



**On down the line**  
The Gazette talks to  
*Jurist* editor-in-chief  
Bernard Hibbitts



**Let's work together**  
How should post-COVID  
workplaces be organised –  
remote, in person, or hybrid?



**Four green fields**  
Ireland is an ideal seat  
for international arbitration  
for myriad reasons

# gazette

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# DIGNITY MATTERS

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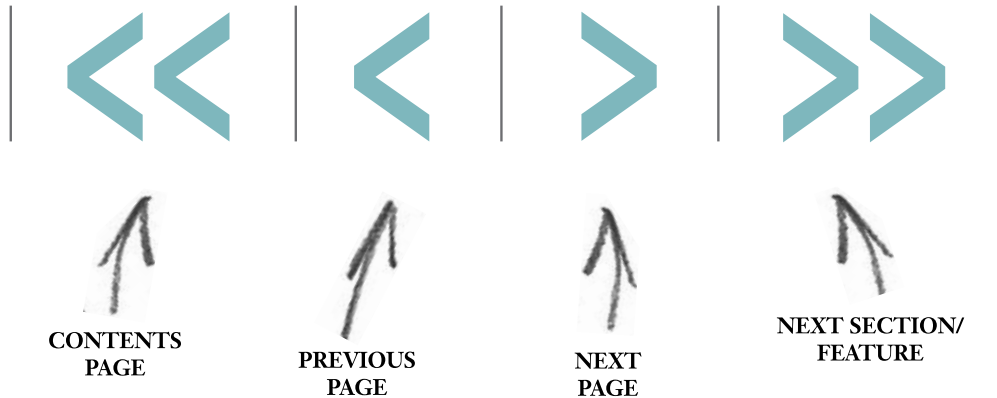


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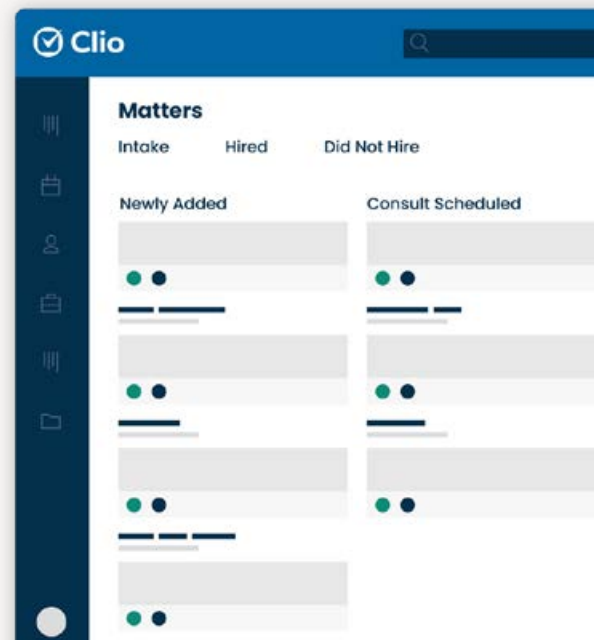
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## PRESIDENT'S MESSAGE

# AN HONOUR TO HAVE SERVED YOU

**T**his has been a wonderful and a very productive year. A year in which every Council member worked their hearts out for you. Such was the workload, that we had ten scheduled meetings of Council and five additional. A sincere thank you to every Council member from the bottom of my heart. Apologies to anyone whom I might have upset during the year, but I can assure you we have all been working towards the same goal – the betterment of the membership in an environment where there are so many different opinions held and expressed!

Dyslexia has always hindered me in dealing with such huge amounts of paperwork and reading. With enormous volumes, the Law Society staff have greatly facilitated me, always with a can-do attitude.

### Memento of achievement

Due to the pandemic, I have not been able to travel the country to meet with our members as presidents normally do. To honour all those solicitors who have served for 40 years or more and retained their membership of the Society, we have had bronze plaques cast depicting the traditional coat of arms of the Law Society – for 926 eligible members. It is my firm intention to present the plaques to each of those solicitors who would like to receive it personally, rather than in the post. The plaque reads: *'In appreciation for your commitment to the provision of legal services to your clients, your colleagues, and to the wider community for over 40 years'*.

It should make for joyful occasions in which different generations of solicitors can meet when the plaques are being presented. I ask each bar association to assist me with the distribution to your members. Further information on this project will appear in the *Gazette* in due course.

In welcoming our new director general Mark Garrett (who starts work in January), I can assure him that, while he will receive lots of opinions on everything, he will have nothing but goodwill and enthusiasm from all quarters. That will facilitate his navigating turbulent waters at all times. I have no doubt but that the coming

years will be full of adventure and collaborative achievement – *go n-eíri an bóthar leat*.


### Exhilarating time

As my term ends on what has been an enlightening, exhilarating and, at times, exhausting year as your president, my overall feeling is of being hugely honoured and extremely grateful for such an amazing opportunity. I do regret that COVID prevented me from having direct interaction with people, and especially with you, the solicitors at the coalface, of all ages and stages, who I had hoped to meet with in great numbers; as well as committee members and Law Society staff. Luckily, many of you did contact me directly about issues or problems of concern, and I was able to engage with people who wished to talk, and to be listened to and understood.


I am blessed with wonderful staff in my own office who have had to work at a very intense level all year. My wife Katherine, a retired solicitor, has helped me in so many ways, and I simply could not have managed without her level

“ MY OVERALL FEELING IS OF BEING HUGELY HONoured AND EXTREMELY GRATEFUL FOR SUCH AN AMAZING OPPORTUNITY

head and endless support and assistance – so thank you, Kate!

I cannot overemphasise the extraordinarily diligent work that your Council members are doing as volunteers on your behalf, and the enormous benefit that accrues to all areas of legal practice. *Míle buíochas* to all our Council members and the Law Society's staff, especially Mary Keane, who has had an exceptionally busy time since Ken Murphy's retirement in March 2021. And a very special thanks to close advisors, both within and outside Council. 



  
JAMES CAHILL,  
PRESIDENT

PG. GAZETTE STUDIO/SHUTTERSTOCK



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Law students in conflict zones are working as on-the-ground reporters for US publication, *Jurist*. Editor-in-chief Bernard Hibbitts speaks to Mary Hallissey

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If an unauthorised development has been in place for more than seven years, it is termed immune from prosecution, or unauthorised but immune. But it is not as straightforward as it might seem. Brian Robinson revs the DeLorean

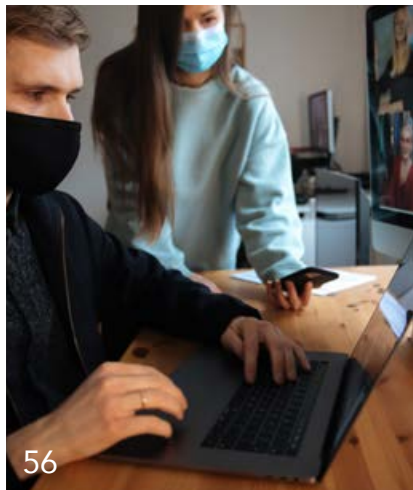
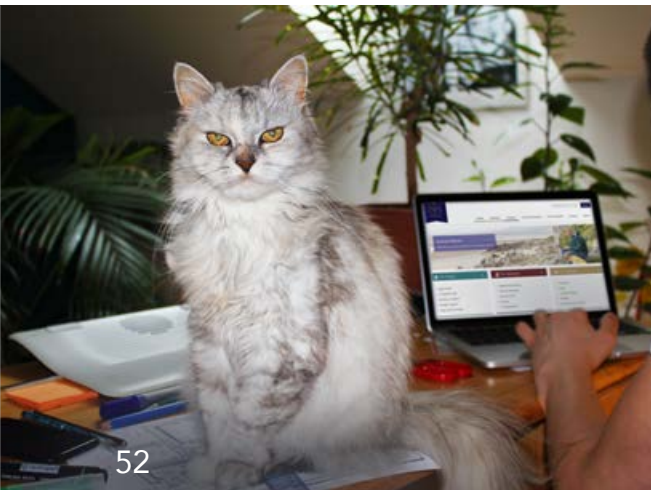
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Dublin is the perfect seat for arbitration in cases between a British and a European party under English law, as well as between a European/UK party and a third-country party under any common-law system. Gavin Woods and Seán McCarthy pull on the green jersey

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Professional service firms are now struggling with the challenges of how the workplace should be organised – remotely, in person, or hybrid? Tatiana Andreeva, Ciara O’Higgins and Paola Zappa wanna hold your hand



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# THE BIG PICTURE

## APOCALYPSE NUTS

In further climate-emergency shock news, woodland creatures have apparently taken to hoarding food. In evident preparation for the End of Days and the imminent return of the Norse squirrel god Ratatoskr, this ever-ready rodent looks to safeguard his stash. A Dutch photographer captured this sylvan shopping spree set-up after leaving a miniature trolley filled with squirrely sustenance in the woods near the city of Oss



# NEW SOLICITOR SCs NAMED



ALL PICS: LENS MEN

A total of 12 solicitors were presented with patents of precedence on 7 October 2021 by the then Chief Justice Frank Clarke, which permits them to use the designation senior counsel (SC). They have joined 17 other solicitors who became SCs on 9 October 2020. (From l to r): Geoffrey Shannon, Helen Sheehy, Keith Walsh and Rachel Minch



Damien Keogh, Larry Fenelon, Stuart Gilhooly and Conor Linehan



Alison Flanagan, Raymond Bradley, Nicola Dunleavy and Geraldine Clarke

# SLA COUNCIL MEETS FACE TO FACE



The first in-person meeting of the Southern Law Association's council took place recently, chaired by its president, Juli Rea. After 20 months of council meetings via Zoom, the association commented that the "resumption of unfettered debate and banter was most welcome"! Members of the Council (l to r): Robert Baker, Gerard O'Flynn (vice-president), Joan Byrne, Joyce Good Hammond, Catherine O'Callaghan (honorary secretary), Juli Rea (president), Emma Meagher Neville (PRO), Brendan Cunningham and Jonathan Lynam

# THE WICKLOW WAY



ALL PICS: CIAN REDMOND

Various bar associations held virtual meetings recently, attended by the Law Society's President James Cahill, director general Mary Keane and a number of special guests. At the Wicklow Bar Association meeting on 29 September were (top, l to r): James Cahill, Mary Keane, Sorcha Hayes, and Stuart Gilhooly; (second row, l to r): Patrick Jones, Patrick Dorgan, Denis Hipwell, and Deirdre Fox; (third row, l to r): Mark Maguire, Paul McKnight, Maria Byrne, and Michael Moran

# SHANNONSIDE ENCOUNTER



Attending the Limerick Solicitors' Bar Association meeting on 14 October were (top, l to r): James Cahill, Mary Keane, and Derek Walsh; (second row, l to r): Stuart Gilhooly, Patrick Dorgan, and Donal Creaton; (third row, l to r): Nicola Hackett, Joe O'Malley, and Sorcha Hayes

# DROGHEDA RENDEZVOUS



Attending the Drogheda Bar Association meeting on 14 October were (top, l to r): James Cahill, Mary Keane, Sorcha Hayes, and Alison Quail; (second row, l to r): Patrick Dorgan, Stuart Gilhooly, Paul A Moore, and Orla Shevlin; (third row, l to r): Paul J Moore, Julie Sadlier, Fergus Minogue, and Julian Grant; (fourth row, l to r): Matthew Wilson, Paul Smyth, and Fiach McHugh

# WEE COUNTY LINK-UP



Attending the Louth Solicitors' Bar Association meeting on 15 October were (top, l to r): James Cahill, Mary Keane, Stuart Gilhooly, and Sorcha Hayes; (second row, l to r): Conor MacGuill, Larry Steen, James Murphy, and Megan Murphy Byrne; (third row, l to r): Amy Bradley, Donal O'Hagan, John McGahon, and Seamus Roe; (fourth row, l to r): Sara McDonnell, Niall Lavery, Francis Bellew, and Richard McDonnell

# FOLLOW ME UP TO CARLOW



Attending the Carlow Bar Association meeting on 19 October were (top, l to r): James Cahill, Mary Keane, and Joseph Farrell; (second row, l to r): Patrick Dorgan, Stuart Gilhooly, and Sorchá Hayes; (third row, l to r): Lisa Carty, Kirsty Kavanagh, and Anthony Coomey

# DIP INTO DONEGAL



Attending the Donegal Bar Association meeting on 19 October were (top, l to r): James Cahill, Mary Keane, Stuart Gilhooly, and Patrick Dorgan; (second row, l to r): Gary Clarke, Niall McWalters, Liz O'Donnell, and Margaret Mulrine; (third row, l to r): Máirín McCartney, Sorchá Hayes, Jane Lanigan, and Kevin McElhinney

# SOUTH-SIDE STORY



Attending the Southern Law Association meeting on 20 October were (top, l to r): James Cahill, Mary Keane, Patrick Dorgan, Sorcha Hayes, and Stuart Gilhooly; (second row, l to r): Gerald AJ O'Flynn, Justin Sadleir, Brian Long, PJ Feeney, and Michael Quirke; (third row, l to r): Áine Hynes, Brendan Cunningham, Colm McGuire, Barry McCarthy, and Grahame Copplestone; (fourth row, l to r): Stephen McDevitt, Ted Hallisey, Juli Rea, Cian Fenton, and Joan Byrne

# LIVE FROM LOVELY LEITRIM



Attending the Leitrim Bar Association meeting on 21 October were (top, l to r): James Cahill, Mary Keane, Sorcha Hayes, and Kieran Ryan; (second row, l to r): Stuart Gilhooly, Karena Boyle, Patrick Dorgan, and Gabriel Toolan

## LEGAL EZINE FOR MEMBERS

The Law Society's *Legal eZine* for solicitors is now produced monthly and comprises practice-related topics such as legislation changes, practice management and committee updates.

Make sure you keep up to date: subscribe on [www.lawsociety.ie/newsletters](http://www.lawsociety.ie/newsletters) or email [eZine@lawsociety.ie](mailto:eZine@lawsociety.ie).



# ZOOM SUMMIT IN SLIGO



Attending the Sligo Bar Association meeting on 26 October were (top, l to r): James Cahill, Mary Keane, and Stuart Gilhooly; (second row, l to r): Sorcha Hayes, Damien Martyn, and Patrick Dorgan; (third row, l to r): Michael Monahan, Michele O'Boyle, and Seamus Monaghan

# KILDARE CONSULTATION



Attending the Kildare Bar Association on 26 October were (top, l to r): James Cahill, Mary Keane, Stuart Gilhooly, Helen Coughlan, and Amy Bradley; (second row, l to r): Sorcha Hayes, Jason Teahan, Emma Farrell, Mark Murphy, and Seamus Taaffe; (third row, l to r): David Osborne, Andrew Cody, Elaine Farrell, Conor O'Toole, and Sinéad Dooley; (fourth row, l to r): Catriona Byrne, Sharon Murphy, Tom Stafford, Mark Stafford, and Geraldine Gillece

# NEW IP AND TECHNOLOGY LIST ON THE WAY FOR COMMERCIAL COURT

■ New court rules will create an Intellectual Property and Technology List as part of the Commercial Court and will reform the conduct of intellectual-property proceedings, *write Fiona O’Beirne and Shane O’Brien (McCann FitzGerald).*

It comes on foot of a recommendation by the group established to review the administration of civil justice in Ireland, which published its [report](#) in late 2020.

Order 63A RSC, which governs the Commercial Court, has been amended so that, if ‘intellectual-property proceedings’ or proceedings involving issues of ‘technological complexity in any field of industry’ appear in the Commercial Court list, the judge can assign them to the new list (a subdivision of the Commercial List).

Order 63A defines ‘intellectual-property proceedings’ as any proceedings instituted, application made, or appeal lodged under (or concerned with the licensing of rights protected under) the: *Trade Marks Act 1996*, Regulation 2017/1001 on the EU trademark, the *Copyright and Related Rights Act 2000*, the *Patents Act 1992*, Regulation 469/2009 concerning the supplementary protection certificate for medicinal products, the *Industrial Designs Act 2001*, Council Regulation 6/2002 on Community designs, Council Regulation 2100/94 on Community plant variety rights, and the *European Union (Protection of Trade Secrets) Regulations 2018*.

Also included are proceedings for relief in respect of unregistered intellectual-property rights; to prevent passing off; to prevent unfair commercial practices; and in respect of a right of confidence in information.



PICTURE: CIAN REDMOND

In relation to the second branch of the new list, there is no further guidance in the rules as to what level of ‘technological complexity’ will merit entry into the list. This should become clearer over the coming months, as the new list begins to operate. However, what is clear is that there is no exhaustive list of entry categories here, and the court has been given a wide-ranging discretion in this regard.

Order 63A is also amended to include dedicated and detailed pre-trial procedures for proceedings listed in the new list. These procedures include a case-management conference after close of pleadings (unless otherwise directed) to ensure that the case proceeds to trial in a manner that is just and proportionate, expeditious, and likely to minimise costs.

The case-management conference is to address matters such as whether there is a need

for further particulars, discovery, inspection or experiments, a modular trial or an assessor, and the time likely to be required by the trial judge for advance reading. The judge can direct that the proceedings be heard on affidavit, or heard on affidavit with oral evidence on a specific issue(s), and/or be determined without discovery or with limited discovery.

## Amendments to order 94

Order 94 RSC sets out the rules more generally in relation to intellectual-property proceedings. Most of the current provision has been in situ since 1986 and was in need of an update. This has now been done. The rules, as amended, take account of legislative developments at both national and European level, and deal with issues such as the initiation of proceedings, service and remedies, as well as the more specialised procedural steps that are

characteristic of intellectual-property actions. Some new features of particular relevance to patent proceedings are:

- The court may direct the preparation of a technical primer (document setting out basic undisputed technology),
- If validity of a patent is challenged on obviousness grounds, a party seeking to rely on the commercial success of the patent has to plead the grounds on which they so rely – it may not be necessary for that party to make discovery related to the issue of commercial success where certain commercial information is provided and verified on affidavit,
- Where a party delivers a ‘product or process description’, it may not have to make discovery of documents relating to the features of the product or process concerned,
- Where facts are sought to be established by experimental proof, specific new procedures for ‘notices of experiments’ will apply, and
- Provision is made for orders limiting the inspection of documents containing confidential information, facilitating ‘confidentiality club’ arrangements.

These new rules came into operation on 22 October 2021 (for proceedings commenced after that date) and are welcomed by clients and practitioners alike. They bring much needed updates and reform, and should provide for more efficient disposal of intellectual-property and technology disputes before the Irish courts. The various procedural reforms that are specifically applicable to patent proceedings are particularly welcome, and should have a significant positive impact on the efficient conduct of such proceedings.

# SOLICITORS LAUNCH NEW DEDICATED ASYLUM AND IMMIGRATION BODY

■ The Taoiseach Micheál Martin has said that Ireland will develop a fully digital customer-centric immigration service over the next three years.

Speaking at the launch of the [Irish Immigration Lawyers' Association \(IILA\)](#) recently, the Taoiseach said that “a lack of security of status” could leave people more vulnerable to exploitation because certain unscrupulous employers could take advantage of those in precarious legal situations. “That is why [the] Government is fully committed to introducing a regularisation scheme for the undocumented by the end of this year,” he said. “Those who meet regularisation criteria to remain in the State will become part of Irish society.”

## Immigration challenges

IILA was formed by a group of solicitors who work in asylum and immigration law. They were conscious of the fact that practitioners operating in the field did not have the benefit of a dedicated immigration committee to advise them on changes in the law, so decided to establish their own independent association. The association aims to:

- Provide continuing professional development in the sector,



Taoiseach Micheál Martin: ‘lack of security of status leaves people vulnerable to exploitation’

- Liaise with the Courts Service, judges, the Department of Justice, and the Chief State Solicitor’s Office,
- Liaise with the [Immigration, Asylum and Citizenship Bar Association](#) on issues of mutual concern,
- Keep members updated on changes to legislation, policy and court judgments,
- Advise on the regulation of immigration consultants and advisers, and
- Organise annual meet-ups and social events when COVID-19 restrictions ease.

## Input on policy issues

Ms Justice Tara Burns (the High Court judge in charge of the asy-

lum and immigration list) said that a dedicated immigration law association should have an input in policy issues.

Speaking in a pre-recorded video, she said: “It is through this medium that real and effective change can occur for migrants coming to this country. Having not practised in the asylum area, I had very little knowledge of the ‘nuts-and-bolts’ involved in the system. As I have stated in court on very many occasions, I am, quite frankly, shocked at the level of work that goes into every application, every review, every proposed revocation.

“Apart from the complexity of the law and the breadth of

applications covered, you are frequently dealing with people in difficult circumstances, from different cultures, with a different language, who have an important story to tell.

“It falls on your shoulders to understand that complex situation and convert it into a viable application. This is a difficult task and, perhaps, one that is not widely recognised as required and valuable. However, it is noble and worthwhile,” the judge commented.

## Founding members

The founding members and current committee of IILA are Aileen Gittens (McGrath McGrane Solicitors), Carol Sinnott (Sinnott Solicitors), Colm Stanley (Stanley Solicitors), Hiro Ino (Hiro Ino & Co), Karen Berkeley (Berkeley Solicitors), Leah O’Leary (Daly Lynch Crowe and Morris), Shehzad Bajwa (Bajwa Solicitors), and Thomas Coughlan (Thomas Coughlan and Co Solicitors).

The association currently has over 110 members and rising. Membership is open to all practising solicitors with an interest in asylum and immigration law. More information can be found at [www.iila.ie](http://www.iila.ie).

# CJEU SLAPS POLAND WITH €1M-A-DAY FINE

■ The EU’s highest court has ordered Poland to pay the European Commission a penalty of €1 million a day for non-compliance with an interim order made in July.

The penalty arises from a previous ruling by the Court of Justice of the European Union (CJEU) against Poland, which found that changes to its courts system infringed EU law.

The ruling is the latest skirmish in a long-running battle between the commission and Poland over its judicial system. Earlier this month, Poland’s Constitutional Tribunal ruled that parts of the EU treaties were incompatible with the Polish Constitution. The case (on 27 October) concerned Polish legislation that gives the disciplinary chamber of its Supreme Court

jurisdiction in certain areas. The CJEU has said that the chamber’s independence and impartiality are not guaranteed, and that it cannot be regarded as a court or tribunal in EU law.

In April, the commission took action against Poland for failing to make the changes necessary to bring its courts legislation back into line with EU law. The CJEU later granted a commis-

sion request to adopt several interim measures, ahead of a final judgment. In its October judgment, however, the court said that Poland had not complied with the order, and that it would now impose the penalty. The CJEU added that the Polish government had not provided it with evidence that the country’s courts were complying, in principle, with its July order.



# REVENUE E-BRIEF ON REGISTER OF BENEFICIAL OWNERSHIP OF TRUSTS

■ Revenue has issued an e-brief (195/21) in relation to registering details of the beneficial ownership of their trust on the Central Register of Beneficial Ownership of Trusts.

The e-brief ('Central Register of Beneficial Ownership of Trusts') recognises the difficulties that trustees and their representatives encountered in meeting the 23 October 2021 deadline.

The Law Society continues to engage with the Registrar in relation to incidental and other trusts, and whether they need to be registered or not. Solicitors who consult the FAQs ([www.revenue.ie/en/crbot/documents/trust-faqs.pdf](http://www.revenue.ie/en/crbot/documents/trust-faqs.pdf)) will notice that a number of areas are under review.



Other issues raised by the Society include whether the purchase of a property in trust for a client should be registered and whether signing a contract for purchase of a property in trust is merely incidental to the convey-

ance and, as such, not an express trust.

The whole issue of where a relatively small sum of money is left to (for example) a godchild in a will, with the proviso that if the godchild is under 18

that the money can be given to the parent of that godchild, and whether this is an express trust that requires registration, has also been raised.

The Law Society will continue to update members when it receives further clarification on these and any other issues raised. Previous updates from the Probate, Administration and Trusts Committee can be found in the 'News' section of [www.lawsociety.ie](http://www.lawsociety.ie) (search for 'Central Register for the Beneficial Ownership of Trusts' and 'CRBOT update'). The committee advises all practitioners concerned to read the FAQs, and to start the process of registering their will trusts. Queries should be emailed to Padraic Courtney (committee secretary) at [p.courtney@lawsociety.ie](mailto:p.courtney@lawsociety.ie).

## LAW WILL RINGFENCE TIPS FOR WORKERS

■ The Government has approved the drafting of a new law on tipping that would give new rights to workers. The bill would prevent employers from including money received from tips as part of workers' contractual rates of pay.

Under the *Payment of Wages (Amendment) (Tips and Gratuities) Bill*, employers would have to clearly display their policy on how both card and cash tips, gratuities, and service charges are distributed.

The Tánaiste Leo Varadkar said that the bill would provide clarity for customers and staff, adding: "This new law will, for the first time, give workers legal protections over tips. It will mean that any tips received cannot be counted towards an employee's basic pay – they must be counted as additional and separate."



PICTURE: SHUTTERSTOCK

"Most establishments already treat their employees fairly with regard to tips, so for many it will mean no change, other than having to display their policy clearly," he stated.

The electronic record generated by these types of tips will also facilitate inspections by the Workplace Relations Commission (WRC) in the event of a complaint being made.

Previous plans for legislation on the issue had fallen after the general election of February 2020.

## COURTS' TIMELY COVID REMINDER

■ The Courts Service and the judiciary have issued a reminder to court users of the public-health measures, announced at the start of the Michaelmas term earlier this month.

The service said that its "steadfast goal" was to keep courts and court buildings open and safe, adding that all measures were reviewed regularly. It stressed that the measures it

had introduced were aimed at ensuring a safe environment for all court users, jurors, and those working across the courts during this phase of the pandemic.

Those with queries about jury summonses are being asked to contact the number provided on their summons, and to refer to the Courts Service Twitter account @CourtsServiceIE, or the organisation's website ([www.courts.ie](http://www.courts.ie)).

## NEW DPP NAMED

■ The Government has appointed solicitor Catherine Piere to be the next Director of Public Prosecutions (DPP).

She will succeed the current director, Claire Loftus, who completes her term of office on 7 November.

Piere has extensive experience of working in criminal law, most

recently as the head of the Prosecution Support Services division in the DPP's office.

She previously held legal roles in the Policing Authority, the Central Bank, and the Garda Síochána Ombudsman Commission.

Educated in UCC and Queen's University Belfast, the new DPP qualified as a solicitor in 2001.

# SURVEY TO PINPOINT 'BARRIERS' IN ENTRY TO LEGAL PROFESSION

■ The Legal Services Regulatory Authority (LSRA) has announced plans to carry out what it describes as a “comprehensive survey” of young barristers and solicitors.

The online, anonymised evaluation will cover trainee and early-career solicitors and barristers, as well as law undergraduates.

The LSRA is undertaking the project after a request from Minister for Justice Helen McEntee for the authority to “consider the economic and other barriers faced by young barristers and solicitors, and to make recommendations”.

The survey is being conducted with independent research company Behaviour & Attitudes. It is being distributed by email during

October, with the assistance of the Law Society, the Bar of Ireland, and the King's Inns.

The survey will cover trainee solicitors, solicitors who are in their first seven years of practice, student barristers, and practising barristers. Law undergraduates are also being surveyed, with the assistance of the law departments of a total of 15 universities, colleges, and institutes of technology around the country.

## Pay and costs

The LSRA says the fieldwork from the survey will feed into its forthcoming report to the minister on:

- The remuneration of trainee



PICT: ROLLING NEWS

Minister: aims to increase diversity in the legal professions

- solicitors and barristers,
- Other costs associated with joining each profession,
- The information available to prospective trainee solicitors and barristers on available

solicitor training firms and masters,

- The information available on the terms and conditions available, and how they are selected,
- Any other barriers faced by young solicitors and barristers – including the ability to take maternity leave.

Minister McEntee has stated that this research forms part of her plan to increase diversity across the justice sector. The LSRA has been asked to pay particular attention to equity of access and entry into the legal professions, with the objective of achieving greater diversity.

# IBA SETS OUT TO TACKLE WELLBEING 'CRISIS'

■ A new report from the International Bar Association (IBA) has identified what it describes as “worrying” mental-wellbeing trends across the legal profession.

*Mental Wellbeing in the Legal Profession: A Global Study* also provides ten principles for legal workplaces and organisations to help address what it sees as a “crisis”.

Launched on 26 October, the report draws on data collected from a global survey of almost 3,500 legal professionals, and more than 180 legal organisations.

The IBA says that the findings confirm that the mental wellbeing of legal professionals is a cause for global concern.

The survey also found that problems linked to wellbeing had a disproportionate impact on women, young people, those who identified as an ethnic minority, and those with disabilities.



Stigma was identified as a problem, with just over 40% of respondents saying that they would not discuss issues with their employer for fear of damaging their career.

Among the principles set out by the IBA is a call for law firms to adopt a “collaborative” mental-wellbeing policy, and undertake regular assessment of their employees' mental wellbeing.

The global organisation also urges the profession to address ‘systemic problems’ – including poor or non-existent managerial training, bullying, harassment, sexism and racism, and a culture of unsustainable working hours.

The IBA also calls on organisations to prioritise mental wellbeing – pointing out that lawyers who are struggling may not be able to serve clients to the best of their ability.

IBA president Sternford Moyo said: “This report demonstrates that we can, with the right tools and emphasis, recalibrate and find better balance.” The report sets out principles to address the mental wellbeing crisis, including:

- *Adopt a policy* – law firms should adopt a mental wellbeing policy and undertake regular assessment of their employees' mental wellbeing. The policy should involve colleagues from across the organisation.

- *Address systemic problems* – for mental wellbeing in the legal profession to improve, the underlying and fundamental causes must be addressed. The report identified a number of working practices that are problematic for mental health.
- *Prioritise mental wellbeing* – legal organisations should acknowledge the impact poor mental health has on the profession, as lawyers who are struggling may not be able to serve clients to the best of their ability.
- *Recognise intersectionalities* – law firms must make a sustained and meaningful effort to foster equality, diversity and inclusion within the workplace.

The report is available at [www.ibanet.org/Mental-wellbeing-in-the-legal-profession](http://www.ibanet.org/Mental-wellbeing-in-the-legal-profession). The findings largely mirror those of the Law Society of Ireland's recently launched *Dignity Matters* report (see p32).

## ENDANGERED LAWYERS

### YONARQUI DE LOS ÁNGELES MARTÍNEZ GARCÍA, NICARAGUA



In the context of a new cyber-crimes law and other recent legislation, the detention of three lawyer colleagues (Maria Oviedo, Jose Pallais and Roger Reyes), and threats of arrest, defence lawyer Yonarqui Martinez has announced that she will no longer post on social media. She has also asked not to be tagged in any posts that could compromise her freedom.

"My work has always focused on the defence of human rights. I've never focused on trying to discredit anyone – not in my social networks, nor in my private WhatsApp communications. My posts have always revolved around the liberation of the political prisoners and the violations of human rights," the lawyer told the online Nicaraguan news site *100% Noticias*, published in a report on 2 October. "Although I try to denounce the human-rights violations that undeniably are occurring, in a given moment those [laws] could be used against me, and I could face legal charges."

Martinez, who is the chief defence lawyer for some of the political prisoners held under the repressive regime of Daniel Ortega and Rosario Murillo, stated that she "constantly" receives death threats and threats of being locked up.

Last March, a report described how she was detained by ten agents of the Office of Special Police Operations in the Port of Moyogalpa on Ometepe Island.

Even though the lawyer was taking medicine to released political prisoner Justo Rodríguez, the police agents said they had received information that she was carrying alcoholic beverages and drugs. After an hour and a half, she was obliged to take the return ferry without having been allowed entry to the island. During her entire return trip, she was under the custody of police agents. At the Port of San Jorge, she was held once again for an hour.

The same report notes that Martinez has been granted precautionary measures by the Inter-American Commission on Human Rights (IACHR). In its *Resolution 92/2020*, after detailing instances of harassment, threats, arrest, and shots fired, the IACHR called on the State of Nicaragua to "adopt the measures necessary to guarantee the rights to life and personal integrity of Ms Yonarqui de los Ángeles Martínez García and her family nucleus. In particular, the state must ensure that the rights of the beneficiaries are respected in accordance with the standards established by international human-rights law, both by its agents and in connection with risk events attributable to third parties."

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

## GERARD HOGAN FOR SUPREME COURT

■ President Higgins has appointed Mr Justice Gerard Hogan as a new judge of the Supreme Court at a ceremony at Áras an Uachtaráin on 15 October.

The Government nominated Mr Justice Hogan last April. He served on the High Court from 2010-14 and the Court of Appeal from 2014-18. He was appointed an advocate general of CJEU in October 2018.

The Supreme Court vacancy



PICT: ROLLING NEWS

arose after the appointment of Ms Justice Mary Irvine as President of the High Court last year.

## WINDING UP WARDSHIP

■ The *Assisted Decision-Making (Capacity) Act 2015* will bring about important changes for people who are adult wards of court, writes Alice White (*Registrar of Wards of Court*).

The Decision Support Service (DSS) is a new service for adults who need support making decisions. This may include people with an intellectual disability, psychiatric illness, acquired brain injury, and those with age-related conditions, including dementia.

Legal practitioners will be aware of the upcoming commencement of the 2015 act and the changes that this will bring (see *last month's Gazette*, p18).

The Wards of Court Office has started planning for the commencement of this act, and recently issued its first communication to committees of wards of court.

Some practitioners will have received this communication in a professional capacity as committee representatives.

### What changes and what stays?

It is expected that the DSS will start registering new decision-support arrangements in mid-2022. Once commenced, the Wards of Court Office will no longer be authorised to accept

applications for adult wardship. The office will continue to accept applications relating to minors.

All wards of court will be discharged from wardship, following a capacity review, over a three-year period, on commencement of the act. Applications for discharge will be processed in the sequential manner in which they are received.

The wardship list will continue to sit, hearing applications relating to current wards of court for minors and enduring powers of attorney. A separate list under the wardship court will hear applications for discharge from wardship.

The office will continue to register enduring powers of attorney created under the *Powers of Attorney Act 1996*. The DSS will only register enduring powers of attorney created under the act of 2015.

Over the coming months, the office will continue to communicate directly with committees of wards of court and practitioners by providing updates on the Courts Service website.

For further information on the discharge process, you should email the office at [wardsdischargeapplication@courts.ie](mailto:wardsdischargeapplication@courts.ie).

## LAW SOCIETY HONOURS DPP CLAIRE LOFTUS

PIC: CIAN REDMOND



The Law Society hosted a special dinner in honour of the Director of Public Prosecutions, Claire Loftus, who is due to retire from the role on 7 November 2021. Ms Loftus has served as DPP since 2011 and qualified as a solicitor in 1992. Among the special guests at Blackhall Place on 20 October were President of the High Court Mary Irvine, Law Society President James Cahill, Michelle Ní Longáin (senior vice-president), Barry MacCarthy (junior vice-president) and Mary Keane (director general)

## NEW A&L MANAGING PARTNER



Eileen Roberts, David Widger and Julian Yarr

■ A&L Goodbody has appointed David Widger to be its next managing partner, succeeding Julian Yarr next May. Yarr has spent 12 years in the role.

Widger is currently head of the firm's corporate department. His main areas of expertise include mergers and acquisitions, corpo-

rate finance, and corporate governance.

Eileen Roberts (chair of the firm) said that David would bring "a huge amount of experience and leadership" to his new role, adding that he was widely considered to be one of the leading corporate lawyers in Ireland.

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# LIFE-ASSURANCE POLICIES POSE CHALLENGES IN FAMILY LAW CASES

■ In a separation or divorce case, a court may often ask a spouse to purchase a life-assurance policy so that, in the event of death, spousal maintenance payments are protected, writes Dr David Jameson (*Jameson Financial*). The proceeds from the life-assurance policy can provide a tax-free lump-sum payment in place of further maintenance.

Although purchasing a life-assurance policy is a relatively straightforward affair – provided there are no ill-health issues – it is important that the policy is set up in the right manner. This is an unfamiliar area for many family-law practitioners, and there are pitfalls.

The policy can be set up in one of two ways, either as ‘life of another’ or ‘under trust’. In the ‘life-of-another’ method, the person receiving spousal maintenance payments is the policy owner, and the person making these payments is the life assured. The policy owner, however, also pays the life-assurance policy premiums. In the event of the death of the life assured, the sum assured is paid directly to the policy owner.

In the ‘under-trust’ method, the person making the maintenance payments is the policy owner and the life assured. The policy is written under trust, with the person receiving the maintenance payments named as the sole beneficiary of the proceeds of the policy. In the event of the death of the policy owner and life assured, the benefit is paid to the named beneficiary.

## Advantages of ‘life of another’

- The spouse receiving the maintenance payments, as policy owner, has full control over the policy,
- Only the policy owner can



PICTURE: SHUTTERSTOCK

- modify the policy in any way,
- The policy owner can ensure that the premiums are paid on time every month,
- In the event of the death of the life assured, the benefits are paid directly to the policy owner,
- There are no inheritance-tax issues for the policy owner, as they are receiving proceeds from a policy they already own.

## Disadvantages of ‘life of another’

- As recipient of the maintenance payments and policy owner, this spouse may have objections to making the premium payments.

## Advantages of ‘under trust’

- The policy owner, who is the life assured, makes both the spousal maintenance payments and life-insurance policy premium payments,
- The spouse who receives the maintenance payments is named on the trust document as the sole beneficiary of the proceeds of the policy.

## Disadvantages of ‘under trust’

- The policy owner could default on the policy premium

- payments without the knowledge of his or her former spouse. In the event of his/her death, the beneficiary named under the trust could learn that the policy had lapsed.
- The policy owner could attempt to alter the sum assured or term of the policy without alerting the beneficiary of the policy.
- The trust document used in these cases is often provided by the life-assurance companies, albeit carrying the health warning: ‘Please seek your own independent legal advice’. This trust document could, at a future date, be legally challenged.
- Trustees, or those with the power to appoint additional trustees, have to be appointed.
- The policy owner and life assured could remarry. In the

event of his/her death, the new wife or husband could challenge the payment of the benefit on the basis that his/her spouse was paying the premium, and was entitled to all or a portion of the benefits.

- In the event of a death claim, an insurance company might encounter difficulty in locating trustees or the beneficiary of the policy.
- In the event of a death claim, if a financial compensation order was not in place, there could be inheritance-tax issues for the beneficiary.

To sum up, life-assurance policies that are purchased to protect spousal maintenance payments should be set up on a ‘life-of-another’ basis, because the beneficiary maintains control of the policy and will receive the benefits directly in the event of the death of a former spouse.

On the other hand, having the policy owner and the life assured pay the premiums may be convenient, but the disadvantages of ‘under trust’ outlined above show that this method carries inherent risks for the beneficiary. In fact, it would be appropriate for family-law practitioners to make sure that these policies are set up on a ‘life-of-another’ basis, and then to factor in the cost of premiums into the alimony settlement.

## REGISTRAR PLEA ON SPENT MOTIONS

■ The Courts Service has asked parties who have spent motions, which no longer require a date before the Dublin County Registrar’s family-law list, to notify its office by email.

This will allow the office to withdraw the motion. “Any assistance is greatly appreciated, so as to limit the number of motions requiring dates,” the service says.



## WELLBEING

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

## DO I REALLY HAVE A PROBLEM?

**Q** *I'm a solicitor working in a big firm. In the middle of the pandemic, I started to drink more than I usually would have – at least a bottle of wine a night. This has started to interfere with my life somewhat, in particular my personal relationships. Work is going fine. I don't think I have a problem, and I have everything under control. However, important people in my life say they are worried about me. I believe they are overreacting, but I'd like a second opinion.*

**A** Many thanks for your question, and well done for taking the courageous first step of reaching out and seeking guidance and advice. In your statement, I hear you questioning if you have a problem with alcohol and struggling to answer this for yourself. Hopefully the following will be helpful in this regard.

Addiction is a complex issue, and assessing it involves not merely looking at the amount of alcohol consumed (as what is problematic for one might not be for another) but rather assessing how

one's drinking is impacting their daily functioning and the people around them.

In your statement, you say that your drinking is negatively affecting your life and, in particular, is negatively affecting your personal relationships. You also state that important people in your life are worried about you. These are important indicators that your relationship with alcohol is unhealthy and needs some attention.

You seem to realise that you are experiencing negative consequences as a result of your drinking, but yet your drinking has persisted. This is also a sign that your drinking is problematic. Generally speaking, if we engage in something and it has a negative effect on us, we stop. However, in addiction, a core defining feature is that one continues to drink despite experiencing negative consequences as a result of their drinking.

I also notice from your statement that you believe your loved ones are overreacting, and that you feel work is going fine and everything is under control. There are real discrepancies between these beliefs and what you report in the

rest of your statement. It would seem that you may be struggling with admitting to yourself that you have a problem, which is quite common in addiction. Denial is, in fact, a core feature of addiction, and often serves as a psychological defence to protect one from feelings of shame associated with their drinking. It is, therefore, quite common that those close to the individual become aware of the problem before the individual himself does.

Lastly, it would seem from your statement that your drinking increased during the pandemic, which is interesting. I would suggest you think about the function that alcohol is serving in your life, that is, is it to manage stress, loneliness, boredom, etc? Knowing this will help you better understand your relationship with alcohol and will assist you in figuring out what coping strategies might be most beneficial to you should you decide to make a change.

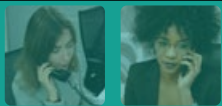
In weighing it all up, it would seem that there could be cause for concern as regards your alcohol use. I would suggest that you contact your GP to discuss the issue in more detail. It may also

be helpful for you to attend an Alcoholics Anonymous meeting (details available on [www.alcoholicsanonymous.ie](http://www.alcoholicsanonymous.ie)). This will allow you to hear of others' struggles with alcohol and, hopefully, identify with them. Lastly, Addiction Counsellors of Ireland ([www.addiction-counsellors.ie](http://www.addiction-counsellors.ie)) have a registry of available therapists in every county, should you wish to explore professional help.

*To submit an issue that you'd like to see addressed in this column, please mail [professionalwellbeing@lawsociety.ie](mailto:professionalwellbeing@lawsociety.ie). Confidentiality is guaranteed.*

*This question and answer are hypothetical. The response has been provided by Emma Kavanagh, head of clinical services at the Rutland Centre ([www.rutlandcentre.ie](http://www.rutlandcentre.ie)). 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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# ONE FOR THE RECORDS?

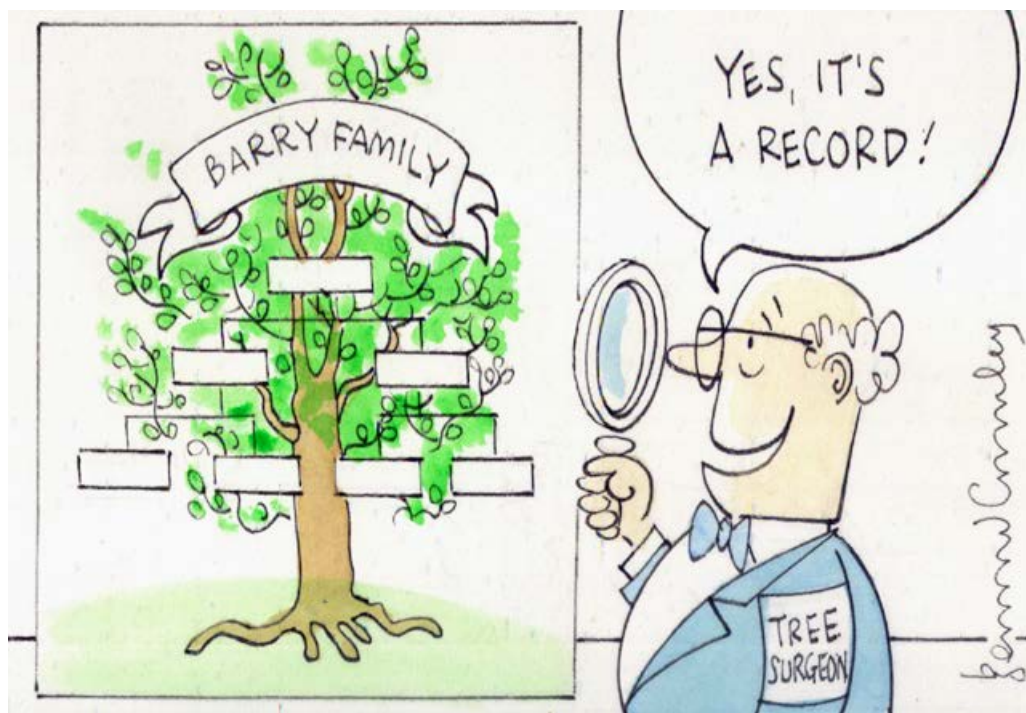
From: David Barry, Solicitors, John Street, Cashel, Co Tipperary

Could Cashel firm Charles M Barry & Son be the oldest sole-family practice operating in the one town in Ireland since its establishment? And is it a record to have a sixth-generation solicitor in a direct line in the one family?

The Barry legal lineage began when Henry Harte Barry (who was admitted to the profession in 1854) founded Henry Harte Barry & Son, Solicitors, in Kanturk, Co Cork.

His son, Charles M Barry, was admitted on 9 February 1889. He established the Cashel dynasty by setting up the firm of Charles M Barry & Son, Solicitors, in John Street, Cashel – the location of the firm to this very day. (For anyone wishing to lay a counterclaim to being the ‘oldest sole-family practice in the one town in the country’, the 1889 date is significant.)

Charles was followed into the practice by his son, Henry Harte Barry (grandson of the original Henry Harte Barry), who was admitted to the profession on 18 May 1928. His son, Henry CP Barry, was admitted in 1964 and, in turn, was welcomed into the Cashel practice.



**The editor adds:**

Henry’s son David became a solicitor in 2004, and continues to practice in the John Street office. His daughter Aisling qualified as a solicitor in 2019, making it six generations of Barry solicitors. (Aisling has resisted the lure of the Premier County, and works for Hayes Solicitors in Dublin.)

Interestingly, as far back as March 1985, David’s dad Henry contacted the Gazette, raising the same question in a letter to the editor: “May

I enquire from your readers whether there is anyone in a position to contradict my claim that we are the oldest continuous sole-family practice in the one town in the country? My late grandfather, Charles M Barry, was admitted to practice in the Hilary Term of 1889 and set up his office in Cashel that year; my late father, Henry Harte Barry, was admitted in the Easter Term 1928. The office in Cashel has continued since 1889 – or 96 years.”

So, is this the oldest continuous family practice still operating in the land – and does it hold the record for having six generations of solicitors in a direct line? Over to our readers!

By the way, Charles’s claim in 1985 that the firm was ‘the oldest continuous sole practitioner family practice in one town’ appears to have been established at the time, as a result of several correspondences published in the Gazette. The firm is now 132 years old.



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# WIND OF CHANGE

As a legal community, we have arrived at an ethical juncture where the modern lawyer – and legal education – have to embrace the wind of change resulting from climate and sustainability issues, argues **Raphael Heffron**

RAPHAEL HEFFRON IS SENIOR IRLI RESEARCH FELLOW IN SUSTAINABILITY, ENERGY AND CLIMATE CHANGE, AND AN EU JEAN MONET PROFESSOR AT THE UNIVERSITY OF DUNDEE

LAWYERS CAN NO LONGER AVOID RESPONSIBILITY OR, INDEED, CLAIM LACK OF KNOWLEDGE ON THESE ISSUES. THERE IS, AT THE VERY LEAST, AN ETHICAL OBLIGATION ON LAWYERS TO RESPOND AND SHOW THEIR COMMITMENT

The world faces many challenges – not least, the pandemic, which we have all lived through for nearly two years now. However, a greater challenge, undoubtedly, is the onset and impact of climate change and all it entails. The consequences of climate change are grave, and it is something we should all interact with. The Intergovernmental Panel on Climate Change report (*AR6 Climate Change 2021: The Physical Science Basis*), which reports on climate change science, is accepted by 99% of scientists around the world.

The reality is that the business world has to adapt to new ways of doing business and move away from what is referred to as a ‘business-as-usual’ approach. This requires an updating of the rule of law in terms of business, if society is to achieve its climate-change aims, set out in the 2015 *Paris Agreement*. In the same year, we also saw the development of the 17 UN Sustainable Development Goals (SDGs). These two advances are slowly having more and more impact – and there will be an update to the *Paris Agreement* at the UN COP26 event in Glasgow this November.

The legal community has an obligation to play its role in these changes. Lawyers can no longer avoid responsibility – or, indeed, claim lack of knowledge on these issues. There is, at the very least, an ethical obligation on lawyers

to respond and show their commitment and contribution to one of the world’s greatest ongoing challenges.

Issues such as sustainability affect many areas of civil law and certainly nearly all areas of commercial law. All categories of law and contracts formulated in this area need to be changed to accommodate this issue of sustainability.

## Urgent overhaul

Legal education also needs an urgent overhaul. To make its contribution, all lawyers should be educated on the pressing concern of climate change and sustainability. Business practices need to think about how they can become more sustainable – therefore law and contracts need to be updated and encourage greater sustainability. At the very least, there should be some clauses within a contract that detail what sustainability is; how it is relevant and applied to that particular business activity; and how business activity responds to climate change.

Today, all lawyers have to pass examinations in a variety of subject areas around commercial law, such as the law of contract, company law, jurisprudence, European Union law, equity, and the law of tort. However, the problem is that there is a deficiency of teaching within these subject areas around climate change and sustainability. A quick review of key texts used by students studying at

undergraduate or postgraduate level in the area reveal little coverage of climate and/or sustainability issues. In terms of moving to qualify to practise as a solicitor or barrister, again, it is not apparent where these issues are included in the curriculum – though it should be acknowledged that these curricula are updated annually.

More books, study, learning materials, and lecture time are needed to cover climate change and sustainability issues to give students a modern legal education today. Different professions in the business world are already changing and making key investment decisions to support that change. For example, PwC announced in July 2021 that they are funding a \$12 billion investment drive in staff in the area of environmental, social and governance (ESG) issues.

In addition, Goldman Sachs has announced a \$750 billion programme in sustainable financing, investing, and advisory activity by 2030. Major firms recognise the need for staff expertise in this area, and that it is growing fast. These companies are another avenue for legally educated and qualified students to secure employment.

## The data-driven lawyer

A key reason why change is being ushered in is that we are fast moving into a data-driven society. We in Ireland, of course, should be more familiar with the effects

PIC: SHUTTERSTOCK

of this data-driven world. Some of the core group of technology companies that are driving this technology revolution are, and have had, a commercial base in Ireland for many years. This push for data has now spread across society, with more and more data being produced on climate change and sustainability. Already, there are [data-driven assessments](#) on how society is meeting the aforementioned UN SDGs.

Today's commercial lawyer has to engage with this explosion of data – one that is set to continue. This is what is being captured under the ESG frameworks that are on the rise in the commercial world. Increasingly, there are obligations – for accounting practices and those securing international finance – to be more transparent around reporting on risks from climate, sustainability,

and waste issues in business activity. With the advent of an increase in data on these issues, it is now unavoidable for lawyers not to engage with this data and for it to affect the advice they give to their clients.

Legal clients expect to be protected now and into the future on issues of climate and sustainability risk. For example, in five-to-ten years, it will no longer be good enough to say that legal advice given at the time (that is, today) was good, when, in fact, data was available that could have informed that advice. In extreme cases, such as in the high-value energy sector, we see current and former executives being taken to court to answer to company strategic decision-making, as it is being claimed that they should have been aware of these risks to the company and failed to diversify investments (for

example, [Exxon Mobil](#), one of the largest multinational energy companies in the US).

#### Ethical 'landmark'

It is clear that, as a legal community, we have arrived at an ethical juncture where the modern lawyer (and judge) has to embrace the winds of change resulting from climate and sustainability issues. These issues may not all be covered within existing legislative and regulatory frameworks, but it is a substantial issue when applying the rule of law. Increasingly, in the context of climate change – through climate and energy justice frameworks – we hear of our obligation to act based on what type of planet we are leaving for future generations.

The issue of justice considerations for future generations will be a prominent feature of the UN

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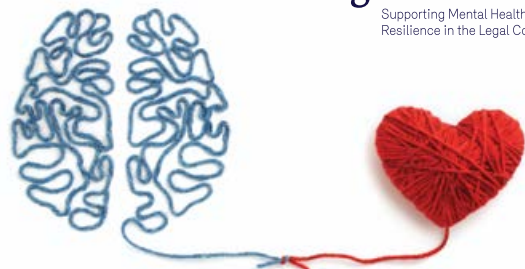
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COP26 conference, and will be the key message put forward by the climate activist Greta Thunberg. Public policy is changing in many countries on climate issues and directly influencing corporate behaviour. Only last May, the Dutch courts stated that Shell, a major multinational Dutch company, had to comply with the *Paris Agreement* and contribute to the national Dutch effort, in *Milieudefensie et al v Royal Dutch Shell* (2021, C/09/571932/HA ZA 19-379). The major effect here is that the Dutch national courts have directly influenced a firm's corporate strategy – and successfully so.

The modern lawyer will have to advise clients that this is the 'ultimate interference' and can happen. If a company is not complying with international agreements on climate and sustainability issues, there is a direct threat of action against the company itself, and even, potentially, against the directors. To ignore such warning signs (not to mention the potential future commercial risks) from not applying data-driven climate

and sustainability analysis when advising a client will probably result in being replaced as the client's lawyer.

### Next steps

For the modern commercial lawyer, climate and sustainability issues will have to become part of their own ethical framework. In order for this to happen, it will be necessary to change the relevant parts of the educational curricula for studying law at undergraduate, postgraduate and professional levels. All types of commercial law subjects should include at least one to two teaching sessions on climate and sustainability issues. Further, there is much scope for speciality subjects in the area – in particular, if we consider the planned rise in investment in staff expertise in the area by the aforementioned major firms.

The future of our world is in a precarious and risky state, given the continued rise in carbon-dioxide emissions. All commercial activity worldwide has to be shaped to provide economies with pathways of how to achieve

a transition to a low-carbon economy. A lawyer's obligation is to ensure that this transition will be a just one. And we can see that this *just* transition issue is a centrepiece of new climate legislation in Ireland – the *Climate Action and Low Carbon Development (Amendment) Act 2021*.

The legal community cannot continue to be behind the curve on issues of climate and sustainability. Legal educators around the country need to embrace the change and ensure that lawyers begin to lead on these issues – and they will only do so if provided more opportunity to gain that knowledge.

The future health of Ireland as a sustainable country, an economy, and a socially just society depends upon an overhaul of legal education. Climate change and sustainability are issues that are not going away, and they will continue throughout our lifetimes. The next generation of Irish lawyers needs to have climate change and sustainability as part of their in-built ethical education as lawyers.

IN EXTREME CASES, SUCH AS IN THE HIGH-VALUE ENERGY SECTOR, WE SEE CURRENT AND FORMER EXECUTIVES BEING TAKEN TO COURT TO ANSWER TO COMPANY STRATEGIC DECISION-MAKING



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# EAMONN HALL – A FIRST ANNIVERSARY REFLECTION

Past-president of the Law Society **Michael V O'Mahony** shares his reflections on the life and career of his friend and colleague, Eamonn Hall, on the first anniversary of his death this November

MICHAEL V O'MAHONY IS A PAST-PRESIDENT OF THE LAW SOCIETY OF IRELAND

THESE PUBLIC GESTURES OF ESTEEM, IN EFFECT, PROVIDED EAMONN WITH A LIVING OBITUARY WHILE HE WAS STILL AROUND TO APPRECIATE IT—WHICH HE DID, SO GRATEFULLY AND SO HUMBLY

**T**his is a personal reflection on the legal career of an extraordinary person, looking back a year since his sad passing in November 2020. Personal though this retrospective may be, one can be confident that many more will also vividly recall Eamonn, who was unforgettable in so many ways.

The range of Eamonn's CV, although as a list impressive, does not fully exemplify the man behind his unique diversity of interests. In particular, in order to pay due homage to him, one must, with fully declared emotion and bias, start at the end rather than the beginning.

When in January 2020, Eamonn starkly made known to us in the Faculty of Notaries that he had been diagnosed with incurable cancer and had been given no more than four months to live, our shock was profound, particularly as up to then there had been no visible let-up in the levels in his energy and enthusiasm in the fulfilment in his role as the faculty's director of education. The shocked impact was the same with other bodies with which he was associated who received the same traumatic

news. Within a very short time, the mutual esteem and respect in which Eamonn was held showed itself in the urge to honour him.

For the Faculty of Notaries, it was the bestowing of a fellowship. For the Incorporated Council of Law Reporting, it was the rapid publication of a book of essays and appreciations relating to his long-standing pivotal role in its workings. For the panel of judges for the Irish Law Awards (of which Eamonn had been the inaugural chair), it was the presentation of a lifetime achievement award. For the Law Society, it was the dedication to him of a room in the Green Hall, an event he attended on 18 August 2020 – perhaps his last non-medical outing – and stood and spoke from the podium, fearlessly and eloquently. In combination, these public gestures of esteem, in effect, provided Eamonn with a living obituary while he was still around to appreciate it – which he did, so gratefully and so humbly.

## The inner man

What of the inner man during this inevitable countdown period? His strength of mind

and character, and love of life and for his family, challenged him to beat the medical forecast – four months becoming six months and, ultimately, ten months. Despite the chemo and the life-prolonging treatment he received during those last months, Eamonn had still one last project to complete, perhaps echoing that electoral slogan, 'a lot done, more to do'.

The Hall family roots are in Donaghmoynne, lying between Carrickmacross and Castleblayney, Co Monaghan. Eamonn, above all, was a stalwart son of Monaghan, his distinctive county accent still detectable, even after all his years living in Dublin. He spoke often of his awareness that his birthplace was near that of poet Patrick Kavanagh and, in more recent times, of comedian and broadcaster Oliver Callan. Eamonn's father, Eugene – auctioneer, land surveyor, and former local historian – had, shortly before his death in 1980, written out the history of the extended Hall family since the 1700s, which, however, had never been published.

Over all the years since his father's death, Eamonn professed



in early 2020 that he had always nurtured the ambition and the need to publish what his father had written for the benefit of both present and future generations of the Halls of Donaghmoynne, not least for his own siblings and his own family. He also professed that such a publication might be of wider value, as typifying other families, both in Monaghan and further afield.

#### Final ambition

Despite his progressively weakening state, this final ambition was consummated by June 2020. The content of this book (some hundred pages – EGH’s only short one!) was as much ‘pure’ Eamonn in its preface, notes and appendices, as it was ‘pure’ Eugene – an epitaph of both. It attributes both parent and son as

the authors, with the publisher being nothing less than Hall (books), located at Eamonn’s home address, a promise to himself at last fulfilled.

Eamonn’s interest in history of all shades is not surprising – like father, like son. Sometimes in dialogue with Eamonn on one topic, he would temporarily divert away onto what he perceived was a related historical connection. One can, with respectful irony, ponder what historical event he would divert to in the course of a discussion with him on an unrelated topic were it occurring on the very date on which he passed away, 21 November 2020 – being the centenary anniversary of ‘Bloody Sunday’!

To revert back to his genesis as a lawyer and onwards,

Eamonn started his working life as a teacher before making the switch to the study of law. He qualified as a solicitor in 1974, and his blossoming interest and focus on so many legally related areas soon followed his in-house employment in Telecom Eireann/Eircom, his Law Society association as a constitutional law examiner and as a member of the *Gazette* Editorial Board (and in many other ways), his prolonged and critical involvement with the Council of Law Reporting and with the governing Council of the Faculty of Notaries, among so many more involvements.

#### Myriad subjects

His transition to the writing of books was interspersed over the years with the writing of always

erudite articles on myriad subjects. When it came to books, Eamonn never found length a problem! His first book in 1993 was *The Electronic Age*, the longer title being: *Telecommunications in Ireland – the Development and Regulation of the Telephone, Broadcasting and Other Electronic Media*. This book, despite the subsequent ongoing advances in technology, is still substantially relevant today in its exposition of regulation of the media.

His joint editorship with Daire Hogan of the 150-year history of the Law Society (1852-2002) is a seminal work, as is his history of official law reporting in Ireland (1866-2006). Eamonn’s long association and friendship with E Rory O’Connor, a fellow notary and writer, culminated in 2018 with their lengthy joint

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

venture, *The Notary of Ireland*, so useful to all notary members of that profession.

Behind Eamonn throughout his illustrious career as a solicitor, notary, academic, lecturer and writer was another solicitor, by far the most important, his ever-patient and understanding wife, Mary. When one reflects on Eamonn's never-ending productivity, not least as a writer of massive tomes, one must also think of the perforce countless hours of isolation involved, not only for Eamonn but, even more so in reverse, also for Mary and, as they grew up, their children Alan and Irene. However, any residue of feelings of loss and regret for the times Eamonn, as husband and father, was locked away in his study should now find solace in the fact of Eamonn's undeniable and permanent membership of the very exclusive pantheon of Irish lawyers whose achievements will long outlive him.

**Dry wit and eloquence**

When Eamonn died just one year ago, E Rory O'Connor circulated to Irish notaries, as well as to the UK counterparts among whom Eamonn was equally well known, a memorable obituary. Coming as it did from someone who knew him so well, for so long, Rory's description of Eamonn as a person encapsulated succinctly how so many of us remember him, and it is appropriate to end this reflection in Rory's own words:

*"Eamonn endeared himself to all with whom he came in contact. His mild manner; his listening ear; his words of comfort – always painstakingly delivered; his dry wit and his eloquence in the spoken and written word never failed to impress and captivate his audience and, indeed, those who shared platforms with him. If Eamonn Hall had a fault, and if it be such, it was pride. Eamonn was a proud person, proud of his achievements in the academic and vocational fields, of his writings and addresses to a myriad of audi-*



Mary and Eamonn

*ences, and of being a notary public but, more than anything else, of his wife Mary and his children, Alan and Irene, and Eamonn Hall was*

*always proud to be considered your friend."*

Eamonn, you will not be forgotten.

ANY RESIDUE OF FEELINGS OF LOSS AND REGRET FOR THE TIMES EAMONN, AS HUSBAND AND FATHER, WAS LOCKED AWAY IN HIS STUDY SHOULD NOW FIND SOLACE IN THE FACT OF EAMONN'S UNDENIABLE AND PERMANENT MEMBERSHIP OF THE VERY EXCLUSIVE PANTHEON OF IRISH LAWYERS WHOSE ACHIEVEMENTS WILL LONG OUTLIVE HIM

## EAMONN G HALL

**Education**

St Macartan's College, Monaghan; UCD (BA); Maynooth (H Dip) Ed; Galway (LLB); TCD (PhD)

**Books**

- *The Electronic Age* (1993)
- *History of the Law Society (1952 – 2002)* (joint editorship with Daire Hogan, 2002)
- *The Superior Courts of Law – Official Law Reporting in Ireland (1866 – 2006)* (2007)
- *The Notary of Ireland* (jointly with E Rory O'Connor, 2018)
- *The Story of an Extended Monaghan Family Since the 1700s* (jointly with his father, Eugene J Hall, 2020)

**Associations and involvements**

- Chief solicitor – Telecom Eireann/Eircom (1984-2007)

- Law Society – constitutional law examiner (1981-2006)
- *Gazette* Editorial Board (over 25 years)
- Law Society Council election scrutineer (over 20 years)
- Faculty of Notaries, director of education
- Incorporated Council of Law Reporting (1986-2020)
- Former president and secretary – Medico Legal Society of Ireland
- Information Society Commission (1997-2000)
- Society of Advanced Legal Studies UC London
- Adjunct member, UCD Faculty of Law
- Council of the Convocation of the NUI
- Contribution for Ireland to *Brook's Notary* (13<sup>th</sup> and 14<sup>th</sup> editions)



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Gráinne Bryan  
Managing Director  
Technology



Kevin Hughes  
Director  
Cybersecurity & Digital Forensics

# THE IMPORTANCE OF DEMYSTIFYING DELETED DATA DURING CYBER INCIDENT RESPONSE, INVESTIGATIONS, OR E-DISCOVERY

By Kevin Hughes, Gráinne Bryan

■ When a file is deleted, is it really gone for good? Most people likely think so. Digital forensics experts, however, know that ‘delete’ isn’t necessarily synonymous with ‘disappear,’ which can be an important distinction when investigating an incident or compliance issue.

A common denominator between these types of matters in both cybersecurity incident response (IR) and e-discovery is that practitioners are often tasked with finding obscure yet critical electronic evidence –and must often recover data that has been deleted. Most rely on standard processes for doing so, and though these common methods have their merits, intensifying demands and challenges in investigations have created a need for new approaches that provide more robust and efficient routes to the restoration of evidence.

## INVESTIGATION SHORTCOMINGS

■ As forensic technology and e-discovery practitioners with experience in IR and a range of legal and regulatory matters, we share an interest in exploring sophisticated approaches for data recovery. This interest was further ignited during a recent client project that entailed analysing another forensic technology firm’s information restoration methodology to determine whether correct steps were taken to recover as much deleted data as possible. Over the course of our analysis, our team found certain data that could have been recovered had in fact not been restored by the initial investigator, and as a result, critical information was omitted from the investigation. In an interview with the firm, we learned that it performed a standard e-discovery workflow involving the collection, whitelisting, and processing of data before uploading to an e-discovery review platform. While a fine initial step during an investigation, this basic process does not capture the entire picture, explaining why certain data was overlooked.

During IR investigations, data recovery teams are often required to recover malware

or other forensic artifacts that were deleted. If malware is recovered, it can be passed to the reverse engineering team to understand the threat actor’s intentions. Other forensic artifacts, such as event logs, are often deleted by threat actors and can contain vital information which will feed into the investigator’s timeline of events. E-discovery proceedings likewise frequently require recovery specialists to find deleted documents or emails within short time frames.

## WHAT IS DELETED DATA?

■ Let’s take a step back and define deleted data. When a file is deleted, it is moved to the trash or recycle bin in the operating system. However, emptying the recycle bin or shift-deleting a file doesn’t permanently remove that data. Rather, disk drives use an index or table to track where each file begins and ends on the disk—although a file is removed from the filing system when it is deleted, the file data remains within unallocated disk space. Once the filing system has marked the unallocated space as available for use, a new file may overwrite the previous file, and only then does the original data become difficult to recover. Digital forensic experts can use specialised tools and techniques to access and preserve data residing in unallocated space – thus obtaining deleted files.

## GOING BEYOND THE BASICS

■ Methods that provide a more robust recovery of deleted files should always be followed. Often, these methods need to look beyond the standard and commonly used Master File Table (“MFT”) approach, which involves identifying files marked as deleted, but not yet overwritten. This process can create critical gaps in the investigation timeline since it is not all-inclusive. For example, partially overwritten files would not be recovered.

Carving is an example of a robust method of recovery for IR investigations and

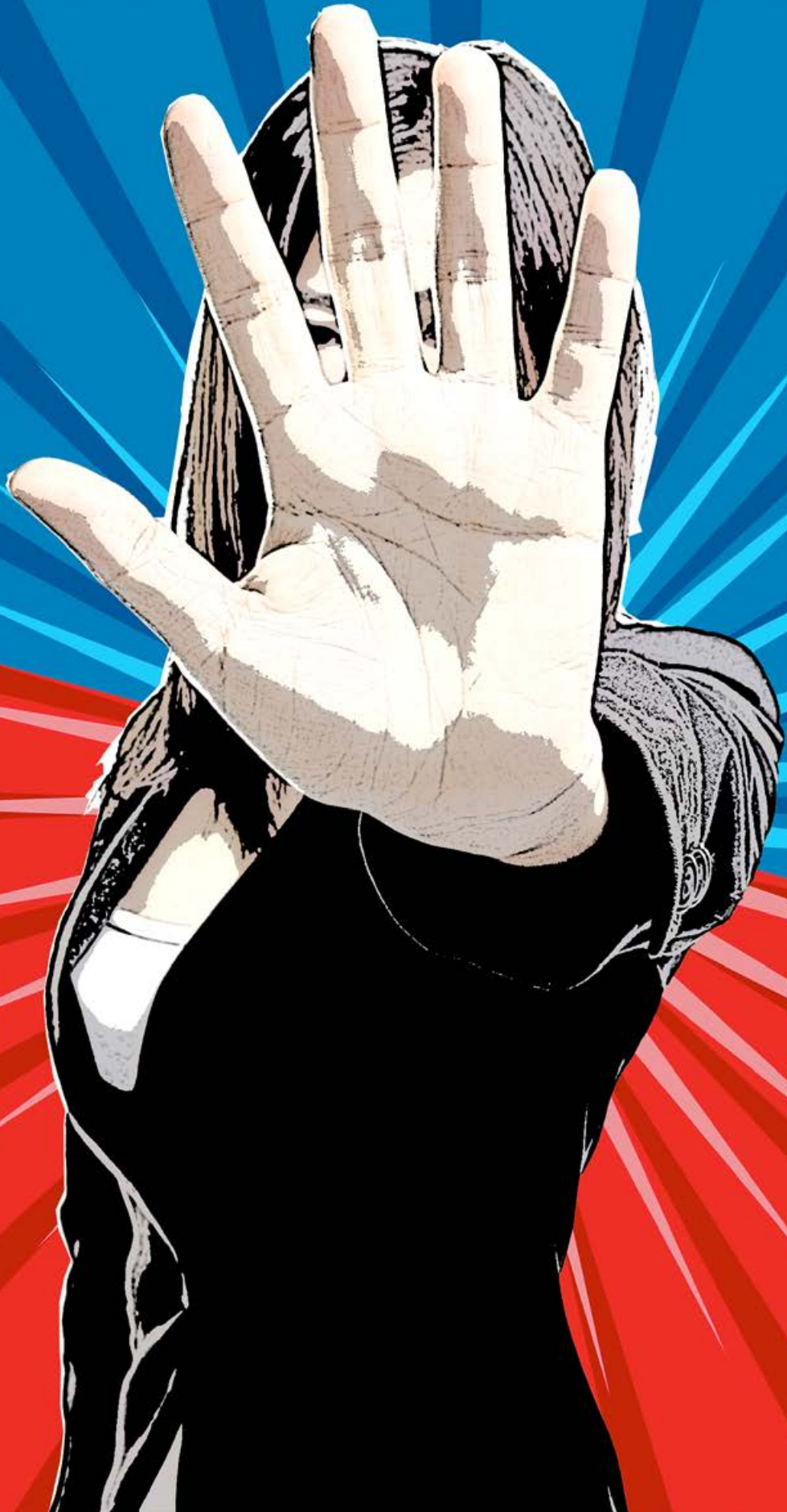
e-discovery, as it is used to recover data that was overwritten or otherwise inaccessible using the MFT approach, with the major difference being the type of data carved for by the investigator. During IR, the investigator would most likely carve for certain operating system files or executables, whilst e-discovery may require documents or emails.

The ability to recover data has become an essential part of any high-stake investigation, whether it be IR or e-discovery, in which certain custodians or threat actors may attempt to delete data to cover up wrongdoing. Digital recovery techniques and technologies are advancing all the time, providing legal and investigatory teams with a wide range of options for gaining access to files thought to be lost. Choosing the right method from the outset saves precious time and budget. In every matter, it is critical to involve experts from the start who can provide guidance on which method aligns best to the unique nuances of the case, and who are aware of the advantages and shortcomings of each, to execute data recovery in the most effective and context-suitable manner.

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PI: GAZETTE STUDIO/SHUTTERSTOCK



# ENOUGH *is* ENOUGH

The *Dignity Matters* report marks a turning point in tackling bullying, harassment, and sexual harassment in the profession, with the Law Society pledging firm action on all of its recommendations. **Mark McDermott** reports

MARK MCDERMOTT IS EDITOR OF THE *LAW SOCIETY GAZETTE*

## ≡ AT A GLANCE

- The *Dignity Matters* report reveals unacceptable levels of bullying, harassment, and sexual harassment in the solicitors' profession in Ireland
- It exposes significant under-reporting of incidents, and discovers that there were limited consequences for those who had engaged in such behaviour
- The Law Society has pledged action on its recommendations and additional supports



The Law Society has committed to supporting the solicitors' profession in addressing bullying, harassment, and sexual harassment in law firms and other workplaces, following the stark findings of its *Dignity Matters* report, which was published on 20 October.

The research, which included a survey of members and trainees, was initiated by the Law Society and conducted by Crowe. It reveals unacceptable levels of bullying, harassment, and sexual harassment in the solicitors' profession; significant underreporting of incidents; and limited consequences for those who have engaged in such behaviour.

The Law Society's report has its roots in the 2019 International Bar Association (IBA) *Us Too* survey, which revealed high levels of bullying, harassment and sexual harassment in the global legal professions. On foot of that survey, the Law Society initiated its

*Dignity Matters* survey so that it could better understand the extent of these issues in Ireland.

### Key findings

More than 1,560 solicitors and trainees responded to the survey – 68% of respondents were women and 32% men. The key findings revealed in the *Dignity Matters* report include:

- **Bullying:** one in two men and one in three women experienced bullying,
- **Harassment:** one in two women and one in nine men experienced harassment,
- **Sexual harassment:** one in two women and one in

eight men experienced sexual harassment,

- A consistent majority did not report their experience of bullying (73%) or harassment (71%), with this figure rising to 91% for experiences of sexual harassment,
- Insofar as respondents were aware, reporting resulted in no sanctions for the persons who engaged in 88% of bullying incidences, 89% of harassment, and 78% of sexual harassment,
- The most prominent reason provided by respondents for not reporting bullying (70%), harassment (76%), and sexual harassment (49%) was the profile or status of the person who engaged in these behaviours, and
- Experience of bullying (46%), harassment (50%), or sexual harassment (21%) has contributed to respondents leaving their workplace.

Commenting on the report, Law Society Senior Vice-President Michelle Ní Longáin said: "These findings, while troubling, are a collective call to action to reaffirm our commitment to eliminating behaviour that has no place in our profession."

She added: "The Law Society has embarked on an ambitious, evidence-based programme of change to support a culture of dignity, respect, and inclusivity in the solicitors' profession."

The report includes a range of recommendations that aim to bring about a culture change in how these matters are dealt with throughout the profession. Among them, the Law Society has committed to supporting the profession in addressing bullying,



FIG. SHUTTERSTOCK

harassment, and sexual harassment, by:

- Raising awareness of the issues and their impact in order to normalise the conversation,
- Implementing and revising policies and standards so that they are active and meaningful,
- Providing regular and customised training,
- Increasing dialogue and sharing best practice across the legal professions and other sectors,
- Underlining the importance of leadership and ownership of positive workplace behaviours,
- Exploring flexible reporting models, and
- Engaging with younger and diverse members of the profession.

**Endemic problem?**

Understandably, the report has been garnering much media attention. On RTÉ radio’s *Drivetime* programme on 20 October, anchor Sarah McInerney quizzed the senior vice-president: “One of the things that really struck me is that, in terms of people witnessing other people being victims of sexual harassment or commentary, 77% of people witnessed sexist comments, including inappropriate jokes about sex or gender; 66% witnessed sexually inappropriate comments being made to other people; 30%

witnessed inappropriate physical contact.

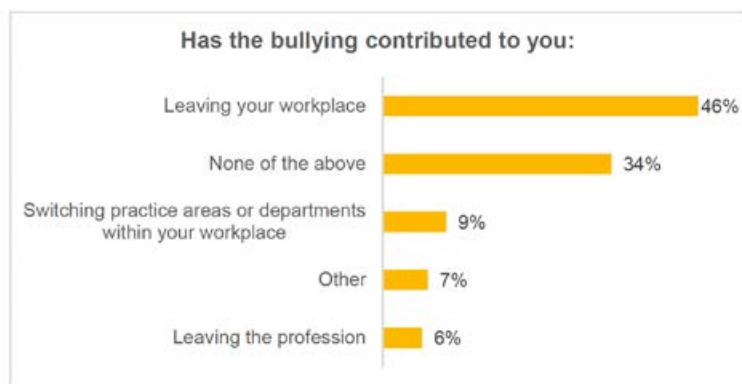
“Everyone knows, on those figures – everyone in the profession knows that this is going on. Did you need the 2019 report from the IBA to tell you that this is going on when you see figures like that?”

**N**í Longáin responded: “I think we don’t want to operate just on the basis of anecdotal comment – that’s all we had until now. Now we have a

report, and we have case studies within it, we have individual stories told, and we have information that empowers us to go forward.

“We were already providing supports, training, continuing professional development, training of students in the Law School – so that was already happening. But it’s evident from this that we need to do more. We’re absolutely not there yet. And we were right to be providing those supports, but we will develop those further.”

**4.3.6.17 Work related impact of bullying**



Respondents were asked if the bullying they experienced had a work-related impact on them. Nearly half of respondents (46%) stated that the bullying resulted in them leaving the workplace, with another 9% stating they switched practice areas or departments within the workplace and 6% saying they left the profession as a result.

## THESE FINDINGS, WHILE TROUBLING, ARE A COLLECTIVE CALL TO ACTION TO REAFFIRM OUR COMMITMENT TO ELIMINATING BEHAVIOUR THAT HAS NO PLACE IN OUR PROFESSION

The senior vice-president said that the Law Society was now turning all of its attention to the report's recommendations: "That's what we're going to act on. We have recommendations to support our profession to address harassment, bullying, and sexual harassment, and they are to raise awareness of the issues and their impact, to normalise the conversation.

"We're going to implement and revise policies and standards, so that they're active and meaningful – not a policy on a shelf or in a file site – and to provide regular and customised training to increase the dialogue and the best-practice sharing across the legal professions and other sectors, and to underline the importance of leadership and the ownership of positive workplace behaviours.

"We'll also explore flexible reporting models and engage with our younger and diverse members of the profession," she said, "because we know that all our solicitors have the right to a safe working environment, as do our trainees."

**N**í Longáin went on to describe the supports currently available to solicitors and trainees suffering from bullying, harassment, and sexual harassment, including LegalMind, the confidential, independent, low-cost mental-health support for members and their family members; the Law School's 'Shrink Me' programme, provided by the Law School Counselling Service for trainee solicitors; the online Professional Wellbeing Hub; and the *Professional Wellbeing Charter*.

"We can do more, an awful lot more," Ní Longáin continued, "because we recognise that; and that's why I'm here. That's why we've published the report rather than keep it internal. Instead, we're making sure that we get it out there – that our members know, and that the public knows, and that we know we'll be held to account for what we do in relation to this. And we will deal with it – we're determined to deal with it."

She then addressed the experiences aired in the report, "which include a wide range of members of the profession – not only the younger members, I'm sorry to say; it's others as well. We will ensure that our members, whoever they are – whether they're the solicitors who are employed, whether they're employers – that they know that there is a right to a safe working environment, free from these negative workplace experiences, and we're going to work with them to eliminate that behaviour."

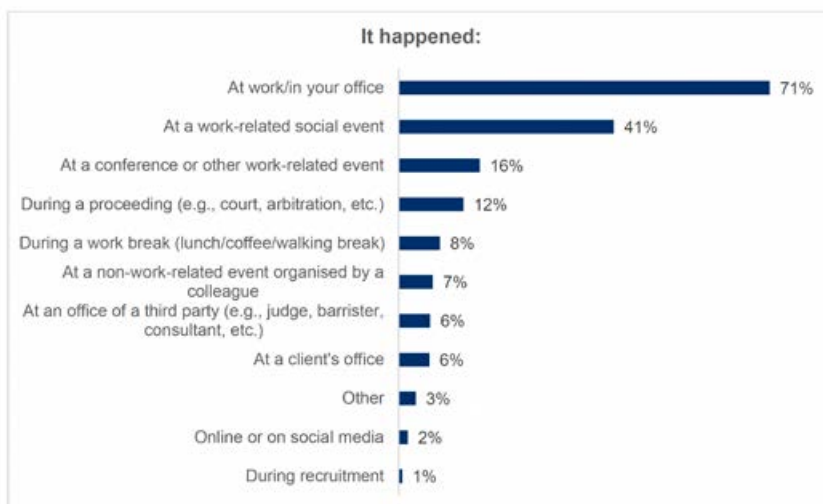
### Reported experiences

The reported experiences published (with permission) in the report make for difficult reading:

- "The interviewee described a manic workplace where tasks would be set and priorities revised within 30 minutes to an hour and continuous queries on work status: 'Have you finished that?', 'Is this done yet?', 'Where's this?'. The interviewee described continuous pressure with nobody left alone long enough to get anything completed. The principal's erratic emotional demeanour was described as impacting on the working environment."

#### 4.3.8.3 Incidences Experienced Sexual Harassment

##### 4.3.8.3.1 Place/Context



- “The interviewee sought to address the situation with the principal, whose response was to demean the interviewee’s work saying, ‘I’m really doubting this now. You didn’t give the impression at all that you were a slow worker and that you were not capable of doing a handful of tasks together.’ Other examples of what was described as constant belittling and undermining behaviour included reading the interviewee’s work, sometimes in a group setting, and commenting: ‘This doesn’t even make sense’, ‘This is laughable’, etc.”
- “The interviewee described difficulties introduced deliberately when they had family responsibilities to attend to, particularly after the arrival of a new baby. While working late was the norm, a request to leave by 6pm one day per week resulted in comments such as: ‘This is what it takes to be a successful lawyer’; ‘Wanting to be home with your family at different times is not going to cut it.’ The interviewee believes this was deliberate and aimed at their parental responsibilities.”
- “In what the interviewee outlined as a turning point, leave was refused to attend a funeral of a close personal friend (as the leave application had not been submitted within the requisite period). Additional tasks were introduced ‘deliberately’ late the same day, which were described as urgent, but known not to be. The interviewee worked until between 1am and 2am for the following two nights to ensure attendance at the funeral.”
- “The interviewee felt there was nowhere to go to seek support with the difficulties being experienced, as the person involved is an employment law solicitor and principal of the practice and, as such, the interviewee believed it was useless to try exercise their rights.”

One interviewee’s suggestions for future changes were that:

- There should be someone to talk to, in order to avoid comments afterwards, such as ‘why didn’t you talk to someone?’
- An attestation be added to the practising certificate application along the lines that the person has contributed to a safe working environment for all, so that consideration of such matters occurs at least once a year,
- The *Gazette* be utilised to get this

information in front of people on how to make the profession a safe place to work, what resources are available, and what help is available,

- Mandatory CPD (one-hour compulsory) around bullying, etc, and safe working environments be introduced with, at the end, clear instructions of where to find support if difficulties are being experienced.

### Unwelcome sexual encounter

Another interviewee referred to “an unwelcome sexual encounter with a colleague that took place at a non-work-related event. Having confided in other friends/colleagues from work, the interviewee was distressed by the subsequent working environment with colleagues (at least some of whom had been at the same non-work event) in circumstances where the interviewee’s version of events was not accepted (‘there are two sides to every story’). The interviewee was subsequently informed by one colleague/friend that the matter was being discussed in the workplace, disseminating reports of the incident to others who had not previously been aware of the situation. The interviewee told the alleged perpetrator of the unwelcome sexual encounter that they should never speak to them again.

“The interviewee did not raise the matter formally at work as it would be escalated and because of fear in terms of career and career progression. The day-to-day impact of meeting colleagues in the difficult and hostile environment resulting from the incident and related discussions has been alleviated by working at home caused by the COVID-19 pandemic.

“The interviewee, feeling there were no supports available, considered the employee assistance arrangements, but decided to seek support privately.

“The interviewee stated it would help a lot if HR could be asked not to put the alleged perpetrator in the interviewee’s work sphere without indicating why this is required, but they understand this is ‘neither feasible nor practical’. The interviewee suggests that arrangements could be put in place to protect a person in that position without having to disclose fully and create a full investigation. Finally, the interviewee pointed out it is ‘still a very male-dominated

profession’, making it difficult for these things to be resolved.”

### Safe workplace

Michelle Ní Longáin says that the Law Society is proud to have taken “a proactive approach in understanding the extent of these issues”. And she has commended the Society’s members for providing their experiences of difficult situations concerning highly sensitive subjects.

“All solicitors have the right to a safe working environment, as do all workers in every occupation – free from the prospect of negative workplace experiences,” she stated. “We will work with our members to eliminate behaviour that does not align with the values of integrity, trust, and respect that are the foundation of our profession.”

As part of the Society’s commitment to improving gender equality, diversity, and inclusion in the profession, the senior vice-president said that the Society was ready to take further action in order to bring about a sea change in the profession: “We in the Law Society will take this report away and consider it across the different aspects of our functioning, to look at everything we can do to strengthen the supports that are there – the policies, the charters, the information that people need – so that we change the culture. We look forward to making meaningful progress on the *Dignity Matters* recommendations in the coming months and years,” she said.

“Bullying, harassment, and sexual harassment are present in all professions and industries,” Ní Longáin added. “It is important to identify the issues and then take action – and we hope our efforts will encourage others to do the same,” she concluded.

## SUPPORTS AVAILABLE

The Law Society offers a range of supports for solicitors affected by the issues highlighted in the *Dignity Matters* report.

These include [LegalMind](#) – a confidential, independent, low-cost mental-health support for members; and the [Professional Wellbeing Hub](#), which offers helpful information and signposts to further resources.



# REPORTS FROM THE FRONT

Law students in conflict zones are working as on-the-ground reporters for US publication, *Jurist*. Editor-in-chief Bernard Hibbitts speaks to **Mary Hallissey** about the challenges and dangers they face on a daily basis

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

A network of law-student journalists is producing on-the-ground reporting from troubled corners of the globe, as a result of the endeavours of the publisher and editor-in-chief of *Jurist*, based out of the University of Pittsburgh.

Canadian-born Bernard Hibbitts is a legal history academic at the University of Pittsburgh School of Law. *Jurist* is an online legal news service, which began in 1996 in the early internet era. The professor now has a volunteer staff of 90 students operating from 30 different law schools around the globe, many in troubled regions.

“Traditionally, law students do other things, they study and

## THE DAY KABUL FELL, WE HAD LAW STUDENTS ON THE GROUND TALKING TO US ABOUT THE FALL OF THE CITY ... FOR THEM IT WAS IMPORTANT, BECAUSE THEY WERE DOCUMENTING WHAT WAS HAPPENING IN THEIR COUNTRY, AND TO THEIR COUNTRY

work,” Prof Hibbitts explained. “But we engaged them to do news because we believe that it’s an important way of connecting them with the outside world and engaging them with issues that are going on right outside their classrooms.”

Fewer than 10% come in with journalistic skills, but *Jurist* trains them from scratch.

### Tremendous transparency

“Law school can be a very isolating experience because it does tend to cut you off, and it pushes you into a particular area,” Hibbitts says.

“We’re trying to encourage undergrads to do something that is a public service. There are many similarities between good lawyers and good journalists. You’re out there assessing evidence and judging credibility. We can go in on the ground in a variety

of different locations and that’s very, very helpful,” he says. “There is a tremendous transparency in all of this.”

He describes a strong reciprocal bond with his team of law student reporters. Regardless of what happens, he will stick with them: “We will stay on the line. That’s what you do in an emergency,” he says.

“Prior to 2018, *Jurist* was primarily based here in Pittsburgh. It was a good, locally based project for our law students, but as law-school enrolments began to decrease in the US, we thought we needed to find a broader staff base, so we started tentatively to reach out to a couple of law schools in our local area. They all wanted to be involved in one form or another, so we actively started to recruit, in Los Angeles, Nevada, and Florida.”

Working digitally, it became easier to pull in law students as reporters. Emerging communication tools made it easier for Hibbitts to train would-be journalists, using video and instant-messaging.

The advent of COVID in March 2020 was “absolutely transformative” he says, because everybody came onto the virtual playing field where *Jurist* had been operating for decades. “We started to get solicitations from law students in faraway places – India, for instance. We developed really good relations with them. We had thought about expanding internationally as long as ten years ago, but the technology didn’t really exist to do it easily. We could have done it, but at a huge cost,” he explains.

Quite suddenly, the *Jurist* model could be scaled and distributed globally. The publication soon had correspondents filing from Australia, Canada, Kenya and India.

### Conflict zone

In February 2020, there was a military coup in Myanmar. Hibbitts learned that law students there had competed in international moot courts. He realised that these law students could help to report on the crisis in the rule of law in that country. They began to write reports in real time, using a variety of different media, about what was happening during protests in Myanmar. “It was absolutely amazing stuff, and scary as heck,” Prof Hibbitts says.

When the protests were suppressed, the law students had to hunker down, but carried on giving information to *Jurist*, essentially filing reports from a conflict zone.



Myanmar protest



IN AFGHANISTAN, IT'S THE TALIBAN RUNNING THE COURTS. THE LAW STUDENTS LOOKING AT THIS ARE HORRIFIED BECAUSE THERE'S NO MORE DUE PROCESS, THERE'S NO REPRESENTATION, THERE'S NO DELIBERATION

But Hibbitts was more than a bureau chief dealing with foreign correspondents – he was also a professor dealing with law students. He understood that he had to protect them, and he worried continually about them, despite their anonymised accounts in the field. Steps were taken to make sure that IP addresses were not traceable. The key was not only to take care of the students' physical safety, but also their mental wellbeing.

“If you're in my position as a professor, you are conscious of your responsibility to deal with students carefully and positively, to keep their spirits up. They were cut off

from their law schools. It was almost like broadcasting from the French Resistance in World War Two. These people on the ground are not just reporting, they are struggling, they are fighting.”

**H**ibbitts had to sustain the law students and make them viable as correspondents in the field. “What makes it more complicated is that most of these law students in Myanmar are women. Because of the nature of the society, the men go into engineering, or become doctors, or go into the military,” he explains.

He had the worry of managing these

bright, ambitious young women already doing remarkable things, such as leading the protests on the streets. “It was remarkably challenging – fascinating in so many ways – but yes, extremely scary,” he now acknowledges.

**The fall of Kabul**

When Afghanistan tipped over into crisis during the summer, Prof Hibbitts found himself as the news editor of a team of reporters with feet on the ground in that country.

As the Taliban approached Kabul in August, Prof Hibbitts began using his



## SLICE OF LIFE

### ■ *Biggest influence?*

My father, who was a professor of biblical studies. For 20 years when I was growing up, I watched him work and talk and walk with his students. He cared about them as people. And they stayed with him, literally until the day he died.

### ■ *Currently reading?*

*Staying Online*, by Robert Ubell. It's a book about the challenges of online education in a post-COVID world.

### ■ *Favourite read?*

Thomas Hardy, *Far From the Madding Crowd*. I don't read many novels, but I love this one. Hardy's Wessex is such a rich imagined landscape.

### ■ *Top podcast?*

Can't say I have one as yet, although *Jurist* is piloting a couple. I hope I like one of those!

### ■ *Currently streaming?*

Nothing really. Too much going on in the real world.

### ■ *Favourite tippie?*

Port, but with Guinness a close second.

### ■ *Favourite band?*

Probably *The Guess Who*, a Canadian rock band from the 1970s.

### ■ *Favourite flick?*

*2001: A Space Odyssey* – I wonder what Arthur C Clarke would make of 2021?

### ■ *Must-have gadget?*

A radio.

### ■ *Bucket-list destination?*

These days, anywhere that's not here – but I would really love to get to Greece. Never been.

### ■ *Are you a cook?*

When I need to be – but Gordon Ramsey is safe!

### ■ *Favourite sportsperson?*

Ken Dryden, Montreal Canadiens' ice-hockey goalie from the 1970s. A great sportsman, lawyer, writer, executive, MP – and an exemplary Canadian.

network. “The day Kabul fell, we had law students on the ground talking to us about the fall of the city,” he says.

*Jurist* quickly had a team of up to 15 Afghan law students filing reports in real time from various places around the country, explaining what was going on. “This was a predictable consequence of what we were doing. Eventually, you will be in the right place, and we were already in the right place in Myanmar, with students trapped in houses literally where confrontations were taking place with demonstrators, watching bodies being carried past the door.”

This was tremendous raw material, Hibbitts says, and involved verification processes to vet both writers and their stories. “For them, it was important, because they were documenting what was happening in their country and to their country. They wanted to reach out and explain, because they didn't want to be alone.”

Now that the Taliban is in charge, *Jurist* is getting other types of news, but the ongoing concerns about students' personal safety remain.

“You're on the bleeding edge of the law, literally,” Hibbitts says. “We have the capacity to do this because law students are everywhere. I almost hate to say this, but we can only fight a couple of wars at a time.”

The whole *Jurist* operation is managed on a shoestring, involving Prof Hibbitts and a few student part-time volunteers. He also carries a full teaching load, so the publication is essentially edited in his spare time.

“There is a very small professional supervisory staff, and another member of the law faculty who is an executive editor. It's a tiny, tiny operation that is punching way above its weight,” Hibbitts says.

### World's biggest class

In an interesting development, the law students in Myanmar have begun to talk to the law students in Afghanistan, comparing notes about their situations.

Both groups have experienced the same sudden social disruption that smashes the lives of law students, and of young women in particular.

“It is a very widespread group, but it's also tightly knit. These students are all remarkably similar, they are engaged, they are publicly oriented, they are optimistic and ambitious. They want to communicate with each other, and so I feel they cohere very



THE QUALITY OF THE STUDENTS IN BOTH CONFLICT AREAS IS EXTRAORDINARY IT'S BEEN A PLEASURE AND A PRIVILEGE TO WORK WITH THEM. THEY HAVE EDUCATED ME AS MUCH AS THEY HAVE EDUCATED THE WORLD

well. There's a lot that unites these students across boundaries.

"From my perspective, this is the world's biggest class. Usually in legal education, international environments are competitive in some way, such as in moot courts. Nobody expects a law school to be doing something like this," he says. "Who said law schools can't do news?" he jests.

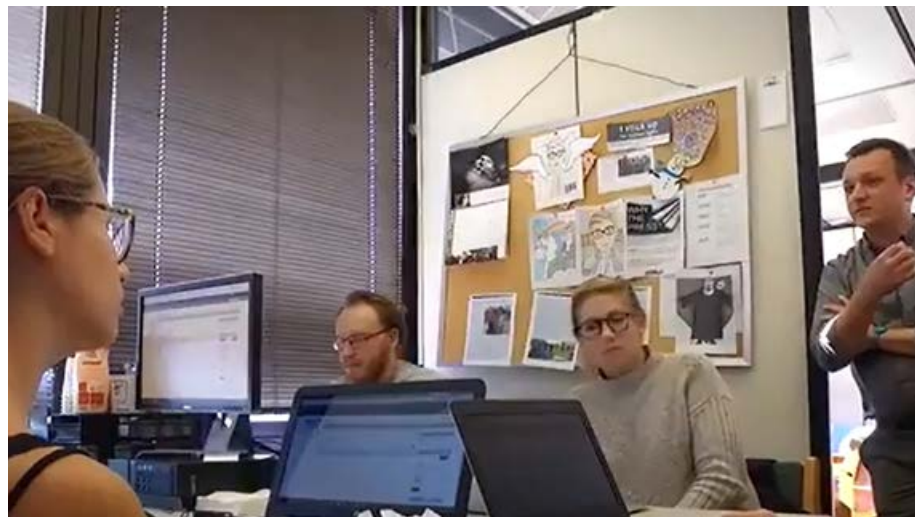
**L**aw schools are boxes – they separate students from everything and everyone else. This is a way to break down those walls. Here, law students are engaged in a common project, and they are working together over the long term. That opens all kinds of possibilities to change the entire way things operate. It's going to encourage the law students to work together and give them networks and connections globally."

### Disintegration of the future

The students in Afghanistan have faced the disintegration of their future – the firms and judicial positions where they would have worked no longer exist.

"They have to face the prospect of retooling or leaving," Prof Hibbitts says. "At a stroke, virtually the entire legal system has been wiped out. This is actually even worse than in Myanmar because there, the legal system was co-opted but left intact, and a lawyer or judge could still operate.

"In Afghanistan, it's the Taliban running the courts. The law students looking at this are horrified because there's no more due process, there's no representation, there's no deliberation.



The Jurist office (pre COVID)

"The nature of the punishments is changing, from some degree of imprisonment and or sanction system, to a system based on shaming and humiliation, corporal punishment and hanging.


"All of that is coming in suddenly, and Afghanistan is not what it was 20 years ago. It's gone through change, and these students represent that change. It's very challenging for them, and they are literally facing the prospect of having to reinvent themselves in a way that's even more dramatic and traumatic than that being faced by the Myanmar students. Their futures have been jeopardised, their dreams are in question, their lives, to some extent, are in question."

### A lifeline

"These students are extraordinarily challenged and yet, amid all of that, they want to talk to us, they want to work with

us. They see us as a lifeline of sorts, and I think that's terrific. They are very impressive people, they're very smart, they're very determined, they're very articulate.

"The quality of the students in both conflict areas is extraordinary. It's been a pleasure and a privilege to work with them," Prof Hibbitts says. "They have educated me as much as they have educated the world."

**H**e believes their established connection to their communities will change their roles as lawyers and turn them into leaders. "This is radical reconnection in real time," he says. "They will overcome these things, one way or another. They are all remarkable men and women. They will either stay there and change the situation, or they will get out and do something else. They are going to persevere." 

If an unauthorised development has been in place for more than seven years, it is termed immune from prosecution, or unauthorised but immune. But whether such a development can avail of this immunity is not as straightforward as it might seem. **Brian Robinson** revs the DeLorean

BRIAN ROBINSON IS MANAGING PARTNER OF BENVILLE ROBINSON SOLICITORS LLP,  
SPECIALISING IN PLANNING ENFORCEMENT AND SECTION 160 PLANNING INJUNCTIONS

# A BRIEF HISTORY OF TIME

## ☰ AT A GLANCE

- Planning permission and the seven-year rule
- When a year is actually a year and nine days
- Prior to the commencement of development conditions, when does time start?
- Ministerial powers arising from COVID-19



section 157(4) of the *Planning and Development Act 2000* provides: “(a) No warning letter or enforcement notice shall issue and no proceedings for an offence under this part shall commence (i) in respect of a development where no permission has been granted, after seven years from the date of the commencement of the development, (ii) in respect of a development for which permission has been granted under part III, after seven years beginning on the expiration, as respects the permission authorising the development, of the appropriate period within the meaning of section 40 or, as the case may be, of the period as extended under section 42.”

This is commonly known as the ‘seven-year rule’. Similar provisions apply with respect to civil injunctions pursuant to section 160(6)(a) of the 2000 act. This is the statutory time-limitation period within which enforcement action, whether civil or criminal, can be taken pursuant to part VIII of the act.

On the face of it, it seems pretty clear. Put simply, if an unauthorised development has been in place for in excess of seven years, no enforcement action can be taken, whether of a civil or criminal nature. While the development is unauthorised, it is what is termed ‘immune from prosecution’ or ‘unauthorised but immune’. However, ascertaining whether or not a particular unauthorised development can avail of the immunity afforded by the seven-year rule is not as straightforward as it might seem.

### What’s another year?

In *Browne v Kerry County Council*, the High Court had to consider the application of time periods in the 2000 act by reference to the control of quarries. Under section 261(6), the planning authority had the power to impose conditions on the operation of a quarry in various circumstances and had a period of two years within which to do so. In *Browne*, the local authority purported to impose conditions on the applicant’s quarry on the precise day that the two years were up. The applicant argued that the conditions had not been imposed *within* the two-year period and were, therefore, *ultra vires* the council and not applicable.

Mr Justice Hedigan considered the provisions of section 251 of the act. This deals with the calculation of time periods under the act. Section 251 provides: “(1) Where calculating any appropriate period or other time limit referred to in this act or in any regulations made under this act, the period between the 24<sup>th</sup> day of December and the 1<sup>st</sup> day of January, both days inclusive, shall be disregarded. (2) Subsection (1) shall not apply to any time period specified in part II of this act.”

Having considered the statute and other matters, Mr Justice Hedigan concluded that section 251 extended the two-year time period in section 261 by nine days in respect of each year, effectively providing for a total time period for the imposition of conditions of two years and



18 days in that instance. As a result, the council in *Browne* was, in fact, within time.

This reasoning does not only apply to quarries and section 261. It is clear that section 251 deals with any “other time limit” referred to in the act. Furthermore, part VIII of the act is not excluded. Part II is specifically excluded under section 251(2). Accordingly, it is commonly accepted that the seven-year period referred to in sections 157 and 160 of the *Planning and Development Act 2000* is, in fact, seven years and 63 days – an additional nine days for each year.

### The seven-year rule

Sections 157 and 160 differentiate between two different circumstances – where planning permission has been granted and where none has been granted. The seven-year period relates to unauthorised development *simpliciter*, where no grant of planning permission has issued. When it comes to planning permissions, the statutory limitation period – or the seven-year rule – is extended even further.

Section 157(4)(a)(ii) provides that the seven-year time period commences after the time period of the planning permission expires. Section 40 of the *Planning and Development Act* deals with the limit of the duration of planning permissions. Section 40(3) provides that a planning permission has a lifespan of five years beginning on the date of the grant of permission or, in addition, such further period that may be specified in the grant itself.

Section 42 gives the planning authority the power to extend the appropriate period on application to it by a party to whom a planning permission was previously granted. The planning authority can extend the lifetime of a



PICTURE: SHUTTERSTOCK

particular period by such additional period as the authority considers appropriate to enable the development to which the permission relates to be completed.

**G**iven that planning permissions normally have a lifespan of five years, the reality is that, where planning permission has been granted, the seven-year rule is effectively 12 years from the date of the grant of permission. Of course, the five-year time period of the planning permission is also subject to the provisions of section 251, as referred to in *Browne*. A planning permission effectively has a lifespan of five years and 45 days, being an extra nine days for each year. An additional nine days must be added for each of the five years of the permission, and also for each of the seven years under the seven-year rule. Accordingly, where enforcement action is taken regarding a development for which planning permission has been granted, the statutory limitation period is 12 years

and 108 days from the date of the final grant of planning permission.

### When does time start?

Often, certain conditions of planning permissions, in particular financial conditions, provide that they must be complied with “prior to the commencement of development”. On occasion, these conditions are not complied with, and it could therefore be argued that unauthorised development commences on the day when works are first carried out and such conditions are non-compliant. It could be argued that, for the purposes of the seven-year rule, time starts on the date that work first commences in non-compliance with a “prior to the commencement of development” condition. However, the provisions of section 157(4)(a)(ii) and section 160(6)(a)(ii) of the 2000 act are clear and unambiguous.

The date of commencement of development is only relevant where no planning permission has been granted. Where planning permission has been granted, it is clearly stated that the seven-year time period commences after the planning permission has expired. Irrespective of when the breach has actually occurred, the seven years only begin to run after the planning permission expires.

### Use conditions

It should be noted that section 157(4)(b) provides a specific exemption from any limitation period with respect to any condition in a planning permission concerning the ‘use’ of the land to which the permission is subject. This states that “notwithstanding paragraph (a), proceedings may be commenced at any time in respect of any condition concerning the use of land to which the permission is subject”. A similar provision regarding civil

THERE IS NO LIMITATION PERIOD ON ANY ENFORCEMENT ACTION, CIVIL OR CRIMINAL, REGARDING A CONDITION IN A PLANNING PERMISSION REGULATING THE USE OF PROPERTY

## ANY CHANGE OF USE FROM THAT WHICH IS PERMITTED PURSUANT TO A CONDITION IN A PLANNING PERMISSION GRANTED AFTER THESE DATES IS ACTIONABLE AT ANY STAGE, IRRESPECTIVE OF WHEN SUCH CHANGE OF USE HAS COMMENCED

matters is contained in section 160(6)(b).

Accordingly, there is no limitation period on any enforcement action, civil or criminal, regarding a condition in a planning permission regulating the use of property. Section 157 of the act was commenced on 21 January 2002; section 160 was commenced on 11 March 2002. Arising from this, it is my view that sections 157(4)(b) and 160(6)(b) of the act do not, and cannot, operate retrospectively. Accordingly, these provisions could only apply to any grant of permission subsequent to those respective dates.

Accordingly, any change of use from that which is permitted pursuant to a condition in a planning permission granted after these dates is actionable at any stage, irrespective of when such change of use has commenced. Some equitable issues – such as acquiescence, laches, or delay – may come into consideration but, ultimately, there is no statute of limitations with respect to use conditions in planning permissions.

### For peat's sake

For the sake of completeness, it should be noted that enforcement action can be commenced at any time with regard to development in the form of the operation of a quarry or the extraction of peat. This is pursuant to sections 28 and 29 of the *Environment (Miscellaneous Provisions) Act 2011*. This relates to both instances of unauthorised development *simpliciter*, and also where planning permission has been granted and it is alleged that the provisions of such planning permission are being breached.

Again, just as with use conditions, issues on retrospectivity and applicability apply, with

sections 28 and 29 of the 2011 act coming into operation on 15 November 2011.

### COVID time

The *Emergency Measures in the Public Interest (COVID-19) Act 2020* gave the Minister for Housing, Planning and Local Government certain powers arising from the COVID-19 global pandemic. Section 9 of the act dealt with the calculation of time limits during the emergency with regard to planning and development.

Specifically, section 9 amended the *Planning and Development Act 2000* for present purposes by introducing a new section 251(a). As inserted, the new section 251(a) specified that a certain time period be disregarded when calculating any appropriate period under the 2000 act. Section 251(a) was brought into force by way of *SI 100/2020*, the *Emergency Measures in the Public Interest (COVID-19) Act 2020 (Part 3) (Commencement) Order 2020*.

Effectively, a freeze commenced on time periods in the planning acts on 29 March 2020. This initially lasted until 20 April 2020, and was subsequently extended until 9 May 2020 and again until 23 May 2020. Ultimately, a time period of eight weeks or 56 days (from 29 March 2020 to 23 May 2020, inclusive) was excluded for the purpose of calculating time periods under the act.

### Time keeps on slipping

The consequences of a finding of unauthorised development can be severe. Successfully arguing the seven-year rule can be a silver bullet in enforcement proceedings and can stop enforcement action in its tracks. However, there are consequences following on from a finding of unauthorised development where, even

though a development may be immune from enforcement, there are still restrictions over the property and what can be done with it.

Other issues arise when considering the seven-year rule, such as the burden of proof; whether replacement, alterations or repairs are permitted; the applicability of statutory and regulatory exemptions; and the distinction between works and use. Just like the rule itself, the consequences that flow if it doesn't apply are not straightforward.

Ultimately, due to *Browne* and the COVID regulations, the seven-year rule for development where *no* planning permission exists is now the seven-year-and-119-day rule. The time period for enforcement action where planning permission *has* been granted is now 12 years and 164 days from the date of the final grant of permission. [E](#)

## LOOK IT UP

### CASES:

- *Browne v Kerry County Council* [2009] IEHC 552

### LEGISLATION:

- *Emergency Measures in the Public Interest (COVID-19) Act 2020*
- *Environment (Miscellaneous Provisions) Act 2011*
- *Planning and Development Act 2000*
- *SI 100/2020 (Emergency Measures in the Public Interest (COVID-19) Act 2020 (Part 3) (Commencement) Order 2020)*

# THE WEARING OF THE GREEN



Dublin is the perfect seat for arbitration in cases between a British and a European party under English law, as well as between a European/UK party and a third-country party under any common-law system. **Gavin Woods** and **Seán McCarthy** pull on the green jersey

GAVIN WOODS IS A PARTNER IN ARTHUR COX AND A MEMBER OF THE ICC COMMISSION, THE RULE-MAKING BODY OF THE INTERNATIONAL CHAMBER OF COMMERCE. SEÁN MCCARTHY IS A BARRISTER, FORMER DEPUTY COUNSEL OF THE ICC, AND CURRENT ICC YOUNG ARBITRATORS' FORUM REPRESENTATIVE

## ≡ AT A GLANCE

- Dublin has a broad pool of experienced neutrals and counsel, deep credibility with business, and an advantageous legal and geographic environment
- Benefits include the geographical location and time zone, as well as the available legal services infrastructure
- Ireland is also cost-effective compared with other arbitration hubs, with savings including more competitive hourly rates for counsel, cheaper travel, accommodation, hearing facilities, and administrative services



P.C. ALAMY

here is a wealth of resources in this country in terms of the provision of arbitration-related legal services. Perhaps the most important of these are its legal practitioners and domain experts. In the international arbitration field, the main protagonists are the legal representatives (solicitors and barristers), the arbitrators deciding the cases and, in many proceedings, expert witnesses in a variety of technical fields.

As counsel, solicitors in a large number of domestic and international firms and barristers have experience representing clients across a range of different international *ad hoc* arbitral rule-sets and/or under the auspices of the world's leading arbitral institutions. Many Irish lawyers have built specialist practices in the fields of international commercial, investment and/or

sports arbitration. Further, a number of Irish lawyers are actively involved in international arbitral institutions. Another key strength of Irish arbitration practitioners is the high number who currently work in the area around the world, or have done so over the course of their careers.

As arbitrator, the number of Irish legal practitioners presiding over international commercial arbitrations is increasing, with more growth possible. There were 16 appointments for Irish arbitrators under the London Court of International Arbitration rules in 2020, being the fourth highest nationality after Britain, Canada and the USA. The same increasing trend can be seen for arbitrator appointments under the International Chamber of Commerce (ICC) rules, the world's most-used commercial

arbitration institution, where Irish arbitrators were appointed 18 times in 2020.

In the investment arbitration context, Ireland currently has four practitioners designated to the International Centre for Settlement of Investment Disputes panel of arbitrators involved in the resolution of disputes between investors and states. In the sports arbitration field, Ireland has several practitioners who act both as counsel or arbitrator on a regular basis under the auspices of the Court of Arbitration for Sport, including Susan Ahern BL, who acted as arbitrator at the Tokyo Olympics 2020.

Ireland also possesses a very talented community of domain experts in fields such as finance, forensic accounting, engineering, construction, and intellectual property. These experts have decades of experience, not only in Irish and UK-based litigation, but also in domestic and international arbitration proceedings themselves. The depth of expertise, in particular, in the construction and engineering sectors is very strong, borne out of a long history of domestic construction arbitration and adjudication.

#### Arbitration Ireland

A significant resource within the Irish arbitration community is Arbitration Ireland, a cross-sectoral association bringing together foreign and domestic members, from legal practitioners to other stakeholders such as the Chartered Institute of Arbitrators, Engineers Ireland, and the ICC's representative in Ireland (Chambers Ireland). Arbitration Ireland works to promote Ireland and Dublin as an international arbitration hub through its engagement with the Irish legal community, the international arbitration legal community, international arbitral institutions, and with



Government. Arbitration Ireland hosts an annual international law conference – Dublin International Arbitration Day – which attracts a mix of domestic and international lawyers. The conference takes place this year on 19 November 2021 (see [www.arbitrationireland.com](http://www.arbitrationireland.com)).

**A**rbitration Ireland also comprises New York and London chapters in order to tap into the Irish legal community abroad, and a young practitioners' group whose aim is to further enhance the knowledge and experience of practitioners under 40 years of age. Arbitration Ireland is a leading supporter of the 'Ireland for Law' initiative, as part of the Government-supported International Legal Services Strategy.

#### Fair city

In terms of accessibility, Ireland and Dublin have many benefits. The first of these is Ireland's geographical location and time zone. In an increasingly time-constrained business

and legal world – post COVID-related travel restrictions – Ireland is perfectly placed for transatlantic and European disputes, given the high frequency of international flights to and from Dublin every day. Also, given that so many international companies have their European headquarters in Dublin, there is a good reason for their own convenience why they may wish to choose Dublin as the venue for their arbitrations.

The second major benefit Ireland possesses is the legal services infrastructure available to parties. The country has dozens of law firms with deep arbitration expertise, with the latest technological capabilities and practices, including the recent influx of several large British and US firms. This allows parties with even the largest disputes to feel safe in the knowledge that their counsel are fully equipped to prosecute their case.

Thirdly, in terms of facilities, the Dublin Dispute Resolution Centre, located within the Distillery Building complex, was purpose-built to house any and all ADR processes, particularly arbitrations. It has hosted a large number of international arbitration hearings since its opening.

Aligned with the ease of accessibility, Ireland and Dublin provide the above services on a hugely cost-effective basis compared with other arbitration hubs in Europe and the Middle East. These costs savings range from more competitive hourly rates for counsel, to cheaper travel, accommodation, hearing facilities, and administrative services.

#### Key elements

These attributes mirror the requirements of in-house counsel, such as Karl Hennessee (Airbus senior vice-president for litigation, investigations and regulatory affairs), who views three elements as being key when

AS ARBITRATOR, THE NUMBER OF IRISH LEGAL PRACTITIONERS PRESIDING OVER INTERNATIONAL COMMERCIAL ARBITRATIONS IS INCREASING, WITH MORE GROWTH POSSIBLE

## DUBLIN IS THE PERFECT LEGAL SEAT OF ARBITRATION IN CASES BETWEEN A BRITISH PARTY AND A EUROPEAN PARTY UNDER ENGLISH LAW, AS WELL AS BETWEEN A EUROPEAN/UK PARTY AND A THIRD-COUNTRY PARTY UNDER ANY COMMON-LAW SYSTEM

choosing a seat of arbitration on behalf of an organisation.

The first is a “clearly defined and effective law (and, where needed, judicial enforcement mechanisms) to assure certainty”.

The second is a “broad population of skilled neutrals and counsel to avoid conflicts and assure respectful and efficient processes”.

The final element is the presence of “credible and broad connections to business and financial expertise that support the credibility of the arbitral process and result, and hence a return to amity after the award or settlement”.

Maria Irene Perruccio (in-house counsel for international disputes at Webuild Group SpA) says that organisations should “prefer seats of arbitration where the local law and local courts are known to be arbitration friendly, and prone to enforce and protect awards”.

Specifically, in relation to Dublin’s position, Hennessee states: “It meets all of the above criteria, both from a seat and an institutional perspective – a broad pool of experienced and decisive neutrals and counsel, deep credibility with business, and a legal and geographic environment with advantages, only further enhanced by recent political developments.”

Perruccio sees the city as being “not as expensive and busy as Paris or London, an English-speaking country [which is an advantage in international arbitration], and having an arbitration-friendly reputation in terms of its procedural law and local courts”.

### Future proof

In a post-Brexit and post-COVID European landscape, the significance of Ireland’s natural advantages on the global business stage should

not be underestimated. The legal uncertainty created by Brexit has had a significant impact on cross-border trade with its EU neighbours – and there is a strong argument that Ireland is strategically well placed if there is any degree of deviation from England’s traditional place as the centre of most commercial dispute resolution in Europe.

The first major attribute that Ireland possesses in this context is its inherent neutrality *vis-à-vis* Europe, the UK, and third countries. A common occurrence, especially in international commercial arbitrations administered by institutions like the ICC and the Stockholm Chamber of Commerce (SCC), is the need to preserve the neutrality of the proceedings by the choice of a neutral seat of arbitration in default of a choice by parties in their arbitration agreement(s).

**T**his reinforces the significance of Ireland’s nature as both a common-law, English-speaking country, but also independent of Britain. Therefore, Dublin is the perfect legal seat of arbitration in cases between a British party and a European party under English law, as well as between a European/UK party and a third-country party under any common-law system.

Finally, as a member of the EU single market, the ease of freedom of movement for EU nationals and the ability for third-country nationals to apply and gain visas based on a long-standing system is a further advantage for arbitrations based in Ireland, versus the uncertainty and evolving regulatory situation for travel into the UK. The importance involved in being able to secure the attendance of witnesses in person cannot be underestimated, even with the


rise of virtual hearings in international arbitration. These types of strategic considerations are key to the modern practice of international arbitration, where there can be fine margins between a winning case or otherwise.

**A**s such, Irish-seated arbitrations may present a lower-risk and higher-reward alternative for most types of dispute to be settled by international arbitration compared with a seat in other jurisdictions.

### Strong case

It is clear that Ireland and Dublin present a strong case for continued growth as a centre for international arbitration over the coming years. A remaining obstacle to a large increase in arbitrations is further establishing the pipeline of international contracts with Dublin as the chosen seat. The evolution of the legal market in Ireland with its increased international dynamic, including the growth of large Irish-based in-house legal teams in international organisations, and the number of international law firms establishing in Ireland, may accelerate that change.

It is also vital that general counsel and transactional lawyers are aware of the positive attributes that the city and country possess in this post-Brexit and post-COVID landscape when negotiating international contracts.

Those who are familiar with the benefits the country has to offer to arbitration users are undoubtedly positive about its further growth potential. Increasing knowledge about Dublin and Ireland as strong options for arbitration, then, continues to be a key element in this journey. 

## ≡ AT A GLANCE

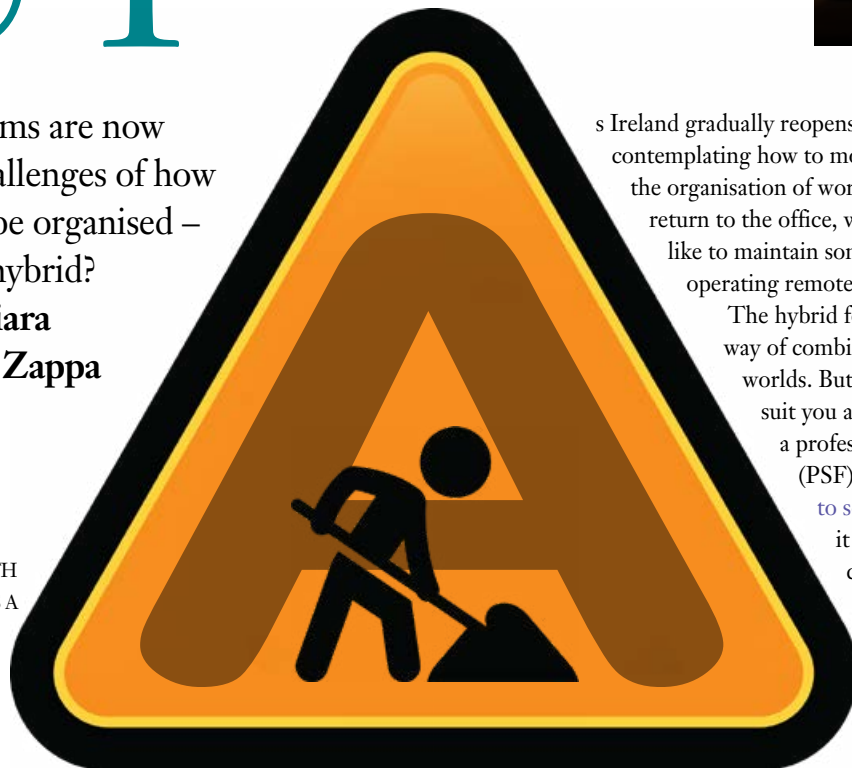
- With 88% of Ireland's eligible population fully vaccinated, businesses are trying to figure out how work now needs to be organised
- The hybrid form is regarded as combining the best of both worlds
- The decision to work remotely, in person, or hybrid will need to consider the needs and expectations of external and internal stakeholders

# WE CAN WORK IT OUT

Professional service firms are now struggling with the challenges of how the workplace should be organised – remote, in person, or hybrid?

**Tatiana Andreeva, Ciara O'Higgins and Paola Zappa** wanna hold your hand

DR TATIANA ANDREEVA IS RESEARCH DIRECTOR AT THE SCHOOL OF BUSINESS, MAYNOOTH UNIVERSITY, CIARA O'HIGGINS IS A RESEARCHER AND LECTURER AT THE UNIVERSITY OF DEUSTO, SPAIN, AND DR PAOLA ZAPPA IS AN ASSISTANT PROFESSOR AT MAYNOOTH



As Ireland gradually reopens, businesses are contemplating how to move forward with the organisation of work. Some prefer to return to the office, while others would like to maintain some of the benefits of operating remotely.

The hybrid form is often seen as a way of combining the best of both worlds. But does this approach suit you as a professional or a professional service firm (PSF)? In fact, **it is not new to some PSFs**, though it may not have been conscious or openly labelled as such. To make a conscious decision regarding what might work best for you, it's important to start by



IN THE ABSENCE OF DIRECT OBSERVATION, JUNIOR MEMBERS APPEAR TO STRUGGLE WITH DECIPHERING THE ORGANISATIONAL CULTURE THROUGH EMAILS AND VIRTUAL MEETINGS

understanding the challenges PSFs may face when working in remote or hybrid form, and then assessing your readiness to tackle these challenges. We suggest you consider two groups of challenges – external and internal.

The external challenges stem from your collaboration with external parties and, therefore, are relevant to all PSFs, no matter their size – from a small professional practice to a large international PSF. Indeed, professional services often involve interaction with a number of different actors, so your decision about whether to work remotely, in person, or hybrid will need to take the needs and expectations of these actors into consideration.

#### Don't let me down

The essence of a professional service is to build a tailored solution to the client's problem. To do this, you may need to

meet the client in person to gain a full understanding of the complexities of the case and the subtleties of their needs. However, after the initial reconnaissance provides you with the lay of the land, much of the subsequent research and deskwork required to devise potential solutions can probably be done remotely. Finally, depending on the project and the client, implementation of the solution may require a mixture of in-person and remote interactions.

Unbundling the professional service into specific tasks in this way allows you to go beyond the remote versus in-person dichotomy and adopt a more flexible approach. In this more fine-grained analysis of the tasks to be performed, you may also find that some tasks provide more effective results when done in person, while others are just as effective when implemented remotely. For example, our research shows

that, during the pandemic, PSFs were able to remotely contract and implement projects with existing clients because trust already existed between them. However, they found it extremely challenging to convince new clients by pitching to them remotely.

Moreover, it's important to remember that your choice of where to work will not depend exclusively on your preferences and policies, but will need to consider those of your clients. Some clients may prefer in-person meetings to share their confidential concerns; others may continue to limit access to their offices, especially to external parties; and others again might be limited by personal circumstances (for example, vulnerable individuals or care-givers who are still interacting mostly remotely).

Similarly, PSFs also interact with other actors, who influence or regulate their profession, such as public or Government



institutions, and professional associations or societies. These bodies are also transitioning to hybrid work environments, as they accelerate the digitalisation of many of their procedures and test innovative ways to promote networking and training of their members. For example, virtual deal-making, as well as [virtual and hybrid hearings or trials](#), appear to be here to stay.

Now, let's look at the internal challenges PSFs may face if they use a hybrid or a fully remote format. Based on our research, we identified three core issues:

- Access to senior professionals,
- Organisational culture, and
- Ensuring a fair and equitable workplace.

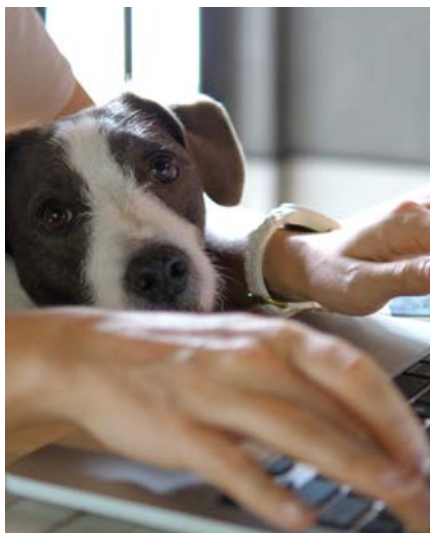
These are likely to be more relevant to larger firms rather than to individual professional practices.

### Long and winding road

Traditionally, PSFs have used an apprenticeship model to train and develop their junior employees. Learning-by-doing is central to this approach, as young professionals are expected to acquire professional know-how by working with their senior colleagues and being mentored by them. For example, junior hires often shadow their mentors on client engagements, and learn by observing them in action. They also often learn the tricks of the trade from informal 'water-cooler' conversations.

The shift to remote work during the pandemic demonstrated that sustaining experiential learning while working online is challenging for everyone involved. Many junior hires felt the lack of face-time with clients and partners left them at a disadvantage in their training and professional development.

Their mentors struggled also, because teaching professional know-how in online mode is challenging, and many experts did not have the experience or training to deal with this challenge. Furthermore, some senior professionals were already reluctant to mentor first-year associates before the pandemic, because they viewed it as too time-consuming and costly. A shift to remote working increased their resistance. As a result, during the past year, senior professionals have become less inclined to engage with more junior colleagues; mid-level associates have become even busier as they are coveted by all; while first-year



PICTURE: SHUTTERSTOCK

associates felt they were being left in limbo.

In the future, more senior professionals are likely to choose fewer days in the office compared with their junior colleagues, because they may perceive less need for professional development, or prioritise the benefits of remote working over the need for visibility. However, it is precisely these senior professionals who are the source of learning for junior colleagues. Without them being in the office, the opportunities for learning and the value of office time for junior professionals will decrease dramatically.

**A**t the same time, remote working does not always place junior professionals at a disadvantage. It may also bring some benefits beyond the widely discussed wellbeing and work/life balance – *if* the firm can manage the process well.

First, in larger firms with multiple offices across the country or indeed the globe, working remotely gives junior associates an opportunity to work with partners in different locations. This means more [opportunities to learn](#), in particular to tap into more diverse or specialised expertise and skills compared with those available locally and, in the long run, to find more 'sponsors' to advocate for their own promotion to partnership level. That said, to unlock these developmental opportunities, senior professionals need to be ready to mentor junior associates from other locations, let go of territorial feelings about their local talents, and allow them to work with partners from elsewhere.

Second, pandemic experience suggests that some junior professionals working remotely were given greater autonomy and

more [opportunities to develop their own voice](#) earlier in their career than they would have had if their apprenticeship happened in the traditional office-only environment. While this may be beneficial for individual professional development, the question remains as to what impact this might have on the organisational culture of PSFs as they go back to the office.

### Come together

Indeed, it is not only the tricks of the trade that junior professionals need to learn when they join the firm. They also need to learn the culture. [Organisational culture](#) is often an essential part of the PSF's brand and reputation, and it shapes its professionals to conform to this image. Shared values influence interactions with clients and, therefore, clients' perceptions of both the professional and the firm's unique selling points. Organisational culture also matters for bonding among colleagues and affects the employees' sense of identity, retention rates, and knowledge sharing.

However, building and maintaining a [distinctive organisational culture](#) in a remote workplace appears challenging. This is even more so in a hybrid one, because not everyone is 'in the same boat' by default. Why? Because transferring and nurturing the organisational culture requires socialisation and people 'doing things together'.

Socialisation is important to ensure that professionals remain engaged with their organisation, but is particularly crucial for newly hired employees. Junior members assimilate the organisational culture at the office. It is by observing others, typically senior members, and by bonding with peers that newly hired staff understand the culture, learn the firm's habitual way of behaving, and develop a sense of belonging.

In the absence of direct observation, junior members appear to struggle with deciphering the organisational culture through emails and virtual meetings. And the lack of opportunities for serendipitous encounters and joint training programmes on-site make it difficult to bond with peers. For these reasons, many are sceptical about whether culture can be assimilated and reinforced in a remote or hybrid context, and wonder whether there is a risk that a separate online culture might develop.

So, should hybrid working arrangements be completely disregarded by PSFs? Research suggests that organisational culture can still

## THE ESSENCE OF A PROFESSIONAL SERVICE IS TO BUILD A TAILORED SOLUTION TO THE CLIENT'S PROBLEM. TO DO THIS, YOU MAY NEED TO MEET THE CLIENT IN PERSON TO GAIN FULL UNDERSTANDING OF THE COMPLEXITIES OF THE CASE AND THE SUBTLETIES OF THEIR NEEDS

flourish in a hybrid context if the office space is transformed into a socially engaging cultural space. Professionals can schedule individual and teamwork for online working days, and managers should encourage them to use the office space to informally connect with colleagues in the same and – more importantly – other teams or areas.

Companies could explicitly signal this expectation by **offering opportunities for socialisation** and making time for them in professionals' busy schedules. Examples include meetings where employees gather to discuss recurring themes across projects and industries, wellness events, or social gatherings.

### Get back

The arguments above seem to suggest that the hybrid approach may enable PSFs to benefit from the advantages of both remote and office work arrangements. However, there is another (darker) side to this coin. The hybrid model typically means that the work arrangements of individual employees vary, depending on their personal preferences and life circumstances. Some would prefer to work mostly in the office, others mostly from home.

These differences in the proximity to the office and key organisational decision-makers are likely to influence access to resources, experiential learning opportunities, networking opportunities – and, in turn, performance appraisal outcomes and promotion opportunities. For example, our recent research presented at the Grow Remote webinar 'The Future of Remote: Can Hybrid Really Work?' (see presentation starting at 18 mins, 10 secs) suggests that employees who work in hybrid or fully remote working arrangements think that

their manager is not that aware of what they do and how they perform. Such visibility in the eyes of their managers (or the lack thereof) has a wide range of implications – for example, for invitations to interesting new projects, performance appraisal, or chances of promotion.

**T**o summarise, differences in employee work arrangements within the firm, inherent to the hybrid model, are likely to create new power discrepancies among employees and widen the existing ones. Junior employees and **women are more likely to suffer**. This issue is not specific to PSFs, as all firms may struggle with it. Yet, taking into account the nature of the work in PSFs – where much of the know-how is tacit and difficult to transfer online, the quality of a service is often difficult to assess, evaluating the performance of remote employees is challenging, and a strong hierarchy of seniority is already in place – firms may find it particularly challenging to address these discrepancies.


To counteract these potentially damaging aspects of hybrid work, the organisation needs to train both employees and managers, and develop policies and processes to support more **equal and fair access to resources and opportunities**.

### Revolution

All these are considerations that firms will need to contemplate when deciding how to carry out their professional work from now on. There is no 'one-size-fits-all' solution. You will need to find a suitable mix that simultaneously adapts to the way in which your external actors are transitioning to hybrid or remote work; enables the most impactful way to execute the different tasks

that constitute your professional services; and considers the internal issues of professional development, culture and fairness.

If you choose a hybrid approach, you will have to think carefully about how to maximise available face-time: for example, to spend it with clients or with colleagues? These priorities will differ for different firms and individual professionals, but they need to be well-thought-out and clear for the hybrid model to work.

Finally, whatever hybrid mix you choose, to benefit from it most, you should develop some guidelines on how it will work in your organisation. 

## LOOK IT UP

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- Empson, L, *Leading Professional People* (podcast, in particular episode 7: 'Post-pandemic professionalism')
- Fayard, AL, Weeks, J, Khan, M (2021), 'Designing the hybrid office' (*Harvard Business Review*, 1 March)
- Howard-Grenville, J (2020), 'How to sustain your organisation's culture when everyone is remote' (*MIT Sloan Management Review*, 62(1), 19-21)
- Mortensen, M, Haas, M (2021), 'Making the hybrid workplace fair' (*Harvard Business Review*, 24 February)
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# POST-PANDEMIC PREDICAMENTS

The challenges of the post-pandemic office, the hybrid work/life balance, and protecting employees' mental health were the central themes at this year's Business of Wellbeing summit. **Mary Hallissey** reports

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



THE RETURN TO THE OFFICE WILL REQUIRE INDIVIDUAL CONVERSATIONS, BECAUSE EMPLOYEES HAVE GAINED THE RIGHT TO PUSH BACK AGAINST UNREASONABLE BURDENS

**H**ow do you create an effective office and remote-work balance that ensures that people feel involved – and have an opportunity to shine? This was the key question posed by Valerie Daunt (human capital lead at Deloitte Consulting) at this year's Law Society Business of Wellbeing online summit on 12 October.

Daunt stressed: "It's important to ensure that those working remotely have the same opportunities as those in the office."

Feeling part of an organisation is a good predictor of both employee retention and long-term profitability. However, she pointed out that, during the pandemic, many workers had opted to leave not only their cities, but the country, in order to work remotely. Employers now need to consider how they can retain those people, post-pandemic – and what kind of well-rounded employee experience will contribute to their retention.

Managing remote performance for hybrid workers is another "cultural challenge". Managers need to strive to provide a supportive, positive, flexible work environment with growth opportunities. "How do you ensure that people continue to build the capabilities they need for the future?" Daunt asked.

Employee retention and long-term profitability are all "really positive reasons" for organisations to think about the employee experience, she urged. A focus on well-being and putting employees at the heart of an organisation, with a shared sense of purpose, is key.

Smaller organisations have a much better chance of being able to truly understand what their individual employees need, she said, because of their proximity to their workers.

## Open disclosure

The webinar heard that the open disclosure of struggles, from employees at every level, enabled open dialogue and shut down a sense of stigma about difficulties.

Attendees expressed fears that those working flexibly or remotely would be excluded from promotional rounds – even though they might be working just as hard as those attending the office every day.

Daunt spoke about the "great resignation" prompted by the pandemic, adding that lockdown had allowed people the time to think about what they really wanted to do in their lives. Individuals were thinking deeply about the organisation they were going into next, and wanted a workplace aligned with personally held values.

"There is so much choice [for

employees], and organisations need to think about what they're offering," Daunt warned. "Millennials and Gen X-ers are particularly focused on having a great experience at work," she said.

Advocates, mediators, and negotiators were in roles that often demanded "impossible standards" because they carried significant levels of responsibility. It was not a profession where you automatically switched off at the end of the working day, the webinar heard, and cancelled social plans tended to be a feature of the working life of a lawyer. As a result, a sense of psychological safety was crucial in avoiding burnout, attendees heard.

Law Society past-president Michael Quinlan reminded participants of the Law Society's [Professional Wellbeing Hub](#), urging anyone in need of assistance to start their search there.

## Reopening problems

Commenting on the stresses that firms had faced during lockdown, David Williams (partner, LK Shields Solicitors) said: "It was so much easier just to close down the office than to reopen it. Reversing that is just so much more complex, however, and I think we have to do a lot of listening to people."

"There's no one-size-fits-all here. People have gotten used to



PIC: SHUTTERSTOCK

working from home. With some people, we almost must provide a reason *why* they should come back into the office,” he observed.

Williams spoke about a recent conversation he had had with a junior lawyer who wanted to work remotely on a permanent basis: “We discussed whether that was actually good for that person’s career – not having the human interactions with other professional lawyers that just happen by accident if you’re sharing an office. Those conversations aren’t planned, but just happen, whereas, when working remotely, everything is planned.

“You don’t have the accidental conversations that allow so much knowledge to be imparted from the senior people to the junior people, or even just the gossip about what’s going on,” he said.

However, Williams questioned the value of a sparsely popu-

lated office: “What is the point of working there all day if you haven’t interacted with anyone?” he asked. “So, you have to make an effort to actually interact with people when you do get back into the office.”

He also wondered whether people would get back into business suits if they hadn’t been wearing them for 18 months. There were concerns, too, about retaining and attracting staff, which was not simply a matter of offering enormous salaries, disproportionate to the age of the person.

Williams warned of the danger of getting trapped in a wealthy lifestyle with no ‘Plan B’ to exit, if it wore thin. Some people wanted to disconnect now, post-pandemic, because they realised there were different lifestyle options, with resulting high attrition rates, he said.

Surveys have shown that

younger, newly qualified lawyers are prioritising their work/life balance, he added.

#### Mental-health shift


Good mental health was one of the strongest and most-frequent reasons for leaving a job, the webinar heard. This profound shift may call into question the entire future of the billable hour. The question is, which firms are going to be brave enough to take a different approach, asked Sara Carnegie (director of legal projects at the International Bar Association). Richard Martin (director of mental health and wellbeing at Byrne Dean) said that the return to the office would require individual conversations, because employees had gained the right to push back against unreasonable burdens.

Lockdown could be regarded as having had a positive impact from an inclusion perspective, he

said, because many of the barriers to workplace participation had now been broken down: “In order to work, I don’t have to be at a particular place, during particular hours, wearing particular clothes.”

He then posed an interesting question: “If we just require everybody to come back three days a week – Monday, Wednesday, and Friday – are we just putting back those barriers?”

Some people would inevitably want to spend more time in the office, close to the partner, Martin noted. But he warned that decades of experience, from a gender perspective, had shown the reality of the proximity of power, and the damage this could cause from an inclusion perspective.

There were now wonderful opportunities for people to be able to define what “good work” looks like to them, he said. 

# BACK HOME TO DONEGAL

The innovative PPC Hybrid is proving particularly important for those who are most geographically distant from Blackhall Place. The *Gazette* talks to four Donegal trainees who started the course in December 2020



ON A NUMBER OF OCCASIONS, I HAVE ACTUALLY COME AWAY FROM ONLINE WEEKEND LECTURES TO FACE SCENARIOS IN THE OFFICE THE FOLLOWING WEEK THAT REQUIRED ME TO APPLY THE KNOWLEDGE GAINED TO FILES. IT MAKES THE WHOLE LEARNING PROCESS MORE REALISTIC

The Law Society's PPC Hybrid uses a 'blended-learning' approach that involves a combination of online recorded lectures, 'live' online tutorials and skills workshops, as well as on-site, face-to-face tuition. Importantly, this means that trainees can continue working through the delivery of the course – and they don't have to relocate to Dublin for extended periods.

Choosing the hybrid option was "a no-brainer" for Jason Laverty (trainee with Browne and Co, Letterkenny): "The option suited me to the ground, as I didn't want to travel to Dublin and spend an extended period of time away from home or work."

For Megan Clarke (trainee with McGinley Solicitors in Letterkenny), a similar reasoning applied: "I can remain in Donegal and travel to Blackhall Place one weekend a month, eliminating the need to seek accommodation for the duration of my PPC1. This was always a worry for me, even when I was sitting my FE1 exams, and I couldn't believe it when the Law Society introduced PPC Hybrid."

Course manager Rory O'Boyle (also a Donegal native) says that it was exactly for such trainees that the hybrid course was devised. In doing so, the Society remains fully committed

to fostering the hybrid trainees' full sense of connection with, and belonging to, the Law School, the Society, and the wider profession.

## Virtuous circle

It's not just the convenience of not having to relocate to Dublin that resonates with the Donegal trainees – they also identify a real learning opportunity from studying and working at the same time.

For example, Niall Gallagher (a trainee with Sweeney McHugh Solicitors in Dungloe) highlights that the hybrid "provides an unparalleled experience, in that the skills learned through online lectures can be applied daily in a practical setting, allowing me to further develop my legal knowledge at a much quicker rate than, otherwise, would have been possible. Undoubtedly, the opportunity to learn and apply both the practical and academic skills while working alongside colleagues in the office was the biggest factor in me choosing the PPC Hybrid course".

Niamh Grant (trainee with VP McMullins, Letterkenny) agrees: "I enjoy the hands-on approach to learning, and felt I would benefit from training in an office while completing the PPC."

Similarly, Megan Clarke says: "I find it fantastic that I can apply the knowledge I obtain from the PPC Hybrid directly to my work.

On a number of occasions, I have actually come away from online weekend lectures to face scenarios in the office the following week that required me to apply the knowledge gained to files. It makes the whole learning process more realistic."

## Diversity and inclusion

The chair of the Society's Curriculum Development Unit, Brendan Twomey (whose practice is also based in Donegal) states that, when introducing the PPC Hybrid, one of the main aims was to devise a programme structure that would contribute to the Society's priority of improving the diversity of its pool of trainees and, ultimately, the diversity of the profession more generally – and that it is hugely gratifying to see that the programme is achieving those aims.

The type of trainees identified as being likely to benefit from this more flexible route of entry into the profession include mature students, parents, carers, and those from non-traditional educational and socio-economic backgrounds. The first two intakes onto the PPC Hybrid have seen 100 trainees join the programme. Almost half of the traineeships are located outside the Dublin area. Taken together with the Society's newly introduced Small Practice Trainee-



Niall Gallagher (trainee, Sweeney McHugh Solicitors), Megan Clarke (trainee, McGinley Solicitors), Brendan Twomey (chair, Law Society Curriculum Development Unit), Rory O’Boyle (PPC Hybrid course manager), Jason Laverty (trainee, Browne and Co, Solicitors, LLP) and Niamh Grant (trainee, VP McMullins)

ship Grant, this marks a significant and welcome shift away from a potentially overly Dublin-centric system of training.

Apart from geographical flexibility, other statistics indicate how the hybrid course has contributed to the diversity of the pool of trainees. For example, over half of PPC Hybrid trainees are over the age of 30, and more than 70% are female.

Another very welcome development has been that PPC Hybrid trainees come from a much more diverse educational background, with, for example, only 13% of hybrid trainees having attained their undergraduate degree in UCD or Trinity. This diversity is also seen in the Donegal trainees, with two of

the four students getting their degree at Letterkenny Institute of Technology.

Jason Laverty says: “I studied a three-year LLB locally in Letterkenny IT, during which I worked in Lifford. I come from a family of seven siblings, and my parents are from large families (11 and 12 siblings) – none of whom had a background in law.”

**The future**

Reflecting on these developments, Rory O’Boyle states that, in his day, pursuing a career in law meant – initially, at any rate – leaving somewhere like Donegal for an urban setting. However, not anymore, as shown by these trainees who can study at undergraduate level, find

their traineeship, and complete their PPC while staying firmly rooted to where they are from. Indeed, the four Donegal trainees who joined the PPC Hybrid in December 2020 all expressed a desire to remain in the county, post-qualification.

This, of course, is not a story unique to Donegal. Hybrid trainees have training firms in counties that were previously, perhaps, underrepresented, including Cavan, Kerry, Mayo, Roscommon and Sligo, to name but a few.

The ongoing challenge will be to ensure that trainees can study, train, and qualify into their local communities, ensuring the vibrancy of the profession in every corner of the country.

THE ONGOING CHALLENGE WILL BE TO ENSURE THAT TRAINEES CAN STUDY, TRAIN, AND QUALIFY INTO THEIR LOCAL COMMUNITIES, ENSURING THE VIBRANCY OF THE PROFESSION IN EVERY CORNER OF THE COUNTRY

# ANOTHER PIECE OF THE PII

Professional indemnity insurance premiums look set to increase further this year. **Sorcha Hayes** looks at the reasons for the hardening market and offers tips on the upcoming 2021/22 renewal process

SORCHA HAYES IS HEAD OF PRACTICE REGULATION, AND IS SECRETARY OF THE LAW SOCIETY'S PROFESSIONAL INDEMNITY INSURANCE COMMITTEE



AS IT IS EXPECTED THAT PREMIUMS WILL INCREASE FOR THE NEXT RENEWAL, YOU SHOULD PUT FINANCING SUCH PREMIUMS AT THE TOP OF YOUR TO-DO LIST, INCLUDING USE OF SAVINGS OR OBTAINING THE NECESSARY LOAN FACILITIES

Last year saw increases in professional indemnity insurance (PII) premiums due to hardening markets arising from global issues. This year, further increases are expected, as the market hardens further.

So why is the premium increasing? Briefly put, *premium = base rate + risk*.

Premiums are calculated by an insurer by combining insurance base rates with risk markups. Base rates tend to be based on global issues for the insurer, such as their loss ratio across their entire book of business worldwide, increasing claims due to COVID-19 and other high-loss events, solvency requirements, and the poor performance of PII markets worldwide. Risk levels depend on the performance of the domestic solicitors' PII market, minimum terms and conditions, and individual risk factors for each firm, such as claims experience, areas of work, turnover, etc.

In a soft market, the base rates decrease and risk decreases or stabilises, resulting in a decrease in premiums. This premium decrease is accelerated through competition between insurers to gain clients by lowering prices. In a hard market, either the base rate or the risk (or both) increases, causing an increase in premium.

The usual cause for a hard mar-

ket is a substantial increase in the quantity or quantum of claims, as we saw during the last downturn with conveyancing claims. This increases the risk end of the equation, causing an increase in premium. In such cases, the Law Society and firms themselves can take action to reduce risk and the premiums, either by changing the minimum terms and conditions and/or implementing robust risk-management procedures.

This hard market is not caused by a poorly performing Irish solicitors' PII market, but rather global losses being experienced by insurers, which cause an increase in the base-rate end of the equation. This is why insurance premiums are increasing across all types of insurance in the market, and also why your premium can increase when you do not have any claims or increases in other risk factors.

Because the increase in premium is being predominantly caused by global issues that are outside the control of the Law Society, changes to minimum terms and conditions and improvement in risk management can only minimise premium increases, but cannot stop them.

The Irish solicitors' PII market has predominantly seen a rise in premiums due to base-rate increases, as our market is performing well with regards to claim

levels, which has acted to minimise premium increases. Other PII markets have seen much higher premium increases due to increased base rates and increased risk (due to increases in claims).

## Capacity v premium

In a hard market, insurers seek to maintain or increase their profitability in order to deal with increasing loss ratios and solvency requirements, including for events that would not have been factored into their underwriting criteria, such as a worldwide pandemic. Usually, an insurer increases their profitability by increasing their capacity. Capacity is the number of clients (in our market, solicitor firms) that insurers cover. Increasing capacity usually results in premium levels staying stable. However, in this type of hard market, insurers become conservative and seek to limit or decrease capacity. As such, they maintain or increase profitability by increasing premium.

## Financing your premium

As it is expected that premiums will increase for the next renewal, you should put financing such premiums at the top of your to-do list, including use of savings or obtaining the necessary loan facilities. The Society partners with Bank of Ireland on an annual



PIC: SHUTTERSTOCK

basis to provide a finance facility for members who wish to finance payment for their PII premium, income tax, pension contributions, or practising certificates. Information on premium financing can be found on the Society's website at [www.lawsociety.ie/pii](http://www.lawsociety.ie/pii).

Some insurers offer the ability to stagger premium payments over the year, using either monthly or quarterly payments. You should ask your broker for assistance negotiating such staggered premium payments with your insurer.

### Make your broker work

Keep in mind that brokers are providing you with a service and are being paid a fee for it – and you are their client. Your broker should pay due regard to the interests of your firm, treat you fairly, and provide you with good-quality service. Your broker should be acting as your advocate, advisor, and champion in the market. A good broker will not redi-

rect you to the Society for assistance in obtaining insurance, as this is the role of the broker, not the Society.

As such, you should ask your broker what fees they get for placing your insurance and what services they will provide you for that fee, and you should agree acceptable service levels with your broker in advance of the renewal. Remember, as the client, you are entitled to demand good-quality service from your broker.

### Don't rely on just one broker

Brokers usually have access to only two or three insurers in the market. In order to maximise the number of quotes you obtain and your chances of affordable cover, you should send your common proposal form to all insurers in the market, with the exception of insurers that do not cover your type of firm. Even if you have been with an insurer for years, they could change their underwriting criteria, leaving you with-

out cover unless you have a backup. So if your broker does not have access to the entire market, you should use more than one broker.

### Apply early

As mentioned before, insurers have limited capacity and so will have a maximum number of firms that they are willing to cover. You should apply as early as possible to ensure that you obtain a quote before the insurers close their books, even if you have been with your insurer for a number of years. The common proposal form and guidance have been published on the Society's [website](#).

### Variable renewal dates


Variable renewal dates have been available since 2011, and you should discuss with your broker whether they are right for you, with the caveat that you may receive a higher quote outside of the downward pressure of the renewal, and insurers may not be

willing to write cover mid-year due to limited capacity.

### First-party cybercover

Your PII provides third-party civil liability cover and, as such, it does not provide first-party cover for your losses in the event of a cyberattack. You should discuss the possibility of obtaining separate first-party cybercover with your broker, as it should act to protect you from such losses, and also give you access to experts to rectify IT gaps and PR issues after a cyberattack. Such cover also makes your firm much more attractive to insurers, as it is seen as good risk management.

### Further information

Information on premium calculation tips for renewal, guidance, and helpful documentation can be found on the Society's website at [www.lawsociety.ie/pii](http://www.lawsociety.ie/pii). You can contact the Society's PII helpline by email ([piihelp@lawsociety.ie](mailto:piihelp@lawsociety.ie)) or tel: 01 879 8707. 



# TIME IS ON MY SIDE

The CJEU recently found that national procedural rules should be interpreted strictly, reminding national competition authorities of the need to conduct investigations expeditiously. **Cormac Little** starts the clock

CORMAC LITTLE SC IS PARTNER AND HEAD OF THE COMPETITION AND REGULATION UNIT OF WILLIAM FRY LLP AND CHAIR OF THE LAW SOCIETY'S EU AND INTERNATIONAL AFFAIRS COMMITTEE



THE COURT FOUND THAT THE RESTRICTIVE EFFECTS OF A BID-RIGGING CARTEL DISAPPEAR ONCE THE ESSENTIAL ELEMENTS OF THE RELEVANT CONTRACT, MOST NOTABLY THE OVERALL PRICE, ARE AGREED BY THE PARTIES

In its 14 January 2021 judgment in *Case C-450/19 (Kilpailu-ja kuluttajavirasto)*, the EU Court of Justice (CJEU) focused on when the national limitation period for bringing proceedings for breaches of EU and/or national competition law comprising alleged collusion in a public-procurement process begins. The court's judgment contains findings of significant interest regarding both the public and private enforcement of antitrust rules in the EU.

### Time of the preacher

Article 101 of the *Treaty on the Functioning of the EU* (TFEU) prohibits agreements between undertakings, decisions by associations of undertakings, and concerted practices that have the object or effect of restricting competition with an effect on trade between EU member states. Price-fixing, market-sharing, and other forms of cartel behaviour are viewed as 'hard-core' infringements of article 101. The national competition laws of all EU member states contain provisions that apply article 101, by analogy, to antitrust infringements whose effect is limited to a single country (or part thereof) – for example, the Irish equivalent to article 101 is contained in section 4 of the *Competition Act 2002* (as amended), whereas the Finnish equivalent is found in

paragraph 4 of *Law 480/1992* on restriction of competition (as amended).

### Waiting on a friend

Cartels are usually secretive and conspiratorial. Accordingly, national competition authorities (NCAs) have found that the best way to detect such infringements is to encourage one of the participants to come clean and cooperate with an investigation in return for immunity from or a reduction in, penalties. Many competition regimes operate such immunity or leniency programmes, including at EU level and in Ireland/other member states. Accordingly, major anti-trust investigations in the EU are often triggered by applications for immunity or leniency. Under such schemes, a participant in cartel activity that blows the whistle regarding its co-conspirators may qualify for no or reduced sanction. The current Irish Cartel Immunity Programme (CIP), which came into effect in early 2015, outlines the policy of both the Competition and Consumer Protection Commission (CCPC) and the Director of Public Prosecutions in considering applications for immunity from prosecution for cartel offences.

### Hold on

Eltel is a major Nordic provider of power supply and communications networks. One of Eltel's

key competitors is Empower Oy (Empower), since renamed Enersense International Oyj. In spring 2007, Fingrid Oyj (Fingrid), the Finnish national electricity transmission system operator (the Irish equivalent is EirGrid plc), published a tender for the construction of a high-voltage power line between two municipalities in western Finland. The tender deadline was fixed for 5 June 2007, with the relevant works being due for completion by 12 November 2009. Eltel submitted its bid on the eve of the relevant deadline and signed the contract with Fingrid on 19 June 2007. Ultimately, Eltel completed the high-voltage line by the November 2009 deadline and received its final payment from Fingrid on 7 January 2010.

Empower submitted a leniency application to Kilpailu-ja kuluttajavirasto (the Finnish Competition and Consumer Authority, or FCCA) on 31 January 2013. This prompted an investigation into the alleged cartel between Eltel and Empower regarding contracts for the design and construction of power transmission lines in Finland. On 31 October 2014, the FCCA granted leniency to Empower, thus exempting this company from sanction for any involvement in a 'power lines' cartel.

On the same day, the FCCA issued proceedings before the



COUPLED WITH THE CJEU'S JUDGMENT IN ELTEL, THIS PROVISION EMPHASISES THE VIEW THAT ALLEGED VICTIMS OF COMPETITION LAW INFRINGEMENTS HAVE MORE SCOPE FOR MANOEUVRE THAN THE CCPC (AND OTHER NCAs) IN TERMS OF THE TIMING OF ANY ENFORCEMENT ACTION

Finnish Market Court for the imposition of a €35 million fine on Eltel for its participation in the 'power lines' cartel. According to the FCCA, the single and continuous infringement of article 101 of the TFEU (and its Finnish equivalent) was implemented through a series of meetings between Eltel and Empower, where the two companies allocated future public-works contracts between them while agreeing tables for such tenders containing prices and margins.

### Time travelling blues

In a judgment dated 30 March 2016, the FCCA's application was rejected by the Market Court on procedural grounds since, under Finnish law, a fine cannot be imposed unless the court application is lodged within five years from the date at which the restraint of competition ceased. The FCCA appealed the Market Court's decision to the Supreme Administrative Court (SAC), arguing that the relevant competition law infringement ended at the earliest on 12 November 2009 (that is, when the power line was constructed) or, alternatively, lasted until 7 January 2010 (when the final instalment was paid by Fingrid to Eltel).

More broadly, the FCCA argued that the award of a public works contract to a cartel participant has long-term effects, given that the contracting authority is likely to have paid a higher price than would have been the case absent the cartel, coupled with the likelihood that the relevant fee will be paid in instalments over several years. While denying the existence of any cartel, Eltel also argued that the duration of any breach of EU and/or Finnish competition rules must be assessed by reference to the period for which the impugned conduct occurred. Accordingly, if there was a cartel, it ended either on the date the tender was



Time waits for Norman

submitted (namely 4 June 2007) or, alternatively, 19 June 2007 – the date on which the contract with Fingrid was signed.

Faced with the novel question of the duration of the economic effects of a competition law infringement, the SCA referred the question of when a cartel ends to the CJEU for preliminary ruling under [article 267](#) of the TFEU. In this regard, there are four possible dates, starting with the earliest:

- The date of the bid submission,
- The date the contract was signed,
- The date the relevant works were completed, or
- The date on which the final contractual payment was made.

### Your time is gonna come

After recalling the key concept that each economic entity must independently decide its market conduct, the CJEU stipulated that any contact between com-

petitors likely to reveal future market activity is a breach of article 101 of the TFEU. The court also noted that the FCCA identified the overall engagement between Eltel and Empower in advance of the submission of bids for the construction of the relevant high-voltage line in Western Finland as a "single and continuous infringement".

The CJEU stated that EU competition rules focus on the economic consequences of anti-competitive arrangements rather than their legal form. More specifically, article 101 may continue to be engaged, provided the illegal conduct produces effects beyond the date the relevant contracts terminate. In this regard, the court noted that the FCCA considers that Eltel's submission of the June 2007 bid is the most recent action in the relevant single and continuous antitrust infringement. That said, in an interesting nuance, the court found

that the relevant breach ended once a definitive contract was agreed between Eltel and Fingrid. In other words, the court found that the restrictive effects of a bid-rigging cartel disappear once the essential elements of the relevant contract, most notably the overall price, are agreed by the parties. Indeed, as soon as the contracting authority signs the agreement with the winning tenderer, it definitively loses the chance to procure the relevant works, goods, or services under normal market conditions.

The CJEU distinguished between the restrictive effects of the cartel on competition (which deprives the contracting authority, in this case Fingrid, of the opportunity of awarding a public contract under normal conditions of competition) and the resulting wider negative economic effects on other economic operators. Such market players may launch damages actions before the national courts. The court specifically stated that the limitation periods for any such actions are outside the remit of its judgment.

In sum, the court held that, in the case of a single and continuous infringement whose most recent element is the submission of a ‘rigged bid’, the period of breach ends when the key elements of the specific public contract are agreed. Following on from the January CJEU decision, on 20 August 2021, the SAC dismissed the FCCA’s proposal to fine Eltel, thus upholding the March 2016 decision of the Market Court.


### In the midnight hour

The decision has significant implications for both the public and private enforcement of competition rules.

The (Irish) CIP, like other immunity/leniency schemes, is a vital weapon in the battle against anti-competitive activity, particularly cartels. Any such programme is based on the principle that participants (including both legal and natural persons) in anti-competitive conduct will qualify for immunity/leniency from sanction provided they cooperate with any subsequent investigation/any ensuing court proceedings. Indeed, paragraph 3.8 of the CIP requires an immunity applicant to cooperate fully with the CCPC on a continuing basis, including for any prosecutions. Put another way, immunity/leniency is granted in the expectation that a whistle-blower’s erstwhile co-cartelists will be pursued and perhaps penalised.

This was certainly the intention of the FCCA when, acting on foot of evidence (presumably provided by Empower), it requested the Market Court to fine Eltel. However, based on the CJEU’s judgment, the FCCA was time-barred from pursuing Eltel, since the five-year time-period expired on 19 June 2012 – around seven months before Empower submitted its leniency application. Clearly, the lack of relevant conditions regarding the justifiability of material provided by an applicant is an obvious gap in the Finnish leniency programme, since immunity was granted to a company in return for the provi-

sion of evidence that was, at least, in terms of the ‘power lines’ cartel, unusable. The CIP contains a similar lacuna so, as currently constituted, the difficulty faced by the FCCA would, in a similar scenario, also be encountered by the CCPC in terms of the issuing of summary proceedings.

Over the last decade, the European Commission, conscious perhaps of the limits and nature of both its and the various NCAs’ respective resources, has increasingly encouraged victims of cartels and other anti-competitive activity to seek redress before the national courts. This policy resulted in the adoption in 2014 of an EU directive whose aim is to facilitate the award of damages by national courts for infringements of competition law (this directive was implemented into Irish law by SI 43/2017, the *European Union (Action for Damages for Infringements of Competition Law) Regulations 2017*). Article 9 of these regulations stipulates that an action for damages should be commenced within six years from the date of the relevant cause of action. However, this six-year period does not commence until the later of the date on which the infringement ceased or the date of the finding of an infringement by the European Commission/Irish courts. Accordingly, coupled with the CJEU’s judgment in *Eltel*, this provision emphasises the view that alleged victims of competition law infringements have more scope for manoeuvre than the CCPC (and other NCAs) in terms of the timing of any enforcement action. 

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## CPD Cluster Events 2021

The 2021 Law Society Finuas Skillnet clusters are run in collaboration with the regional bar associations and will provide essential practice updates on key issues relevant to general practitioners.

Topics, speakers and timings vary for these training events and all offer a mix of general, regulatory matters and management and professional development CPD hours.

- 11 November** General Practice Update 2021 in partnership with the Carlow Bar Association, Kilkenny Bar Association, Wexford Bar Association and Waterford Law Society
- 18 November** Practitioner Update Cork 2021 in partnership with the Southern Law Society
- 25 November** North East CPD Day 2021 in partnership with the Cavan Bar Association, Drogheda Bar Association, Louth Bar Association and Monaghan Bar Association
- 01 December** Practice and Regulation Symposium 2021 in partnership with the Dublin Solicitors' Bar Association

To register please visit [www.lawsociety.ie/cpdcourses](http://www.lawsociety.ie/cpdcourses)

DATE	EVENT	CPD HOURS	DISCOUNTED FEE*	FULL FEE
11 Nov	<b>Employment Law Annual Conference</b> Online via Zoom webinar	3 General (by eLearning)	€160	€186
15 Nov	<b>Dealing with Challenging and Hostile Calls</b> Online via Zoom meetings	3 General (by eLearning)	€135	€160
15 Nov	<b>Building Emotional Resilience</b> Online via Zoom meetings	3 Management & Professional Development Skills (by eLearning)	€135	€160
19 Nov	<b>Environmental Justice, Democracy and Human Rights</b> Online via Zoom webinar	3 General (by eLearning)	Complimentary	
25 Nov	<b>Vaccine Passports: A Ticket to Digital Dictatorship</b> Online via Zoom webinar	2 General (by eLearning)	Complimentary	
26 Nov	<b>Family and Child Law Conference 2021</b> Online via Zoom webinar	3 General and 1 Regulatory Matters (by eLearning)	€160	€186
2 December	<b>Human Rights Equality</b> Online via Zoom webinar	TBC	Complimentary	
7 December	<b>Current Challenges and New Opportunities for International Arbitration in Ireland</b> Online via Zoom webinar	TBC	Complimentary	
9 December	<b>Technology and the Legal Practice</b> Online via Zoom webinar	3 General (by eLearning)	€160	€186
Online, on-demand	<b>Anxiety Awareness Course</b> with Caroline Foran	1 Management & Professional Development Skills (by eLearning)	Complimentary	
Online, on-demand	<b>Depression Awareness Course</b> With Alastair Campbell	1 Management & Professional Development Skills (by eLearning)	Complimentary	
Online, on-demand	<b>Trauma Awareness Course</b> With Dr. Sharon Lambert and Blindboy	1 Management & Professional Development Skills (by eLearning)	Complimentary	

For a complete listing of upcoming courses visit [www.lawsociety.ie/cpdcourses](http://www.lawsociety.ie/cpdcourses)

or contact a member of the Law Society Professional Training team on: Tel: 01 881 5727 | Email: [lspt@lawsociety.ie](mailto:lspt@lawsociety.ie) | Fax: 01 672 4890

\*Applicable to Law Society Finuas Skillnet members. \*\* Open Skills Training Programme open to all staff working in the legal sector

\*\*\* Open Skills Managers Training Programme open to all managers working in the legal sector.

## REPORTS OF LAW SOCIETY COUNCIL MEETINGS

## 17 SEPTEMBER, 24 SEPTEMBER, 15 OCTOBER 2021

Recent meetings of the Council were held on 17 September, 24 September (in Westport Town Hall, where the Council was joined by invited guests), and 15 October 2021.

#### Director general

The Council considered a comprehensive report from Michele O'Boyle, chair of the Director General Recruitment Committee, which was tasked with leading the recruitment process. The Council unanimously agreed to accept the recommendation of the committee to appoint Mr Mark Garrett to the position of director general, with effect from 3 January 2022, for a seven-year term of office.

#### Survey of younger members

The Council considered *The*

*Future Way We Work* report on the survey that had been commissioned by the Society's Younger Members Committee. It was agreed that the report would be launched at the committee's conference.

#### Dignity Matters

The Council considered the *Dignity Matters* report and recommendations. The report was commended by the Council and unanimously approved.

#### Restrictive easements

The Council welcomed successful representations that had been made by the Society on the matter, and appreciated that the Minister for Justice had committed to introducing an amending bill to address the November deadline.

#### Afghan lawyers

The Council agreed to participate in various initiatives that were being undertaken by the legal community in support of Afghan lawyers.

#### Profession of 'conveyancer'

Noting the recently launched LSRA consultation on this issue, the Council agreed that the profession should be invited to provide views on the matter in advance of the closing date for submissions (6 January 2022).

#### Methodist Hall

The Council agreed to engage in expenditure on the renovation of the Methodist Hall, which was purchased by the Society in 2019. The renovated space will be used to provide the Law School with extra capacity.


#### PII regulations 2021

The Council approved the *Solicitors Professional Indemnity Insurance (Amendment) Regulations 2021*, which were required to finalise the common proposal form, after which the Society would continue to engage with insurers and brokers.

#### Law Directory 2022

Noting that 1,250 members had opted-in to receive a hard copy of the *Law Directory* in 2021, the Council agreed to continue to provide members with the option to do so (subject to further review at a future date).

#### Election scrutineers

The proposed scrutineers for the 2021/22 annual and provincial elections, appointed pursuant to by-law 6(9)(a) of the Society's bye-laws, were approved by the Council. 



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Diploma in Judicial Skills and Decision-Making	13 October 2021	€3,000
Diploma in Technology and IP Law	13 October 2021	€3,000
Diploma in Education Law	29 October 2021	€2,600
Diploma in Commercial Property	2 November 2021	€2,600
Certificate in Immigration Law and Practice	4 November 2021	€1,650
Certificate in Trade Mark Law	9 November 2021	€1,650

## SPRING 2022 COURSES – APPLICATIONS NOW OPEN

Diploma in Aviation Leasing and Finance	27 January 2022	€3,000
Certificate in Company Secretarial Law and Practice	1 February 2022	€1,650
Diploma in Employment Law	11 February 2022	€2,600
Diploma in Insurance Law	15 February 2022	€2,600
Diploma in Compliance and Risk Management	16 February 2022	€2,600
Certificate in Data Protection Practice	17 February 2022	€1,650
Diploma in Healthcare Law	24 February 2022	€2,600
Certificate in Charity Law	25 February 2022	€1,650
Diploma in Corporate Law and Governance	1 March 2022	€2,600
Diploma in Commercial Contracts	5 March 2022	€2,600
Certificate in Enforcement for Public Bodies	5 April 2022	€1,750

### CONTACT DETAILS

E: [diplomateam@lawsociety.ie](mailto:diplomateam@lawsociety.ie) T: 01 672 4802 W: [www.lawsociety.ie/diplomacentre](http://www.lawsociety.ie/diplomacentre)

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Diploma Centre reserves the right to change the courses that may be offered and course prices may be subject to change.

**WILLS**

**Carroll, Kevin Joseph (deceased)**, late of 26 Seaview, Poulshone, Gorey, Co Wexford. Would any person having knowledge of a will executed by the above-named deceased, who died on 23 April 2021, please contact Cooke & Kinsella Solicitors, Wexford Road, Arklow, Co Wicklow; tel: 0402 32928/40012, fax: 0402 32272, email: [fergus@cookekinsella.ie](mailto:fergus@cookekinsella.ie)

**Dawson, Michael (deceased)**, late of 18 Castle Gardens, Drumgoold, Enniscorthy, Co Wexford; formerly of 6 Brennan's Terrace, Strand Road, Bray, Co Wicklow; ABI Ireland, Grancore, Ballinkeel, Ballymurn, Enniscorthy, Co Wexford; and Bree, Enniscorthy, Co Wexford. Would any person having knowledge of the whereabouts of any will made by the above-named deceased, who died on 20 August 2021, please contact Niamh Moriarty & Co, Solicitors, Parnell Road, Enniscorthy, Co Wexford; tel: 053 923 7666, email: [sandra@niamhmoriarty.ie](mailto:sandra@niamhmoriarty.ie)

**Doyle, Josephine (deceased)**, late of 18 Melrose Avenue, Fairview, Dublin 3, who was born on 15 October 1928 and who died on 7 June 2019. Would any person holding or having any knowledge of a will made by the above-named deceased please contact Brady McGreevy Solicitors, 21 Upper Fitzwilliam Street, Dublin 2; DX 109 004; tel: 01 661 8001, email: [info@bmcgw.ie](mailto:info@bmcgw.ie)

**Duke, Geoffrey (deceased)**, late of Ravenwood, Rockfield Road, Kells, Co Meath. Take notice that any person(s) having a claim against the estate or any person having knowledge of any will made by the above-named deceased please contact Mark Collins, Tom Collins & Company, Solicitors, 132 Terenure Road North, Terenure, Dublin 6W; tel: 01 490 0121, email: [mark@tomcollins.ie](mailto:mark@tomcollins.ie)

**Dunne, Glen (deceased)**, late of 17 Dalepark Road, Aylesbury, Tallaght, Dublin 24. Would any

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

person having knowledge of the whereabouts of any will made by the above-named deceased, who died on 5 November 2019, please contact RM Solicitors, Unit 10, Old Bawn Shopping Centre, Old Bawn, Tallaght, Dublin 24; DX 104003 Tallaght; tel: 01 635 4601, email: [info@rmlaw.ie](mailto:info@rmlaw.ie)

**Kelly, Kevin (deceased)**, late of 14 Old Balreask Woods, Navan, Co Meath, who died on 10 October 2020. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Deborah Leonard, Paul Brady & Co, Solicitors, 3 Railway Street, Navan, Co Meath; C15 Y682; tel: 046 902 8011, fax: 046 902 3983, email: [dleonard@paulbradysolicitors.ie](mailto:dleonard@paulbradysolicitors.ie)

**Kelly, Marie (deceased)**, late of Ballynacourty, Clarenbridge, Co Galway, and 2 The Rookery, Cheek Point, Co Waterford. Would any person having knowledge of a will executed by the above-named deceased, who died on 23 January 2021, please contact Colman Sherry, solicitor, The Square, Gort, Co Galway; tel: 091 631 383, email: [info@colmansherry.ie](mailto:info@colmansherry.ie)

**Keogh, Denis (deceased)**, late of Bishopscourt Nursing Home, Waterfall, Co Cork, and formerly of Cobh, Co Cork, who

died on 2 May 2008. 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 Diarmuid O'Shea & Co, Solicitors, 60 Main Street, Kinsale, Co Cork; tel: 021 477 4149, email: [reception@dosheasolicitors.ie](mailto:reception@dosheasolicitors.ie)

**Martin, John (deceased)**, late of 16 St Luke's Court, Cromcastle Green, Kilmore West, Dublin 5, who died on 28 May 2021. Would any person having knowledge of the whereabouts of any will made or purported to be made by the above-named please contact Siobhan Purcell, Justin Hughes Solicitors, 89 Phibsborough Road, Dublin 7; tel: 01 882 8583, email: [info@justinhughes.ie](mailto:info@justinhughes.ie)

**Mulvany, Marie (deceased)**, late of 530 Galtymore Road, Drimnagh, Dublin 12, who died on 18 November 2019. 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 Mc Mahon & Company Solicitors, 20 Village Green, Tallaght, Dublin 24; tel: 01 452 5211, email: [info@patmcmahonlaw.com](mailto:info@patmcmahonlaw.com)

**O'Connor, Paul (otherwise Patrick) (deceased)**, late of 20 Dooneen Road, Woodview Park, Limerick, who died on 10 June 2021. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Adrian Greaney & Co, Solicitors

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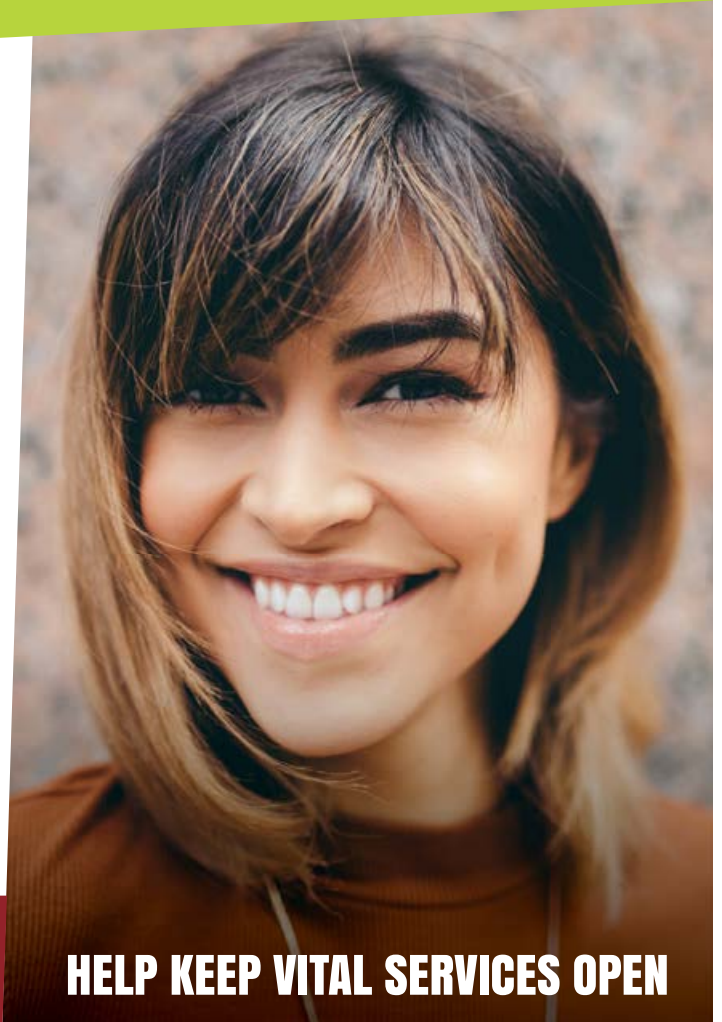
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tors, 8 Catherine Place, Limerick; tel 061 314 468, email: [ag@aglaw.ie](mailto:ag@aglaw.ie)

**O'Driscoll, Elizabeth (Lily) (deceased)**, late of 1 Berkeley Court, South Douglas Road, Cork, who died on 14 September 2021. Would any person knowing the whereabouts of any will executed by the above-named deceased please contact Ms Jane Bourke, Finghin O'Driscoll Solicitors, 11 Pembroke Street, Cork; tel: 021 420 4122, email: [info@fodsolicitors.com](mailto:info@fodsolicitors.com)

**Reilly, Kate (otherwise Catherine Margaret Reilly) (deceased)**, late of 117 Seabourne View, Greystones, Co Wicklow, who was born on 16 October 1962 and who died on 14 September 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 Gillick & Associates, Solicitors, Unit 8 Riverside

Business Centre, Tinahely, Co Wicklow; tel: 0402 28759, email: [info@gillicksolicitors.com](mailto:info@gillicksolicitors.com)

**Stewart, Anthony (deceased)**, late of 55 Memorial Court, South Circular Road, Islandbridge, Dublin 8. Would any person with any knowledge of a will executed by the above-named deceased, who died on 15 April 2020, please contact Yvonne McGuirk, solicitor, Main Street, Celbridge, Co Kildare; DX 138 009 Celbridge; tel: 01 627 2900, email: [yvonne@yvonnemcguirk.com](mailto:yvonne@yvonnemcguirk.com)

#### TITLE DEEDS

**In the matter of the Landlord and Tenant Acts 1967-2005 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978 and in the matter of premises situate at Units 2/3 Shanowen Industrial Estate, Santry, Dublin 9**

Take notice that any person having any interest in the freehold estate or in the intermediate interest in the following property: part of Units 2/3 Shanowen

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Industrial Estate, Santry, Dublin 9, being part of the property demised by lease dated 1 September 1950 between (1) Whitehouse Limited and (2) Patrick Drew, Christopher Drew, John A Drew and Dominic J Drew for the term of 250 years from 1 January 1950, subject to the yearly rent of £120.

Take notice that Ravenshire Limited intends to submit an application to the county registrar for the city of Dublin for the acquisition of the freehold and/or any intermediate interest in the aforementioned property, and any party asserting that they hold the freehold or any intermediate interest in the aforementioned property is called upon to furnish evidence of their title thereto to the below-named solicitors within 21 days from the date of this notice.


In default of any such notice being received, Ravenshire Lim-

ited intends to proceed with the application before the said county registrar at the end of 21 days from the date of this notice and will apply to the said county registrar for such directions as may be appropriate on the basis that the person or persons beneficially entitled to all superior interests up to and including the freehold in the aforementioned property are unknown and cannot be ascertained and/or cannot be found.

*Date: 5 November 2021*

*Signed: ByrneWallace LLP (solicitors for the applicant), 88 Harcourt Street, Dublin 2*

#### RECRUITMENT

**Legal secretary required**, preferably with experience in conveyancing, litigation, and probate. Please send CV to Enda P Moran, solicitor, Main Street, Celbridge, Co Kildare; email: [enda@endapmoran.ie](mailto:enda@endapmoran.ie) 



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## PRO BONOBO

Two men were arrested after New Zealand police found them with a car full of KFC and over \$100,000 in cash, *The Guardian* reports. They were caught as they tried to enter Auckland, despite a strict COVID lockdown. At least three buckets of chicken, ten tubs of coleslaw, and an undisclosed quantity of fries were found.

The arrest struck a chord with locals, who had to spend several lockdown weeks with takeaways closed – and with black-market suppliers filling the gap.

Another NZ man found himself in hot legal gravy after posting a video online showing him crossing the Auckland boundary in search of McDonald's. He ain't lovin' it now!

## FINGER LICKIN' DUDES



## THE OLD MAN IN THE SEA

A Greek fisherman has been arrested after allegedly catching a dead body in his net – and throwing it back, *GreekCityTimes.com*

reports. The incident is alleged to have happened the same day a 74-year-old man, who had been out spearfishing, was

reported missing near the coast of Pelion.

“The 74-year-old was pulled up ... and thrown back while still

inside the net,” a coastguard said. Three patrol boats were sent out to search for the body, which was eventually located by a diver.

## LOOK, NO HANDS!

In another tale of the unexpected from New Zealand, Christchurch's city wizard has been cast from the public payroll, after a 23-year spell, according to *npr.org*.

Ian Brackenbury Channell (88) had been contracted to the city council to promote the city through “acts of wizardry and other wizard-like services”, at a cost of around €9,700 a year. But the council said it had decided to close the book on it, a spokesperson saying the wizard would “forever be a part of [city] history” – but not of its future.

The English-born wizard is



determined to carry on: “It makes no difference. I will still keep going. They will have to kill me to stop me. It's just they don't like me because they are boring old bureaucrats, and everyone likes me, and no one likes them.”

## APOSTROPHE CATASTROPHE

A missing apostrophe in a Facebook post could cost an Australian man tens of thousands of dollars after a court ruled that a defamation case against him could proceed, *The Irish Times* reports.

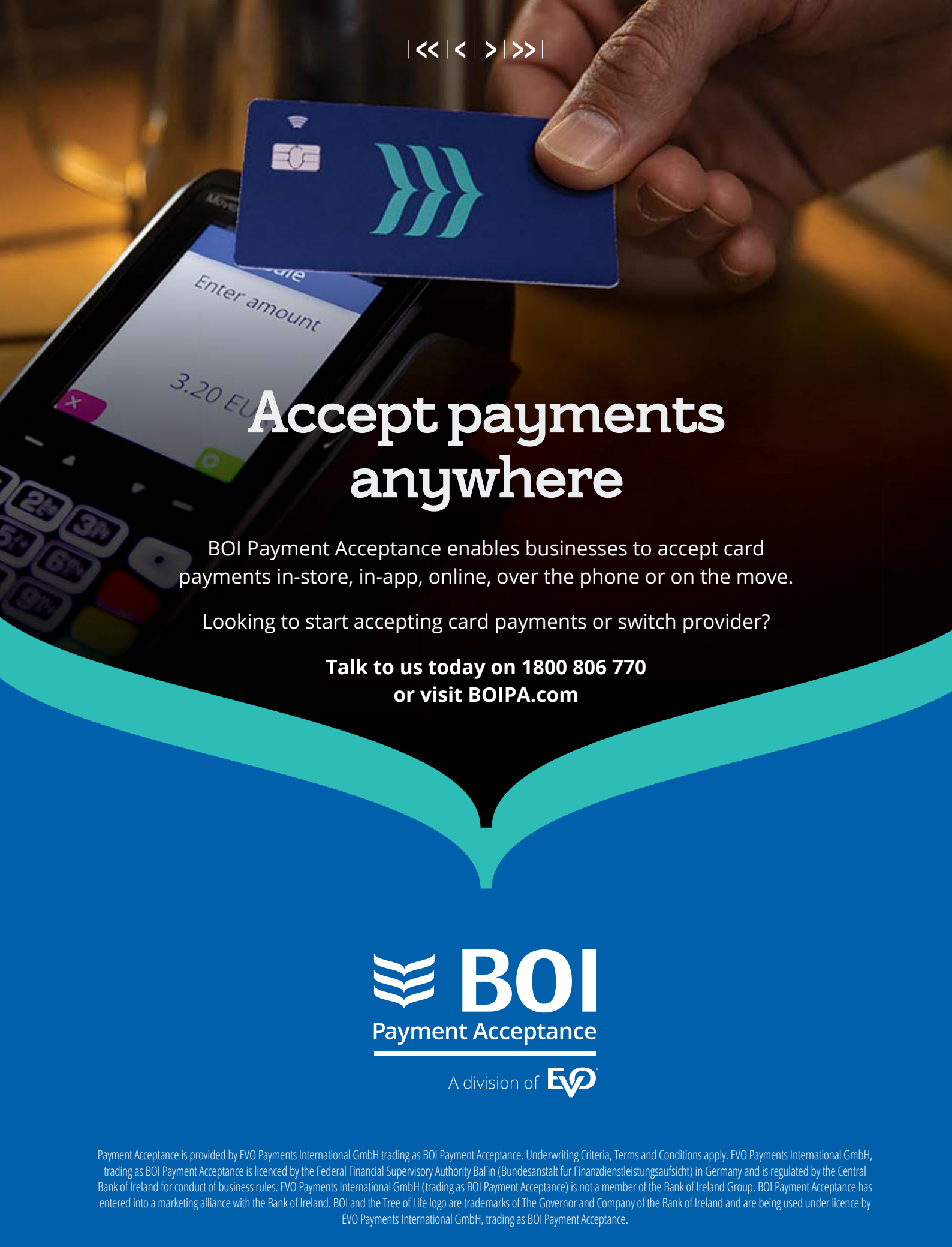
In a post last year, estate agent Anthony Zdravic appears to accuse Stuart Gan, his former employer, of not paying retirement funds to all the agency's workers. At issue is the word ‘employees’ in the post, which read: “Oh Stuart Gan!! Selling multi-million \$ homes in Pearl Beach but can't pay his employees superannuation. Shame on you

Stuart!!! 2 yrs and still waiting!!!”

Less than 12 hours later, Zdravic deleted it, but it was too late. Gan filed a defamation claim.

The judge said: “The difficulty for the plaintiff is the use of the word ‘employees’ in the plural. To fail to pay one employee's superannuation entitlement might be seen as unfortunate; to fail to pay some or all of them looks deliberate.”

Readers may remember a US case involving workers' overtime that hinged on an Oxford comma – the final comma in a series like ‘A, B, and C’ – in state law (*Gazette May 2017*, p72).



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