Lodge, Castleknock, Dublin 15, who passed away on 4 August 1987. Would any person having knowledge of the whereabouts of a will of the above-named please contact Justin Hughes, solicitor, Justin Hughes Solicitors, 89 Phibsborough Road, Dublin 7; tel: 01 882 8583, 882 862, email: info@justinhughes.ie

Slattery, Vincent (deceased), late of 10 Beverley Drive, Templeogue, Dublin 16, who died on 1 May 2021. Would any person holding or having any knowledge of a will made and executed by the above-named deceased please contact Geraldine Kelly & Co, Solicitors, 195 Lower Kimmage Road, Dublin 6W; tel: 01 492 1223, email: info@geraldinekellysolicitors.ie

MISCELLANEOUS

Practice for sale in the south of the country. Reply to **box no 01/05/2021** (c/o *Law Society Gazette*), Blackhall Place, Dublin 7

TITLE DEEDS

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of an application by Sheila McGinnity, 17 Cathedral Road, Cavan: in the matter of premises known as 17 Cathedral Road, Cavan

Take notice that any person having an interest in the freehold estate or any superior intermediate interest in all the premises situate at 17 Cathedral Road, Cavan, in the townland of Keadue, barony of Upper Loughtee, and town and county of Cavan (hereinafter called 'the property'), the subject matter of a lease dated 5 July 1936, Lord Farnham to Arnold Lang for a term of 99 years from 1 May 1936, subject to a yearly rent of

£7.10d thereby reserved and the covenants of the lessee and the conditions therein contained and, further, the subject matter of a sublease dated 29 June 1946, John Francis Smith to Arthur Robert Martin McLoughlin for a term of 88 years from 1 May 1949 and subject to a yearly rent of £10 per annum thereby reserved and the covenants on the part of the lessee and the conditions therein contained.

Take notice that the applicant, Sheila McGinnity, hereby intends to submit an application to the county registrar for the county of Cavan for the acquisition of the freehold and all intermediary interest in the said property and that any party asserting that they hold a superior interest in the property is called upon to furnish evidence of such title to the property to the undersigned solicitors within 21 days from the date of this notice.

Take notice that, in default of the said notice of interest being received, the applicant, Sheila McGinnity, intends to proceed with an 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 Cavan for such directions that may be appropriate on the basis that the person or persons beneficially entitled to the superior interest including the freehold reversion in the said property are unknown or unascertained.

Date: 4 June 2021

Signed: Michael J Ryan (solicitors for the applicant), Athbarra House, Cavan

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 81 Morehampton Road, Donnybrook, Dublin 4: in the matter of an application by Elaine Cogavin

Take notice that any person having any interest in the freehold estate of the following property: all and singular the premises known as 81 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 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 of 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 of 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 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 applicants 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 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: 4 June 2021

Signed: Liston & Company

(solicitors for the applicant), Argyle House, 103-105 Morehampton Road, Donnybrook, Dublin 4, D04 T2X5

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 an application by Mark Dunne, Denise Holland and Declan Quilligan, and in the matter of the property known as 44, 44A and 46 Seafield Crescent, Booterstown, Co Dublin

Take notice that any person having an interest in the freehold estate or any intermediate interests of 44, 44A and 46 Seafield Crescent, Booterstown, Co Dublin, held under indenture of lease dated 31 December 1934 made between Patrick Jerome Hennessy, Stephen Hubert Butler, William Mark McCarthy and Thomas Joseph Stapleton of the one part, and John Kenny of the other part (the 'lease') for a term of 900 years from 1 October 1934, subject to the yearly rent of one shilling and subject to the covenants and conditions therein contained.

Take notice that Mark Dunne, Denise Holland and Declan Quilligan intend to submit an application to the county registrar for the county of Dublin at Áras Uí Dhálaigh, Inns Quay, Dublin 7, for the acquisition of the freehold interest and all intermediate interests in the aforesaid property, and that any party asserting that they hold the fee simple or any intermediate interest in the aforesaid property are called upon to furnish evidence of title to the said property to the below-named solicitors within 21 days from the

date of this notice.

In default of any such notice being received, Mark Dunne, Denise Holland and Declan Quiligan 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 may be appropriate that the person or persons beneficially entitled to the intermediate interests, including the fee simple in the aforesaid property, are unknown or unascertained.

Date: 4 June 2021

Signed: Donal M Gahan, Ritchie & Co (solicitors for the applicant), 36 Lower Baggot Street, Dublin 2

In the matter of the Landlord and Tenant Acts 1967-2020 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978

Take notice that any person having any superior interest (whether by way of freehold estate or otherwise) in the following property: (i) all that and those the licensed house and drapery premises known as 'The Gate Bar', situate at Westgate in the town of Carrick-on-Suir, in the barony of Iffa and Offa East, and county of Tipperary, as more particularly delineated and described on the map or

plan annexed to a lease dated 31 October 1933 between Charles Humphreys Peare of the one part and Denis John O'Driscoll of the other part for a term of 99 years from 1 May 1933 at a yearly rent of £10 per annum and thereon edged red; and (ii) an additional portion of land situate at the rear of the property at (i) consisting of an outdoor area used by customers of 'The Gate Bar', which has been incorporated into the property at (ii) by encroachment over many years so as to enlarge the extent of the property held under the lease.

Take notice that Nora Keegan, as tenant under the said lease, intends to submit an application to the county registrar for acquisition of the freehold interest in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid premises (or any of them) are called upon to furnish evidence of their 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 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

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for the county of Tipperary for directions as may be appropriate on the basis that the persons beneficially entitled to the superior interest including the freehold reversion in the premises are

unknown or unascertained.

Date: 4 June 2021

Signed: Michael A O'Brien & Co (solicitors of the applicant), Lee House, Strand Lane, Carrick-on-Suir, Co Tipperary



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THE NAME'S BOND... BASILDON BOND

The *Leicester Mercury* reports that police succeeded in capturing a man after an eight-mile canal boat chase – at 4mph.

An officer followed on his bike, while colleagues staked out a canal lock. As soon as the suspect got off to open the lock, the trap was sprung by officers hiding in the bushes.

The pursuing peeler tweeted, celebrating the logging of his low-speed life-goals: “For 15 years I’ve been trying to tick off a water-based pursuit in land-locked Leicester, and today I’ve ticked it off.”

The Twitter response from a local joker: “I like to think it was like the boat chase in James Bond’s *Live and Let Die*.”



BIRD-BRAINED BANDITS

Two men known as the ‘Big Bird Bandits’ who allegedly stole a Sesame Street costume from a circus in Adelaide, Australia, have been tracked down and charged, *The Daily Mail* reports.

The 213cm-tall bright-yellow Big Bird costume, made of ostrich feathers and valued at AU\$160,000 (€101,550), disappeared, but was found dumped near the outskirts of the circus the following day.

The alleged thieves left behind a note in the beak, apologising for the trouble they had caused: “We were just having a rough time and were trying to cheer ourselves up. We had a great time with Mr Bird. He’s a great guy and no harm came to our friend.”

BULLET TRAIN STEAMS INTO STATION

A Japanese train driver faces possible punishment after he left the controls of a speeding bullet train for several minutes for an urgent toilet break.

The *BBC* reports that the driver had suffered stomach cramps and needed to use the toilet urgently. He called a

conductor, who did not have a driver’s licence, into the cockpit to man the controls – and then left for about three minutes to use the lavatory in a passenger cabin.

The train was carrying 160 passengers and was travelling at 150km/h. While the jour-

ney was incident free, the railway company reported it to the authorities and apologised. Company rules state that if drivers feel unwell, they must contact their control centre. They are allowed to ask a conductor to take over, but only if they have a licence.

FINALLY FACING MY WATERLOO

The Franco-Belgian border, established after the Battle of Waterloo, was inadvertently redrawn by a farmer who moved a 200-year-old border stone because it was in the way of his tractor.

The Guardian reports that the Belgian farmer could theoretically face criminal charges after making his country bigger: the 1819 marker near the village of



Erquelinnes had been moved 2.29 metres.

The village mayor said that the farmer was legally obliged to move the stone back, so as not “to create a diplomatic incident”. If the farmer fails to comply, a Franco-Belgian border commission, dormant since 1930, may have to convene to settle the exact boundary.

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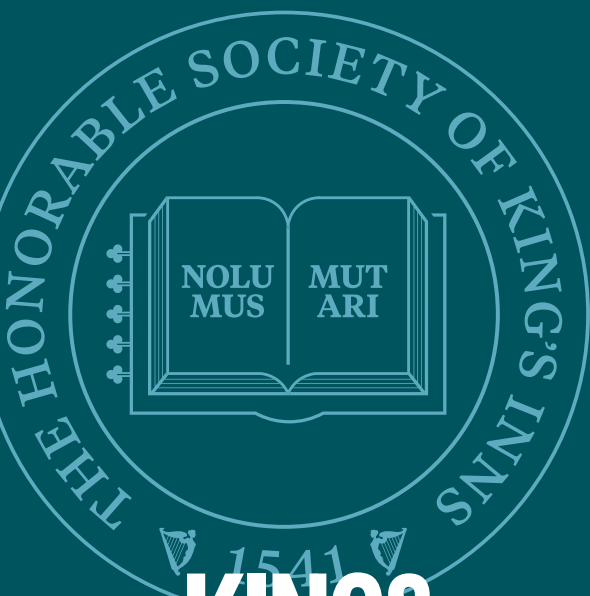
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