By the seat of your pants
Arbitration has benefits – and there are benefits to having Dublin as the seat

The young ones
A legislative gap could lead to minor offenders being sentenced as adults

Free bird
The *Gazette* talks to top aviation leasing solicitor Donal Hanley

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LAW SOCIETY OF IRELAND

THE BIG GREEN

Ambitious climate law plots new course

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LAW SOCIETY

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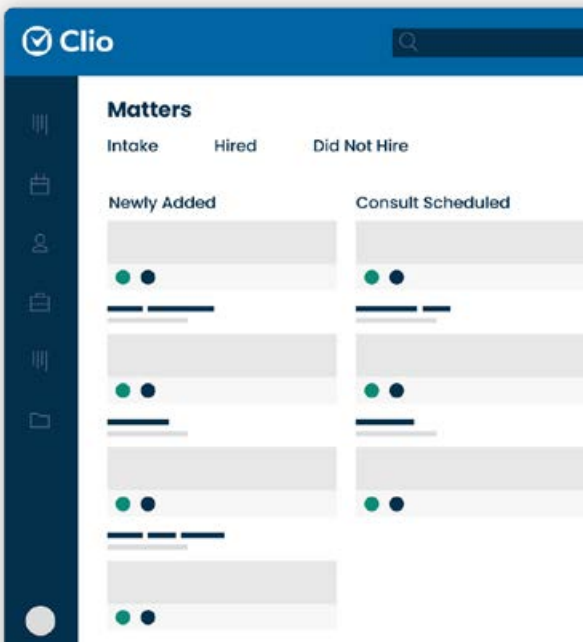

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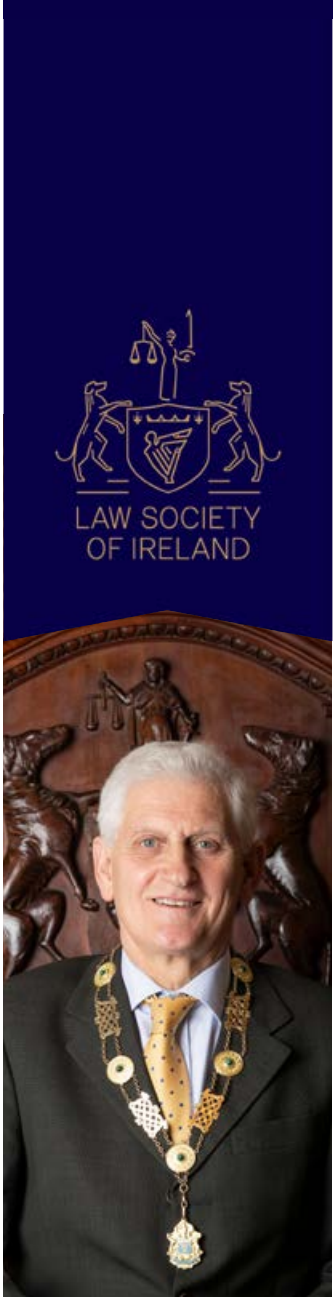
PRESIDENT'S MESSAGE

I HAVE A DREAM



As we return to the office, it is the ideal time to take stock, make plans, and make our dreams real. But before I do, I extend a very warm welcome to Mark Garrett as the new director general of the Law Society, whose term will commence in January 2022 (see page 8).

In addition, I wish to thank all those members of Council who travelled to Westport for our first-ever Council meeting in Mayo, which was held in the Town Hall Theatre on 24 September. We were delighted to meet face-to-face for the first time in 18 months. With the day's business over, a boat trip on Clew Bay was followed by a wonderful evening's entertainment at Mayo Sailing Club, with music by the highly accomplished local band, Crooked Trad.

Pause for thought

Lockdown, with all its ills, gave us pause for thought to evaluate our manner of working and living, and to contemplate our dreams and goals in life.

If you want something you never had, you have to do something you have never done. We need to move out of our comfort zones and challenge ourselves. Action is needed to turn our dreams into reality.

I have a dream that we will treat each other, and all of those with whom we interact, with the respect and dignity we aspire to in the Law Society's Gender Equality, Diversity and Inclusion (GEDI) Report. We can spread the GEDI principles beyond the profession.

I have a dream that all solicitors can safely and successfully transition through the digital revolution, and that our younger members will have the patience and generosity of spirit to assist and encourage the slower, sometimes older, members to succeed. This is a reversal of the traditional roles within the profession.

I have a dream that, on 12 October next, the Wellbeing Summit will be a catalyst for change in how we perceive each other.

I have a dream that we can move together towards a 'service excellence' culture, without being too judgemental.

I have a dream that we can, together, find the selfless courage and resolve to always speak for, act, and truly support our endangered colleagues in countries such as Burundi and Afghanistan, through the Irish Rule of Law International project – our charity in developing countries.

I have a dream that, within our own structures, the regulators and the regulated will work out solutions to those issues that create disharmony and tensions for both, and that the Law Society continues to build harmony with its members.

Excellent systems

I have a dream that the Society's diligent Practice Regulation Department can build on its relationships with PII insurers, so that insurance companies' senior management will understand how excellent the profession's systems are, and so give greater capacity to brokers in selling insurance to practices.

> IF YOU WANT SOMETHING YOU NEVER HAD, YOU HAVE TO DO SOMETHING YOU HAVE NEVER DONE

I have a dream that the Legal Services Regulatory Authority will adopt a holistic approach in dealing with complaints against solicitors.

Finally, I have a dream to begin adventuring again under sail, this time to the southern hemisphere.

What are your dreams?

JAMES CAHILL,
PRESIDENT

PIC: ALAMY

Volume 115, number 8

Subscriptions: €65 (€95 overseas)

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

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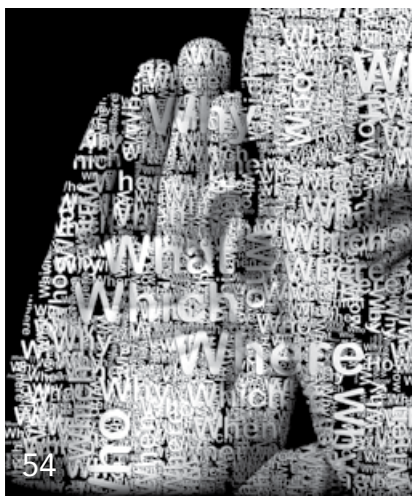
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REGULARS

THE BIG PICTURE

ICE ICE BABY

Paddleboarders float past icebergs in Disko Bay, Greenland, on 2 September. The country is experiencing one of its biggest ice-melt years since records began. Danish researchers studying the Greenland Ice Sheet have estimated that, in July, enough ice melted to cover the entire state of Florida with two inches of water. And, in August, scientists observed rainfall on the country's highest point for the first time ever. The observations follow the recent UN report on global warming, which stated that accelerating climate change is driving an increase in extreme weather events

PIC: MARIO TAMA/GETTY IMAGES

CALCUTTA RUN FINISHES STRONG!

On the final day of the 23rd Calcutta Run, over 900 participants had taken part, covering 30,000km to raise funds for the Peter McVerry Trust and the Hope Foundation. A huge thanks to everyone who supported the event. Our images show participants from Glendalough to Italy, and Greystones to Whistling Straits (sort of)!

The Panel collectively completed 1,354km and raised €5,350 for the run

The Blackhall Place team kicks back after a 5k run in the Phoenix Park

HISTORIC COUNCIL MEETING IN MAYO

PIC: MICHAEL MCLAUGHLIN PHOTOGRAPHY

The Law Society Council held its September meeting in the Town Hall Theatre Westport, Co Mayo – the first time that the Council has met in the county. During the momentous hybrid meeting, it approved the appointment of Mark Garrett as the new director general of the Law Society, whose term begins in January 2022. The 24 September meeting was the first opportunity for Council members to meet face-to-face in 18 months. Once business was completed, members enjoyed a boat trip on Clew Bay, followed by an evening's entertainment at Mayo Sailing Club, organised by President James Cahill

LAW SOCIETY APPOINTS NEW DG

The Law Society's Council has approved the appointment of Mark Garrett as its director general.

Making the announcement at the Council meeting in Westport, Co Mayo, on 24 September, Law Society President James Cahill said that Mr Garrett would begin his new role on 3 January 2022 and would bring "a wealth of knowledge, experience and an impressive track record" to the Law Society.

Garrett has extensive experience in leadership and management, both in the public and private sectors. He has previously worked for the Competition Authority, as chief of staff to then-Tánaiste Eamon Gilmore, and in private-sector organisations, including McKinsey, Glanbia, and Teneo.

He was educated in St Muredach's College (Ballina), UCD, DIT, and King's College London.

Substantial change

The president said: "The Society is at a point in its evolution where it is facing substantial change and reorientation, while being fortunate to have an excellent management team and staff.

"We are confident that, working with the Society's excellent management team, the Council, and the huge voluntary effort of members, Mark will be a great asset to the profession in seizing the opportunities and dealing with the challenges that face us."

Speaking on his appointment, Mr Garrett said: "It is an honour to be appointed to this leadership role with the Law Society, which has a long and proud history of serving, representing, and supporting the legal profession and the public.

"The Law Society plays a vital role in Irish society. It represents solicitors in public life, provides excellent legal education and training, and promotes the maintenance of the highest standards. I look forward to helping the Law Society and the legal profession navigate the challenges and opportunities that lie ahead."

Keane tribute

The president expressed his thanks to Mary Keane, "who has served with distinction as director general since the retirement of Ken Murphy in March 2021. Her professionalism, experience, and dedication have been invaluable, both to me and the profession as a whole," he said.

Keane commented that it had been a "remarkable experience to serve as director general". She will continue in the role until year-end.

The president thanked the recruitment committee, which led the process since July 2020. The committee comprised senior Council members and was chaired by immediate past-president Michele O'Boyle.

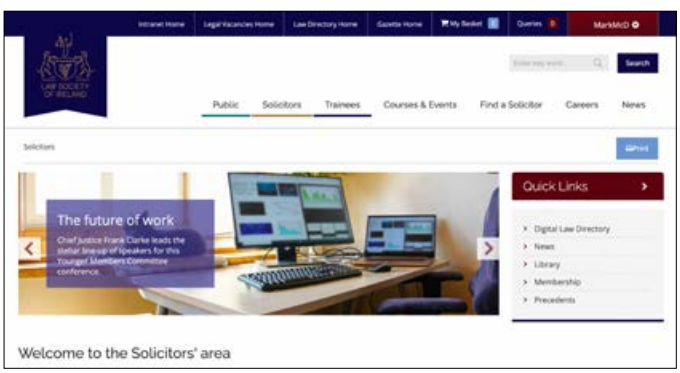
"On behalf of the profession, the current director general Mary Keane, and the Law Society executive, I wish Mark the best in his role as director general," Mr Cahill concluded.

NEW 'ESSENTIALS' CAREER-SUPPORT INITIATIVE FOR YOUNGER MEMBERS COMING THIS AUTUMN

The online career support series presented by the Law Society's Younger Members Committee, in collaboration with the Career Support team, will return this autumn for a new series, starting on 12 October.

The 'Essentials' series of online information sessions will once again focus on career management and associated matters, such as mental health and wellbeing.

Each session is complimentary and will take place at 7pm on Tuesday evenings. It involves a member of the Younger Members Committee in discussion with an expert on a range of topics.



Sessions last between 20 and 25 minutes and aim to provide summary information on each topic, with suggestions on how to follow up and pursue the matter further.

These sessions are held over Zoom, and all younger solicitors and trainees are welcome to participate. While there is no charge for these events, you will need to register in advance in order to attend.

Topics will include essential networking skills, communication skills, business development skills, social-media skills, technology skills, and leadership skills.

To register your interest, email m.rola@lawsociety.ie.

Recordings of the previous spring and autumn series are at lawsociety.ie/solicitors/representation/committees/younger-members.

EASEMENT RIGHTS CLARIFIED DUE TO CONCERNS RAISED BY LAW SOCIETY

Justice minister Heather Humphreys has secured Cabinet approval to amend provisions in the *Land and Conveyancing Law Reform Act 2009* relating to easements.

The move will remove an upcoming deadline that was a matter of significant concern.

The amendments relate to easements (such as rights of way) held by a property owner over a neighbour's land, and *profits à prendre*. *Profits à prendre* are other rights over another person's land, such as fishing or shooting rights, that have been acquired by 'prescription' (that is, by long use as of right), where there is no written deed formally granting the right, or the written deed has been lost.

Prior to the introduction of the 2009 act, prescriptive rights of way were usually verified by simple statutory declarations of long use. The act introduced a new requirement for a prescriptive right to be verified by a court order and registered with the Property Registration Authority (PRA).

An amendment in 2011 provided that, if the prescriptive right was not contested by the owner of the land affected by it, the claimant could apply directly to the PRA to validate and register their right, based on long use. The deadline for applications made to court or directly to the PRA under the old rules was also extended to 30 November 2021. After that deadline, prescriptive rights could still be validated and registered, but only under new rules taking effect on 1 December.

PIC: ROLLINGNEWS.IE

Minister Humphreys said she knew that the position that had been due to apply after 30 November had been a cause of great concern for many. "I have listened carefully to the concerns raised by stakeholders, including the Law Society and the Bar Council," she said.

"I am satisfied that, if not addressed, this deadline was likely to lead to a large volume of unnecessary court cases to protect rights that have been enjoyed for generations, and to cause stress between neighbours, unnecessary legal costs, and added court backlogs.

"That is why I am acting quickly to clarify the legal uncertainty that has arisen and to put in place an appropriate solution. The Government has today [20 September] approved my plans for a short amending bill, to be enacted before the November deadline, which will address the main problems arising in the short term.

"We will remove the major changes to the law on prescriptive easements and *profits* that were due to take effect on 1 December, thereby removing the imminent deadline." She added that the move was expected to greatly reduce current conveyancing delays and blockages, which would be a welcome development for purchasers.

To ensure that the legislation can be enacted in good time before the 30 November deadline, the minister intends to seek a waiver from pre-legislative scrutiny and to seek early signature of the bill by the President.

The minister also outlined her commitment to more comprehensive reform in this area, saying: "The amending bill will address the most pressing need by removing the end of November deadline. However, it is clear that more wholesale reform is needed. I intend to establish a time-bound review that will identify the best long-term, sustainable provisions for the law in this area."

The law applicable to prescriptive easements and *profits* will largely be reverted to the judge-made law that applied before the 2009 act. It will still be possible to confirm a prescriptive right, either by applying to court or by registering it directly with the PRA, but this will be optional (as it was before the 2009 act), rather than a mandatory requirement to avoid losing any rights acquired through long use.

Provision will also be made to ensure clarity on the situation of applications already made to court or to the PRA that have been lodged, but not decided, before these changes come into effect.

Public rights of way and easements (or *profits à prendre*) held under a written title deed are not affected by these changes.

CONROY IS NEW WICKLOW PRESIDENT

Wicklow-based solicitor Damien Conroy has been elected as the new president of the Wicklow Bar Association (WBA), following their AGM.

Damien is a senior partner at Augustus Cullen Law LLP in Wicklow town. He works in the general litigation department, dealing with personal-injury matters, professional and medical negligence, financial mis-selling, defamation, commercial disputes, and employment law cases.

A highly active member of the WBA since 2012, he has served as a committee member and honorary secretary.

Prior to joining Augustus Cullen Law, Damien graduated from Trinity College Dublin, and qualified as a solicitor in 2010, having worked with one of Dublin's top law firms.

Damien says that it's a "great privilege and honour" to be elected as president, commenting: "The Wicklow Bar Association has always been one of the most active and energetic in the country, and my goal will be to continue this dynamism and effectively represent the views of our members in my term as president."

DELAYS 'UNDERMINE INTEGRITY' OF IRELAND'S DIRECT PROVISION SYSTEM

The Law Society has repeated its call for an end to "the non-statutory system of direct provision" in an appearance before an Oireachtas committee. The Society also highlighted deficiencies within the system that needed to be addressed to ensure that an alternative system was "grounded in the principles of human rights, respect for diversity, and respect for privacy and family life".

Stephen Kirwan (of the Law Society's Human Rights and Equality Committee) made the comments in an appearance before the Oireachtas Committee on Public Petitions on 16 September.

During the opening statement, the Society raised a number of concerns about the present system that should be addressed when creating an alternative.

Sinéad Lucey: 'Many barriers are avoidable'

Among the recommendations discussed were the need for the Department of Justice to:

- Provide the opportunity for legal advice before conducting preliminary international-protection interviews and completion of the questionnaire,
- Address the significant and growing backlog of existing cases in an urgent and pragmatic manner, and grant leave to remain to those who have been in the system for more than two years,
- Put appropriate guidance about the role of solicitors during the International Protection Office interview on a statutory footing, to ensure consistency, transparency, and fairness for all international-protection applicants, and
- Remove barriers to international-protection applicants accessing the labour market – including matters related to opening bank accounts, applying for driving licences, and other difficulties posed by the remoteness of some direct-provision centres.

Sinéad Lucey (chair of the Human Rights and Equality Committee) said that the Society had welcomed the publication of the white paper on direct provision in February and the Government's commitment to creating a new system.

"Our recommendations, if implemented, would represent substantial progress to achieve this," she said, adding that the many barriers currently faced by people seeking international protection in Ireland – including delays – were avoidable and must not be transferred to any new system.

"Application delays not only undermine the integrity of the international-protection system – they are the root cause of significant and preventable stress to those within it," she said.

MORE TIME FOR EQUALITY-LAW SUBMISSIONS

A public consultation process taking place as part of a review of equality legislation has been extended by Minister Roderic O'Gorman.

The minister said that the decision to extend the consultation period was made due to requests from stakeholders. The new deadline for submissions is 5pm on 29 November.

The review covers the *Equal Status Acts 2000-2018* and the *Employment Equality Acts 1998-2015*. The department is seeking views on a range of issues, including:

- The use of non-disclosure agreements by employers in cases of sexual harassment and discrimination, in line with the issues raised in the *Employment Equality (Amendment) (Non-Disclosure Agreements) Bill 2021* private member's bill,

PIC: ROLLINGNEWS.IE

Minister Roderic O'Gorman

- The functioning of the acts and their effectiveness in combatting discrimination and promoting equality,
- Awareness of the legislation by the public, from the perspective of the person taking a claim under its redress mechanisms,
- Whether there are obstacles to taking an action under the acts, and the degree to which those experiencing discrimination are aware of the legislation,
- Scope of the current definitions of the nine equality grounds, and whether new grounds should be added, such as the ground of socio-economic discrimination,
- Whether the legislation adequately addresses 'intersectionality' or 'the intersection of discriminations' across a number of grounds,
- Whether existing exemptions in the legislation should be modified or removed, and
- A review of current definitions, including in relation to disability.

Submissions are also invited on the scope of the current definitions of the nine equality grounds – including the issue of whether new grounds should be added.

Announcing the consultation process last July, Minister O'Gorman said that he regarded public consultation as "central to this review of the *Equality Acts*".

"The *Equality Acts* need to be robust and effective, and reflect the lived reality of our citizens and our society," he commented. "The views of those who have experienced discrimination and have experienced the operation of the acts will help inform the review process and will contribute to any outcomes.

The minister said that the scope of the review would be extremely broad: "I recognise that many stakeholders will wish to make detailed submissions."

Submissions should be returned by the 29 November deadline to equalitypolicy@equality.gov.ie. All submissions are subject to release under the *Freedom of Information Act 2014*, and are subject to data-protection legislation.

JUDGES PLEAD FOR A STRUCTURED TRAINING AND INDUCTION PROGRAMME

Irish judges are generally unhappy with the level of training and education provided to them, a seminar entitled 'Judicial Education and Training in 21st Century Ireland' has heard.

In 2019, Dr Rónán Kennedy of NUI Galway interviewed judges from each level of the Irish courts. He found that judges lacked the time to attend training events.

"We simply don't seem to have enough judges in Ireland – there's too much work to go around," Dr Kennedy told the webinar, held on 17 September.

Judges want a structured induction programme with staggered follow-up after six or 12 months, he said. This is particularly the case at the superior court levels, where induction seemed to be "quite informal".

Specialist skills

Judges spoke of the need for a mentoring programme and were enthusiastic about any specialist skills-training they had received. And any reluctance to engage in online training had also shifted due to the pandemic, Kennedy noted.

Study visits to Canada, New York State, Australia, New Zealand and the Netherlands were part of the academic's 2019 review of a 2003 document produced by the Judicial Studies Institute (JSI) on judicial-training needs.

The function of the Judicial Council is to ensure public confidence in the judiciary and to ensure both excellence and independence in judges, Kennedy said: "All of these things have connections with judicial education and training."

In particular, judges needed training in specific aspects of information technology, which would be provided by the Judicial Council, and not by the Courts Service (which administers and manages most, if not all, of the IT used by judges).

Judges had taken up training opportunities, sometimes by webcast, but the focus had been on substantive law topics, rather than judicial skills, Kennedy noted.

In other jurisdictions, the focus had moved to interactive training with varied methods, focusing on the development of skills in a practice-oriented way to deal with real-world problems.

Personal-injury damage levels

The assessment of personal-injury damage levels is the only civil-law matter dealt with by the Judicial Council. "It's interesting to focus on the fact that that is what the legislature thinks the judiciary needs training on," Kennedy commented, adding that a great deal had changed since the 2004 review.

UL Professor Paul McCutcheon listed the recommendations of a 2004 review produced by the JSI, of which very few had been implemented. He also anticipated the expansion and enlargement of the board of the JSI, with the perspective of external members also included.

Dr Rónán Kennedy: 'Not enough judges in Ireland'

A manager and back-office staff would also be needed, he said, in the development of a multi-annual CPD programme for judges, which would allow for better coverage of the training and educational needs of judges.

A serving judge could possibly be seconded to the role of 'dean of studies for judicial training', Prof McCutcheon argued. This would be a model similar to the appointment of a judge to the Law Reform Commission, and would be a statutory provision.

Different delivery methodologies for judicial training should also be developed, he said, with formal recognition and accredited learning.

The JSI could also develop as a research entity that could produce or prepare 'bench books' for judges on particular topics. There would be space, also, for traditional classroom education.

International links should be developed, and a ringfenced budget would be essential, McCutcheon commented. He put the budget estimate at €1.2 million per annum.

Objective need

Mr Justice Richard Humphreys told the webinar that there was an objective need for judicial training.

"There are quite a number of skills that you use as a judge that you simply don't come across as a practitioner – except, possibly, by observing them," he said. In particular, he referred to *ex tempore* (same-day) judgments.

Judge Humphreys said that training was needed in the craft of judging, focusing on ethical dilemmas, rather than on updates about the latest cases. He commented that he had received excellent training from the England and Wales Judicial Training College, which included role-plays, scenarios, and feedback. "It was certainly extremely illuminating," he added. "It's crucial that you never stop learning. Nobody has all the answers anyway – and you have to be self-critical."

40% INCREASE IN FRAUD CRIMES – THOUGH OTHER CRIMES DOWN

The number of crime incidents classified as fraud and recorded on An Garda Síochána's PULSE database grew by more than 40% in the year to June 2021 (Q2), new CSO figures show.

The increase primarily relates to fraudulent attempts to obtain personal or banking information online or by phone, as well as fraudulent use of credit and debit-card information.

However, incidents of burglary fell by 37%, theft was down 22%, while robberies declined by 21% during the same period, compared with Q2 2020.

Fewer assaults were also recorded (-9%), criminal damage (-6%) and public order offences (-10%) – most likely due to the impact of pandemic restrictions.

A total of 3,778 offences were recorded on PULSE for breaches of COVID-19 regulations. This was a marked decrease on 10,438 similar offences during the previous quarter, following the introduction of a new system of fines for breaches in December 2020.

ENDANGERED LAWYERS

THE FALL OF KABUL

PIC: GETTY IMAGES

(After the fall of Kabul to the Taliban, a female law graduate offered her observations to jurist.org, the US law-school-based news service, which are reproduced here in abridged form with permission.)

On the day the Taliban entered the capital, the administration collapsed and all banks and offices closed, and fear covered the city.

Because of having no experts and scholarly people, the Taliban couldn't make their Cabinet fast. Finally, after a month, they announced it, but it was not acceptable for the nation, because none of its members are eligible for their positions and no women are included. As they have no knowledge of management and administration, the Cabinet is facing enormous difficulties and problems.

The Taliban have no respect or good reputation among the people. Most of the people don't want them to make up the government. Men and women through the country are just exhausted and have been demonstrating but, unfortunately, during the protesting, multiple people were killed by the Taliban.

The Taliban have made much waste and loss for the country. They closed 200 hospitals and health-programme offices that were under the control of foreign countries. In a debate, a man defended democracy and blamed the Taliban for destroying it but, after a day, Taliban arrested him and sent him to an unknown place. No woman can go to the office for her job. They have destroyed the electricity and networking in Panjshir province, where the National Resistance Front is in conflict with them. The Taliban have arrested hundreds of people of Panjshir and sent them to unknown places, and they have started genocide in Panjshir province. They have killed 400 people, men, women and children, and have tortured two reporters badly.

Since the Taliban have taken power, the borders have been closed and there are neither imports nor exports. Shops and markets remain closed as well as banks; no one is able to withdraw money. More than two million have lost their jobs. Poverty is coming to everyone. No investment is coming in. All of the NGOs and organisations have left the country. The cost of goods and food is escalating.

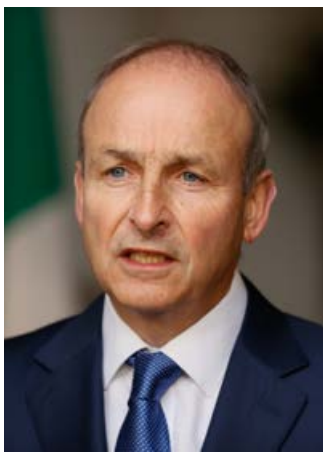
After the fall of the capital, all the lawyers, judges, and personnel of the judicial system left their jobs and went into hiding so the Taliban would not arrest them. Meanwhile, the Taliban convict people without any explanation or even judgment. Generally, the judicial system has been paralysed. There is no activity in related organs. Everything is stopped.

PLANNING LAWS FACE SERIOUS SHAKE-UP

The Government has approved a comprehensive review of Irish planning legislation, which, it says, has become overly complicated and difficult to navigate. It wants to reduce significant delays and costs in the delivery of new housing projects.

Taoiseach Micheál Martin said that the planning laws needed a complete overhaul to meet housing goals: "This large-scale planning-reform programme, which will bring about fundamental improvements to our planning laws, reflects the approach we are taking overall, with challenging deadlines and a truly cross-Government approach to delivery of Housing for All's objectives and other major plans."

The 'Housing for All' programme aims to increase the supply of housing to an average of at least 33,000 housing units per year over the next decade, with a mix of social, affordable, and private housing for sale and rent.



PIC: ROLLINGNEWS.IE

Taoiseach Micheál Martin

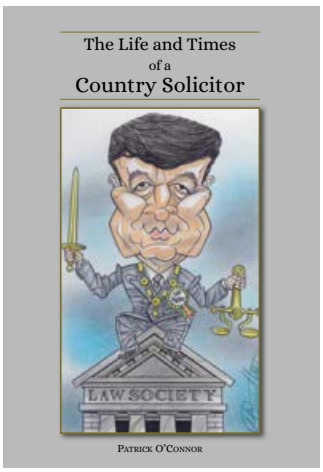
The review will be overseen by Attorney General Paul Gallagher and a dedicated group of professionals with planning-law expertise. The attorney general will work closely with the Minister for Housing to improve the legislation, and will deliver their review by September 2022.

THE LIFE AND TIMES OF A COUNTRY SOLICITOR

Former Law Society president Pat O'Connor has published his memoir, *The Life and Times of a Country Solicitor*. In it, Pat reflects on "a rich and fulfilling life that has taken him to the farthest corners of the world, while remaining firmly rooted in his beloved Mayo".

Pat followed in the footsteps of his father, Thomas Valentine O'Connor, who was the first Mayo man to be elected President of the Law Society (1972-73). Pat succeeded him as principal in the family firm, P O'Connor & Son, and later donned the presidential chain of office himself, 26 years later (1998-99).

A limited number of copies of the book are available to borrow from the Law Society Library, and it can be purchased at Castle Book Shop, Castle Street, Castlebar, Co Mayo or online at www.mayobooks.ie.



ARE YOU READY FOR THE BUSINESS OF WELLBEING SUMMIT IN OCTOBER?

Hot on the heels of the Law Society's highly successful Mental Health and Wellbeing Week (4 to 8 October), members are now gearing up for the much anticipated – and complimentary – Business of Wellbeing Summit on 12 October.

This Finuas Skillnet event, which takes place from 2.30pm to 5pm, qualifies for 2.5 CPD hours of management and professional development skills (by e-learning).

The summit is part of the Society's programme of events marking World Mental Health Day on 10 October. It will examine how small, medium, and large-sized firms can integrate wellbeing into their workplaces. It will offer evidence of how a positive workplace culture can lead to happier employees and, as a result, a thriving business.

Speakers and panellists will include Sara Carnegie (director of legal projects, International Bar Association), Katie da Gama (lawyer, executive and leadership coach), Olwen Dawe (political analyst and consultant), Kate Fergusson (head of responsible business at Pinsent Masons and a diversity and inclusion expert),

Guest speaker Sara Carnegie of the IBA

Nicke Harrison (inclusion and wellbeing lead at Pinsent Masons), Richard Martin (director of mental health and wellbeing, Byrne Dean Solicitors), and David Williams (partner at LK Shields).

Members can register for the summit at www.lawsociety.ie/courses. Login information for this Zoom webinar will be emailed to participants three working days before the event. The webinar will not be recorded, so those who miss the live event will not be able to replay it, and will not be able to avail of the CPD hours on offer.

PHYSICAL HEARINGS FOR LEGAL COSTS

The Office of the Legal Costs Adjudicators has said that all proceedings related to legal costs will be given a physical hearing from 4 October.

This will be the default position, but adjudications and associated applications can be listed for remote hearing – if they can be heard as fairly and effectively as they would during a physical hearing.

In its practice direction, titled 'Michaelmas Term 2021 – Return to Physical Sittings', the office said that, in all cases, parties would be entitled to apply to have the case listed otherwise than in accordance with the default position.

A remote call-over of cases that is held each Thursday at 9.30am will continue to take place remotely.

IRLI IN AFRICA

MALAWI SUPREME COURT REVERSES DEATH-PENALTY BAN

IRLI has previously written (*Gazette*, July 2021, p58) about the seminal judgment in the Malawian Supreme Court case of *Khoviwa v The Republic*, which, read out in open court by Justice Mwangulu on 28 April 2021, ruled that the death penalty was unconstitutional. It ruled further that the complainant, a man on death row, and eight others in his position were entitled to resentencing hearings, which was in line with the earlier 2007 decision of *Kafantayeni v Attorney General*.

The *Khoviwa* judgment was published on MalawiLii (the free online law reporting website in Malawi) and widely reported in the domestic and international press, and Malawi was hailed, once again, for its commitment to human rights. On 3 May 2021, President Dr Lazarus Chakwera welcomed the ruling, confirming that it would be respected.

However, on 18 August 2021, the Supreme Court of Appeal issued a substantially altered, 'perfected' judgment, which affirmed that the judgment of Justice Mwangulu (now retired) was only his personal opinion, and that it was in fact a minority opinion. It reversed the original finding, declared that Justice Mwangulu had gone too far in his ruling, and asserted that the death penalty remained constitutional.

To have a judgment so substantially altered in this manner, four months after the reading of the original judgment, is unprecedented. As in Ireland, the perfection process is only supposed to be used to correct minor spelling and grammatical errors and, under Malawian law, a judgment is deemed perfected after 14 days.

The finding from the Supreme Court that the applicant and eight others on death row should receive resentencing hearings still stands, and their representatives are now working hard to have these sentences commuted.

There has been much speculation about the separation of powers in this case, and to what extent the executive was dissatisfied with having the Supreme Court pronounce on the constitutionality of the death penalty, rather than parliament (despite no one being put to death since the beginning of democracy in 1994). As of now, there is still much momentum to have the death penalty removed from the statute books but, this time, the avenue will, most likely, be through Government.

Susie Kiely is IRLI Malawi country programme manager.

CervicalCheck Tribunal

An Binse um CervicalCheck

NOTIFICATION

The CervicalCheck Tribunal informs interested parties that the deadline for the submission of eligible claims has been extended to **26 January 2022**.

Eligible claimants, with the consent of the relevant respondents, may have their claims heard and determined by the Tribunal in the same manner as the High Court hears and determines personal injuries actions but with a focus on providing **an expeditious process** without compromising important legal safeguards.

Collaboration is a core value that underpins proceedings before the Tribunal. Parties and their representatives are required to collaborate (to the extent reasonably practicable) to ensure that proceedings are conducted and prepared for determination in a manner that is just, expeditious and likely to minimise costs.

The Tribunal's premises provide a private and 'case sensitive' forum for the hearing of eligible claims. Subject to public health measures, interested parties are welcome to visit the premises by appointment with the Registrar.

Completed claim forms may be lodged in person or electronically and hearings may be conducted remotely, if necessary.

Enquiries are welcome and may be made by telephoning 01 674 3300 or by emailing info@cervicalchecktribunal.ie.

The procedures for bringing or transferring claims to the Tribunal together with details on eligibility are to be found on the Tribunal's website **www.cervicalchecktribunal.ie**.

Pádraig Mac Criostail
Tribunal Registrar

WELLBEING

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

BEATING THE PERFORMANCE PARADOX

Q *I am a commercial lawyer and work in a fast-paced, competitive environment. The working hours are long, there are tight deadlines, and client expectations are so high that they often come before anything else. I can't ever seem to let go, which means I don't sleep very well. I am exhausted, and now I feel like work is interfering with other areas of my life – my relationships are now suffering. In my 20s, I think I liked my job?*

A First of all, you are not alone: your experience is echoed by many high-performing professionals across different sectors. We call this 'the performance paradox' – the harder you try, the less you have to give, and the more likely you are to answer 'yes' to some or all of these questions:

- Are you finding it difficult to focus?
- Are you getting moments of anxiety?
- Do you have moments of feeling stuck, numb, and/or overwhelmed?
- Are you finding it difficult to switch off from work?
- Are you finding it difficult to sleep?

For many high performers, there is often a tension between trying to 'give it your all' and managing your own resources so that you can do your best work. You can struggle to find a rhythm for sustainable productivity.

From a day-to-day perspective, this might look like waking up early after a fitful night's sleep. You have a long 'to-do' list; however, you also know it would feel better if you got out for your morning run, took your lunch break, or got out for a walk – but you were too busy to do any of this yesterday.

You are just about to put your running gear on, but instead you decide to get a head-start on your day and complete a report before your first team's call. You tell yourself that you will get out for your run later but, before you know it, your day has been hijacked. It's now after 6.30pm, you didn't get your run, your worked through lunch, and you didn't get a walk. Tiredness is really setting in. You do another hour on work, but you find it really hard to focus. You are now exhausted. Then dinner, spending time on social media, chores, news – and suddenly it's bedtime.

How can you crack this 'performance paradox'? One solution is to find ways that enable you to face into your challenges and still hold on to the things that provide you with the resources to deliver your best, and not compromise your health.

It is important that you establish a rhythm and find the 'wave' that will increase your capacity and move you forward effectively. How can you make sure that you make time to orientate to what gives you energy – whether that's exercise, time in nature, time with friends? How can you make sure you take proper breaks during the working day?

Remember, this is probably different to what your logical mind is telling you – keep going, faster, more!

A recent piece of research carried out by Microsoft illustrated the increased levels of stress (which leads to diminished thinking ability) when we do back-to-back meetings ('Research proves your brain needs breaks' at microsoft.com/en-us/worklab/work-trend-index/brain-research).

It is also worth mentioning here that it's not *just* taking a break that is important, but what you do in your break that matters. For example, many of us find ourselves scrolling on social media while on a break, but that's no break for our brains. In the Microsoft study, they used a short meditation to disengage.

When developing a performance rhythm, it's worth thinking in opposites – quietening your mind, or getting up from sitting and going for a walk outside.

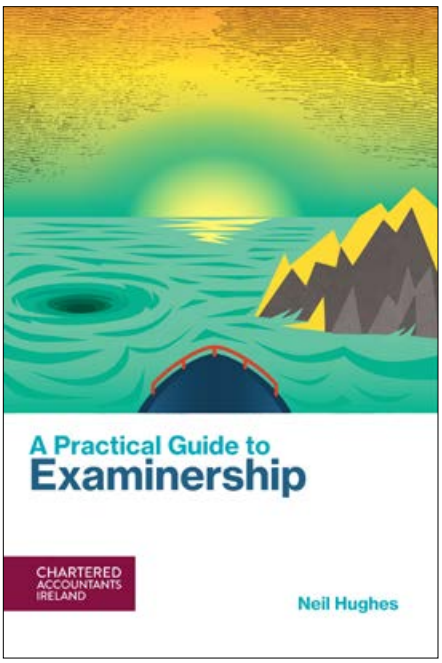
To submit an issue that you'd like to see addressed in this column, please email professionalwellbeing@lawsociety.ie. Confidentiality is guaranteed.

This question and answer are hypothetical and were written by Kerry Cullen, a chartered psychologist and qualified coach who works with Seven Psychology. Any response or advice provided is not intended to replace or substitute for any professional, psychological, financial, medical, legal, or other professional advice.

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

A PRACTICAL GUIDE TO EXAMINERSHIP

Neil Hughes. Chartered Accountants Ireland (2021), www.charteredaccountants.ie.
Price: €30 (incl VAT).



Few people could be better placed to produce a practical guide to examinerships than the author, Neil Hughes. He has been involved in a countless number of examinerships, and the experience that he and his team of contributors have been able to draw upon is reflected in a well-written, well-researched and well-informed guide.

Structured soundly, the guide initially sets out the history of examinership, before expanding over the following chapters on the various facets of the process.

Many of the cases helpfully referenced by the author throughout the guide will resonate with those professionals practising in this area, and many may be interested to discover whether 'their' cases feature. The linking by the author of various technical elements of examinership to actual cases brings to life the various sections of an act and helps the reader to understand their practical effects.

The book consists of 11 chapters over an easy-to-navigate and digest 200 pages. Each chapter is concise and covers a specific area of the examinership process, making the guide a useful reference for a practitioner who might be seeking clarity on a particular issue.

The experience of the author ensures that there are practical examples offered for the more noteworthy sections of acts. Those working in this area, and those proposing to do so, will be grateful to have a single point of reference for the many cases that have gone before the Irish courts over the last 30 years.

While cross-referencing (from time to time) the position in Cyprus, the guide is very much focused on the examinership experience in Ireland since the introduction of the legislation in 1990. In so doing, and although not its primary function, the book serves as a chronicle of some of the lower points of the Irish economy, from then till now.

I would highly recommend this guide to anyone working in the area of insolvency and restructuring. It is what every guide should be – easy to read, concise, and thorough. Additionally, by pulling together and documenting in one place the many fascinating cases that have been before the Irish courts since 1990, it has done those working in this area, now and for years to come, a great service.

Mark Homan is a solicitor and managing partner of BHSM LLP.

THE RELIABLE EXPERT WITNESS

Mark Tottenham BL. Clarus Press (2021), www.claruspress.ie. Price: €20 (incl VAT).

It's rare that when one reads a legal book, you can say that you have been educated, informed, and entertained, but that is exactly what Mark Tottenham managed to do with *The Reliable Expert Witness*, published recently by Clarus Press. A joy to read, I read it in two easy sittings over a weekend.

At only €20, every solicitor should be purchasing a copy. Chapter 11, on 'Pleadings, affidavits and Scott Schedules', should be compulsory reading for every trainee – and every practitioner could benefit from it as well.

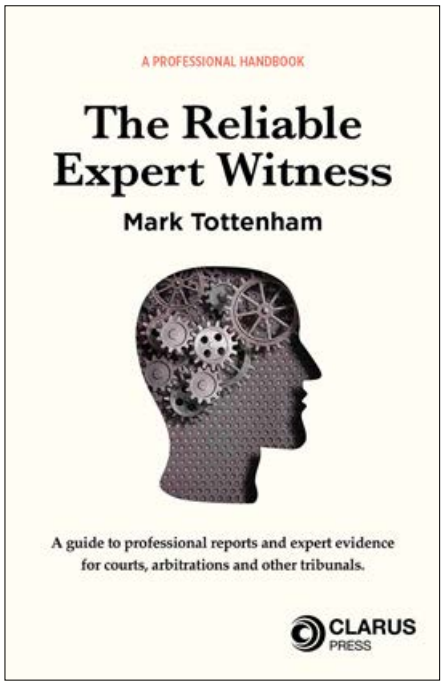
The content is both comprehensive and valuable. There is copious and valuable reference to case law throughout, which is extremely useful. In just over 200 pages, broken down over 14 chapters and a number of very helpful and useful appendices, there is a comprehensive and expert introduction to the law relating to the types of experts and professional witnesses, their duties and obligations in law, how to instruct them, what they should do when instructed, what to expect from them, how reports should be structured, experts meetings, pleadings, oral evidence, ADR, etc.

As an arbitrator, I have had the experience over the years of hearing evidence from people who were introduced as 'expert' witnesses on various topics, and I recall on at least one occasion in recent years receiving copies of the expert-witness reports from both sides. On reading the report from the expert for a claimant, I anticipated that, at the opening of the arbitration hearing, an application might well be made by counsel for the respondent to exclude most of the content of that report, on the basis that it was not relevant to the issues in the arbitration and amounted to an expression of opinion, almost to the point of the expert becoming an advocate for the claimant. Such application was duly made.

Having ruled on the application, and having directed the expert witness that he could not seek to give certain 'evidence' that made up the bulk of his written report, he nonetheless, in an almost petulant fashion, persisted in trying to do so, leading me to wish that I had a judge's power to commit for contempt. If the situation were ever to be repeated, I think I might take pleasure in simply suggesting that the expert purchase a copy of Tottenham's book and educate himself or herself as to the duty of an expert.

Anyone contemplating embarking on a career as an expert witness would do well to read and heed what Tottenham has to say in relation to matters of professional negligence, disciplinary matters, and exposure to costs orders.

This book is my recommendation for 'book of the year'.



Bill Holohan SC is a solicitor and senior partner at Holohan Lane LLP Solicitors.

DISAPPEARING ACT

The changes to be brought about by the *Assisted Decision-Making (Capacity) Act*, when it is commenced, have been discussed for many years. But change is now imminent, writes **Patricia Hickey**

PATRICIA HICKEY IS GENERAL SOLICITOR FOR MINORS AND WARDS OF COURT

ANY APPLICATION TO BRING A PERSON INTO WARDSHIP WILL ONLY CONTINUE UNTIL THE NEW ACT COMMENCES, AND DECISIONS AND PROPOSALS MADE FOR A WARD MUST BE CONSTRUED WITH A LONGER-TERM VIEW THAT THE ADULT WILL NO LONGER BE PART OF THIS OLD SYSTEM OF SUBSTITUTED DECISION-MAKING

The 2015 *Assisted Decision-Making (Capacity) Act*, when commenced, will introduce a new protection regime and new legal framework for supported decision-making for vulnerable adults, with a rights-based approach to decision-making capacity. The current substituted decision-making under wardship will be replaced by assisted decision-making and will be based on the adult's ability to make a specific decision at a specific time.

The new act does not apply to minors, save for a minor who turns 18 within a specified period of time from the date of commencement. Any minor aged less than 18 at the date of commencement of part 6 will not be affected by this act. The act will only apply to minors who turn 18 within 2.5 years, and then a further 0.5 years, from the date of commencement. The current regime for minors will continue as a separate entity to this act under the Courts Service.

This new act will assist in complying with human-rights obligations contained in the *Constitution of Ireland*, the *European Convention on Human Rights*, and the *United Nations Convention on the Rights of Persons with Disabilities*. Draft heads of bill, when completed, are intended to form a new part of the *Assisted Decision-Making (Capacity) Act 2015*. Changes may be introduced by the bill, but the ultimate ethos of the act will remain. This has not been finalised to date, but a provisional commencement date of June 2022 is expected, and hard work is being carried out by many departments and offices to make this happen.

Applying for a declaration

The category of persons who may apply to the Wardship Court seeking the court to make a declaration under section 55(1) for a ward who has attained the age of 18 by the date of commencement of this part of the act are:

- The ward,
- A relative or friend of the ward who has had such personal contact with the ward over such period of time that a relationship of trust exists between them, or
- Such other person as appears to the Wardship Court to have a sufficient interest or expertise in the welfare of the ward.

Notwithstanding the facility for the ward, a relative, friend, or such other person with sufficient interest being entitled to apply within the three-year period, the Wardship Court shall, within three years of commencement of this part, make a declaration for a ward who has reached 18 by that date, or reaches 18 within two-and-a-half years from that date. If the minor reaches 18 within six months after the period of two-and-a-half years, as aforesaid, then the court must make a declaration of capacity within six months.

It is expected that the committee of the ward will also be eligible to apply for the declaration in the amendments to the act.

Main elements

The main elements of the act that will replace the current wardship system for adults are:

- Repeal of the *Lunacy Regulation (Ireland) Act 1871*, subject to transitional arrangements,
- Provision for non-court decision support arrangements, namely assistant decision-making agreements and co-decision-making agreements,
- Conferral on the Circuit Court of jurisdiction to appoint decision-making representatives for vulnerable adults and to deal with applications in respect of enduring powers of attorney and advance healthcare directives,
- Reservation to the High Court of decisions concerning organ donation and the withdrawal of life-sustaining treatment,
- The establishment of the Decision Support Service in the Mental Health Commission.

The new act will provide that an application may be made by the ward, or a category of person prescribed in section 54, to the Wardship Court for a declaration as to capacity of the act. In any event, the Wardship

PIC: SHUTTERSTOCK

Court is obliged to make a declaration as to capacity in respect of every ward within three years of commencement of part 6 of the act.

The orders that the Wardship Court may make are to (a) declare that the person does not lack capacity, or (b) declare that the ward lacks capacity *unless* a co-decision-maker is appointed to make one or more than one decision, or declare that the ward lacks capacity, *even if* a co-decision-maker is appointed.

The court can seek expert reports. For the purposes of an application, the court may direct that such reports as the court considers necessary be furnished to it, including:

- Medical reports relating to the relevant person who is the subject of the application (including reports relating to the cognitive ability of that person),
- Reports relating to the circumstances of the relevant person (including financial reports and valuations of property in which the relevant person has an interest), and
- Reports from healthcare professionals or other relevant experts relating to the relevant person.

Where the Wardship Court makes an order that the ward lacks capacity, it may make such orders as if that court were exercising the new jurisdiction under part 5.

Current regime

The current regime of wardship remains in place until the act is commenced, and will continue to exist for a period of three years. Once commenced, no applications will be made to the Wardship Court for a declaration under wardship. Currently, new applications are still being made to bring adults under the protec-

A PROVISIONAL COMMENCEMENT DATE OF JUNE 2022 IS EXPECTED, AND HARD WORK IS BEING CARRIED OUT BY MANY DEPARTMENTS AND OFFICES TO MAKE THIS HAPPEN

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LAW SOCIETY OF IRELAND

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. The Cluster events will be in-person events held in hotels, subject to Government guidelines.

4 November	**Connaught Solicitors' Symposium 2021** in partnership with the Mayo Solicitors' Bar Association - Breaffy House Hotel, Castlebar, Co Mayo
11 November	**General Practice Update 2021** in partnership with the Carlow Bar Association, Kilkenny Bar Association, Wexford Bar Association and Waterford Law Society - Hotel Kilkenny, Co. Kilkenny

To register please visit www.lawsociety.ie/cpdcourses

DATE	EVENT	CPD HOURS	DISCOUNTED FEE*	FULL FEE
7 October	**Younger Members Committee Conference** Online via Zoom Webinar	2.5 General (by eLearning)	€135	€160
12 October	**The Business of Wellbeing Summit** Online via Zoom Webinar	2.5 Management and Professional Development Skills (by eLearning)	Complimentary	
13 Oct or 3 Nov	**Communications Skills Training Workshop**** Online via Zoom Meetings	3.5 Management and Professional Development Skills (by eLearning)	€135	€160
14 October	**In-House and Public Sector Annual Conference 2021** Online via Zoom Webinar	2 General and 1.5 Management & Professional Development Skills. (by eLearning)	€160	€186
20 October	**Effective Business Writing & Proofreading**** Online via Zoom Meetings	3 Management & Professional Development Skills (by eLearning)	€160	€186
21 October	**Property Law Update 2021** Online via Zoom Webinar	3 General (by eLearning)	€135	€160
4 Nov	**Litigation Annual Conference** Online via Zoom Webinar	TBC	€160	€186
11 Nov	**Employment Law Annual Conference** Online via Zoom Webinar	TBC	€160	€186
9 December	**Technology & The Legal Practice** Online via Zoom Webinar	3 General (by eLearning)	€160	€186
Online, on-demand	**Anxiety Awareness Course** with Caroline Foran	1 Management & Professional Development Skills (by eLearning)	Complimentary	
Online, on-demand	**Depression Awareness Course** with Alastair Campbell	1 Management & Professional Development Skills (by eLearning)	Complimentary	

For a complete listing of upcoming courses visit www.lawsociety.ie/cpdcourses
or contact a member of the Law Society Professional Training team on: Tel: 01 881 5727 | Email: 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.

tion of the current wardship system. This is necessary at present as, until the new act commences, and in the absence of an enduring power of attorney, there is no other system to oversee the personal care and finances of a person who is deemed to lack capacity to manage their affairs.

However, it must be borne in mind that any application to bring a person into wardship will only continue until the new act commences, and decisions and proposals made for a ward must be construed with a longer-term view that the adult will no longer be part of this old system of substituted decision-making. More and more emphasis is being placed on the wishes and preferences of a ward, and short-term decisions are being taken in light of the imminent changes.

Once an application is made to the Wardship Court to review and make a declaration on the capacity of the ward, then the process of dismissing the ward from wardship commences. However, it is important that work is carried out now and going forward to ensure that the ward is prepared for the ultimate discharge from the wardship process. This will include the following:

- *Ensuring that each adult ward has a bank account* to receive the moneys held in court.
- *Legal proceedings* – prepare for amending the title to proceedings, dealing with outstanding costs to date of discharge, settling proceedings, and obtaining court consent to accept settlement as soon as possible to try and complete proceedings in a timely manner. If it is not possible to settle or complete proceedings, then perhaps delaying applying for discharge from wardship until litigation is complete (as long as it is within the three years of commencement of the act) or requesting the Wardship Court to make such order to continue proceedings, as if exercising the jurisdiction under part 5 of the act.
- *Completion of conveyance* – both purchase and sale of property on behalf of a ward. If not completed, a conveyance may fall in the absence of preparing for discharge. This may require inserting special conditions dealing with possible discharge pending commencement of the act, or delaying applying for discharge from wardship until the conveyance is complete. Requesting the Wardship Court to make such order to complete conveyance as if exercising the jurisdiction under part 5 of the act.
- *Probate and administration* – if the committee acted in the administration of an estate on behalf of the ward then, on the discharge of the ward, they should apply to immediately revoke the grant, which would have been limited to the term of the committee acting. Delaying an application for discharge may be prudent if the administration is almost complete to avoid the necessity of applying for a new grant.
- *Detention/deprivation of liberty orders* – applying under the new mental-health legislation when implemented.

PIC: SHUTTERSTOCK

The act will not affect the validity of any order made by the Wardship Court within its jurisdiction that is in force immediately before the commencement of part 6. Pending a declaration of the court (as set out above), the jurisdiction of wardship continues to apply.

Discharge

The right of a ward to apply for discharge from wardship on recovery and to resume management of his/her own affairs exists under the current wardship regime under order 67 of the *Superior Court Rules*.

The current practice for applying to be discharged is that a medical report is submitted to the Registrar of Wards of Court, setting out that the ward has recovered.

The registrar, under the direction of the court, will arrange for a medical visitor (usually a psychiatrist) to visit the ward for the purposes of preparing a report for the court on the capacity of the ward. If the medical visitor is in agreement that the ward has regained capacity, then the President of the High Court may make such order as the circumstances require. This usually involves an order restoring the ward to possession and management of his/her property, discharging the committee, and discharging the person from wardship.

The changes to be brought about by this new act have been discussed for many years, certainly as long as I have worked in the Courts Service. However, it would seem that change is imminent. There will always be an element of fear in change, but we cannot fear the leaves changing, for it leads to the next season.

This article is intended as general guidance in relation to the subject matter and does not constitute a definitive statement of law.

THE ACT WILL INTRODUCE A NEW PROTECTION REGIME AND NEW LEGAL FRAMEWORK FOR SUPPORTED DECISION-MAKING FOR VULNERABLE ADULTS, WITH A RIGHTS-BASED APPROACH TO DECISION-MAKING CAPACITY. THE CURRENT SUBSTITUTED DECISION-MAKING UNDER WARDSHIP WILL BE REPLACED BY ASSISTED DECISION-MAKING AND WILL BE BASED ON THE ADULT'S ABILITY TO MAKE A SPECIFIC DECISION AT A SPECIFIC TIME

THE YOUNG OFFENDERS

In Ireland, a legislative gap exists where a child may have committed a crime but, due to prosecutorial delay, they are not charged or tried until they are over 18. **Jack Meredith** argues that this could lead to minors receiving adult sentences

JACK MEREDITH IS A PRACTISING BARRISTER SPECIALISING IN CRIMINAL LAW AND PERSONAL INJURY LITIGATION

THE STATE COULD, IN THEORY, SIT ON CHARGES THAT OCCURRED WHEN A DEFENDANT WAS A MINOR UNTIL THEY ARE CLOSE TO THE AGE OF MAJORITY, THUS RESULTING IN A DEFENDANT RECEIVING A SENTENCE OF GREATER SEVERITY

Justice delayed is justice denied, which, by any standard, is a fundamental premise of all legal systems. This is particularly important where minors are involved in criminal proceedings. In Ireland, a lacuna exists in sentencing a child in circumstances where they have committed a criminal offence but, for some reason, have not been charged or tried until they attain the age of majority. In this circumstance, the child loses all protections afforded under the *Children's Act 2001*, and they are, in legislative terms, tried and sentenced as an adult, despite the fact that they may have committed the offence when they were much younger and, perhaps, under different social and emotional circumstances.

Despite no legislative function, courts tend to circumnavigate this gap by using judicial discretion, which leads to discrepancies and inconsistent sentencing. Simons J, in *Wilde v DPP* ([2020] IEHC 385), puts it succinctly: "These judicial review proceedings arise against a legislative backdrop, whereby the qualifying criterion for the important procedural protections provided for under the *Children Act 2001* is the age of the accused as of the date of the trial of the offences (as opposed to his or her age as of the date when the alleged offences are said to have occurred).

"It is, perhaps, surprising that the legislation does not expressly address the position of an alleged offender who has transitioned from being a 'child' (as defined) to an adult between the date on which the offences are said to have occurred, and the date of the hearing and determination of criminal charges arising from those alleged offences. Such an interregnum will arise in a significant number of cases, even allowing for prompt garda investigations. For example, if an offence is alleged to have been committed by an individual who is a number of weeks shy of his or her 18th birthday, it is unrealistic to expect that the offence would be investigated and the prosecution completed prior to that birthday. It would have been helpful if the legislation indicated what is to happen in such circumstances."

Dearth of guidelines

Presently, there is nothing within the *Children's Act 2001* that deals with the sentencing of young persons who have attained the age of majority, even though they committed an offence as a minor. Nor are there any sentencing guidelines relating to how this situation ought to be dealt with.

Principles afforded under the act include, among other things, the right to anonymity, that detention should only be used as a last resort, and the added protection that the court can deal with certain indictable offences summarily (see section 75 of the 2001 act). Furthermore, there is a special duty placed on prosecutions involving children – over and above that of offences perpetrated by an adult – that they be concluded as expeditiously as possible. In *F(B) v DPP* ([2001] IESC 18), Geoghegan J explains: "…in the case of a criminal offence alleged to have been committed by a child or young person as in this case, there is a special duty on the State authorities over and above the normal duty of expedition to ensure a speedy trial, having regard to the obvious sensitivities involved".

This has been cited with approval more recently in the Supreme Court decision of *Donoghue v DPP* ([2014] IESC 56). Interestingly, in all criminal matters involving minors, the gardaí are required to refer the child to the Garda Youth Diversion Programme, which assesses whether a minor is suitable for various probationary services. While this is a fundamental requirement, there is, potentially, an added delay in children's cases, which would not be present in cases involving adults. With the added possibil-

PIC: WIKIMEDIA

ity of delay, all other aspects of investigation, charge, and trial would need to be completed more quickly than usual to conform to the requirement of the special duty.

Britain's pragmatic approach

Britain takes a much more pragmatic approach in relation to sentencing of minors who have reached the age of majority, despite committing an offence when they were a child. This is evident at both legislative level and through judicial interpretation. The *Sentencing Children and Young People: Overarching Principles and Offence Specific Guidelines for Sexual Offences and Robbery – Definitive Guideline* sets out the principles for the sentencing of young people.

Of particular relevance are sections 6.1 and 6.2, which state: "6.1 – There will be occasions when an increase in the age of a child or young person will result in the maximum sentence on the date of the *finding of guilt* being greater than that available on the date on which the offence was *committed* (primarily turning 12, 15 or 18 years old).

"6.2 – In such situations, the court should take as its starting point the sentence likely to have been imposed on the date at which the offence was committed. This includes young people who attain the age of 18 between the *commission* and the *finding of guilt* of the offence but when this occurs the purpose of sentencing adult offenders has to be taken into account, which is:

- The punishment of offenders,
- The reduction of crime (including its reduction by deterrence),
- The reform and rehabilitation of offenders,
- The protection of the public, and
- The making of reparation by offenders to persons affected by their offences."

> WHILE PLUGGING THE GAP IN RELATION TO SENTENCING MINORS WHO HAVE TURNED 18 WOULD GREATLY IMPROVE THE SITUATION – AND FEWER APPLICATIONS WOULD BE LITIGATED FOR PROSECUTORIAL DELAY – THE BALANCING TEST IS TOO STRINGENT WHEN IT COMES TO CASES INVOLVING MINORS

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Diploma in Technology and IP Law	13 October 2021	€3,000
Diploma in Education Law	29 October 2021	€2,600
Certificate in Public Legal Education	October 2021	–
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
Diploma in Aviation Leasing and Finance	27 January 2022	€3,000

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This is supported at a judicial level in *R v Ghafoor* ([2002] EWCA Crim 1857), in which the defendant was 17 at the time of the commission of the offence. The English Court of Appeal held: "The approach to be adopted where a defendant crosses a relevant age threshold between the date of the commission of the offence and the date of conviction should now be clear. The starting point is the sentence that the defendant would have been likely to receive if he had been sentenced at the date of the commission of the offence. It has been described as 'a powerful factor'."

Ghafoor has been cited with approval in subsequent Irish case law, most notably in *DPP v JH* ([2017] IECA 206), where the Court of Appeal determined the factors to be considered when sentencing a person who committed an offence as a child but, subsequently, became an adult in the intervening period.

Mahon J explains: "What is relevant in the context of sentencing is the fact that the appellant, although now an adult, committed the crimes in question when he was 15 years old. A sentencing court is required to assess the offender's level of maturity at the time of the commission of the offence and to accordingly access his culpability as of that time."

The legislative lacuna in this area could be filled by sentencing guidelines similar to those in Britain. Guidelines of this type would provide more clarity when it comes to the sentencing of children in general, which, in Ireland, is still subject to much judicial discretion. Furthermore, this takes the much more logical approach of determining a defendant's sentence based on the circumstances they were experiencing at the time of offending. While this is how defendants are dealt with at court level, it does seem like an enormous gap in the legislation, considering that there are many positive protections covered under the 2001 act.

Prosecutorial delay

Many of these cases arise in the context of judicial review proceedings, where the defendant claims that the prosecution has been delayed through blameworthy prosecutorial delay (see *Wilde* and *Furlong v DPP* [2021] IEHC 326). The test applied in these types of cases is no different than that of an adult claiming prosecutorial delay, and is derived from the Supreme Court decision in *Donoghue*, where the court created the balancing test in determining blameworthy prosecutorial delay.

The first limb of the test is to establish whether there has been any such delay in terms of the time – whether during the investigation of the offence, or a delay between charge and trial. The second limb is determining whether the delay caused any prejudice to the defendant in terms of rights – whether legislative or constitutional. Finally, the court must balance the prejudice to the defendant with the public interest in prosecuting offences. The prejudice suffered by the defendant must outweigh the public interest in the prosecution of offences.

Since 2014, there have been 16 cases of judicial review determined by the High Court in relation to applications for dismissal on the grounds of prosecutorial delay. Of those 16 cases, only three applications were successful, where the prosecution was prevented. The premise of these cases is that they are decided on their merits but, in all applications of this nature, the applicant claims prejudice on the grounds of loss of legislative provisions under the 2001 act.

Despite this, most of the cases are dismissed because the interest of justice to prosecute cases outweighs the prejudice suffered by a defendant. While plugging the gap in relation to sentencing minors who have turned 18 would greatly improve the situation – and fewer applications would be litigated for prosecutorial delay – the balancing test is too stringent when it comes to cases involving minors.

Defect in the law

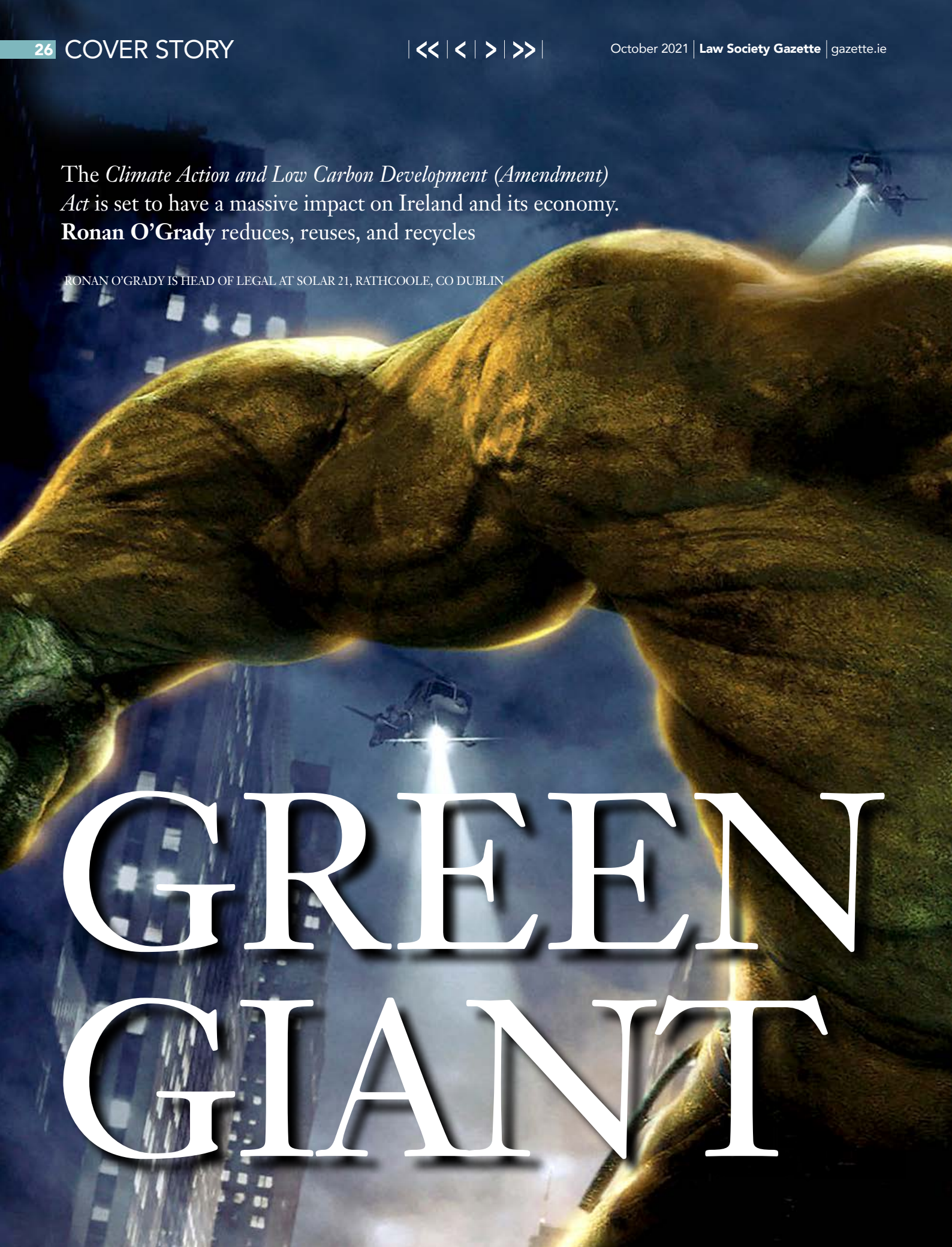
The defect in the law creates a serious problem in the event of delay for whatever reason – whether blameworthy prosecutorial delay or not – as well as other likely situations that may arise, as described in *Wilde*. It further creates an imbalance between defendants and police authorities, in that the State could, in theory, sit on charges that occurred when a defendant was a minor until they are close to the age of majority, thus resulting in a defendant receiving a sentence of greater severity.

Even in the absence of this, the legislative gap means that a defendant will receive an adult sentence for offences that were perpetrated as a minor. This is of particular concern given the differing nature of juvenile criminal records and adult ones (see section 258 of the 2001 act).

The need for clarity in this area is paramount, whether by way of amendment to the current legislation or in the form of prosecutorial sentencing guidelines, as can be seen in Britain, which set out precisely how matters of this kind are to be dealt with. The present form creates too much uncertainly, and places an unnecessary burden on the judiciary to come up with *ad hoc* sentences without protection from statutory provisions.

There seems to be no impediment to having legislative authority on this issue, considering that judges are already applying the principles, as seen in Britain. However, there is a conflict between the judiciary's desire to apply sentences based on the age and maturity at the time of offending and the legislative shortcomings. g

> IF AN OFFENCE IS ALLEGED TO HAVE BEEN COMMITTED BY AN INDIVIDUAL WHO IS A NUMBER OF WEEKS SHY OF HIS OR HER 18TH BIRTHDAY, IT IS UNREALISTIC TO EXPECT THAT THE OFFENCE WOULD BE INVESTIGATED, AND THE PROSECUTION COMPLETED, PRIOR TO THAT BIRTHDAY. IT WOULD HAVE BEEN HELPFUL IF THE LEGISLATION INDICATED WHAT IS TO HAPPEN IN SUCH CIRCUMSTANCES



The *Climate Action and Low Carbon Development (Amendment) Act* is set to have a massive impact on Ireland and its economy. **Ronan O'Grady** reduces, reuses, and recycles

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

GREEN GIANT

PIC: ALAMY

AT A GLANCE

- The *Climate Action and Low Carbon Development (Amendment) Act 2021* will affect every citizen in the land in ways we have yet to imagine
- It commits the Government to move to a climate-resilient and climate-neutral economy by the end of 2050
- The proposed introduction of carbon budgets will drive annual greenhouse gas targets

In July, the *Climate Action and Low Carbon Development (Amendment) Act 2021* was signed into law. The act will commit the Government to moving to a climate-resilient and climate-neutral economy by the end of 2050. The legislation will have far-reaching consequences for every section of the economy, across local authorities and, ultimately, all communities throughout the country, including businesses and individual consumers.

One of the most significant parts of the act is the proposed introduction of carbon budgets, which will become just as important as the annual fiscal budget and will represent the total amount of greenhouse gases (GHG) that may be emitted in the State during the budget period, measured in tonnes of carbon-dioxide equivalent. The Minister for

PIC: ALAMY

the Environment will also be responsible for setting the emissions ceiling for 40 different sectors for the five-year period within the limits of the carbon budget. A strengthened Climate Change Advisory Council (CCAC) will propose the carbon budget to the Government, which must draw up a new climate action plan setting out how cuts will be achieved.

Policy context

Ireland's policy response to climate change is tied to our European and international commitments to reduce GHG emissions. The main Irish climate-action laws and policies are provided for under the:

- *National Policy Position on Climate Action and Low Carbon Development* (2013),
- *Climate Action and Low Carbon Development Act 2015*,
- *National Mitigation Plan* (2017),
- *National Adaptation Framework* (2018),
- *How the State Can Make Ireland a Leader in Tackling Climate Change* (Third Report and Recommendations of the Citizens' Assembly, April 2018),
- *Climate Action Plan 2019* (Department of the Environment, Climate and Communications, published in June 2019 and last updated on 23 April 2021),
- *Long-Term Strategy on Greenhouse Gas Emissions Reductions* (Government of Ireland, November 2019, under review), and
- *Ireland's National Energy and Climate Plan 2021-2030* (Department of the Environment, Climate and Communications, published in June 2020 and last updated on 14 September 2021).

The principal act

The *Climate Action and Low Carbon Development Act 2015* (the principal act) set national climate policy on a statutory footing for the first time in Ireland, with the target

> IN MAY, A DUTCH COURT ORDERED SHELL PLC TO ENSURE THAT THE AGGREGATE ANNUAL VOLUME OF ALL CO_2 EMISSIONS OF THE SHELL GROUP, ITS SUPPLIERS, AND CUSTOMERS IS REDUCED BY AT LEAST 45% BY 2030, RELATIVE TO 2019 LEVELS

of pursuing the transition to a low-carbon, climate-resilient, and environmentally sustainable economy by 2050.

However, a major criticism was the act's lack of specific GHG emissions targets and, in July 2020, the Supreme Court delivered a seminal decision striking down the National Mitigation Plan in *Friends of the Irish Environment v The Government of Ireland & Others*, as it did not contain the specificity required for appropriate transparency in order to comply with the principal act.

To address these concerns, the draft *General Scheme of the Climate Action (Amendment) Bill 2019* was published on 6 January 2020. In June 2020, a new Programme for Government was announced, declaring its commitment to an average reduction of 7% in overall GHGs from 2021-2030 (a 51% reduction over the decade) and to achieving net zero emissions by 2050.

These actions followed swiftly on from Ireland's declaration of a climate emergency in May 2019. Additional momentum was provided by the EU's European Green Deal, announced in December 2019, and will surely now intensify as a result of the code-red warning from the United Nations (IPCC) that climate-change effects are now "widespread, rapid and intensifying", according to their recently released report ahead of the COP26 climate summit in Glasgow in November 2021, in which global efforts to accelerate climate action will be addressed over a two-week period.

The draft *Climate Action and Low Carbon Development (Amendment) Bill 2020* was published on 7 October 2020, with the final more ambitious evolution of the bill, the *Climate Action and Low Carbon Development (Amendment) Bill 2021* published on 23 March 2021. The amended bill reflected the Oireachtas Joint Committee on Climate Action's efforts (which included 78 recommendations) to tackle some of its perceived weaknesses, particularly the crucial redrafting of the National Climate Objective itself to include the word 'achieve'.

The bill finally passed through both houses of the Oireachtas on 16 July 2021 after some last-minute amendments in the Seanad, principally relating to giving the minister "the ability, through regulation, to designate how the carbon budgets are accounted for by an 'evolving methodology' applied to sequestration of carbon on farms achieved through afforestation, soils, hedgerows and re-wetting peatlands". This was seen as a necessary concession to farmers on how carbon is accounted for in agriculture.

Main provisions

The 2021 act's key provision requires the Government to "pursue and *achieve* the transition to a climate resilient and climate-neutral economy by the end of 2050" [emphasis added], with the aim of reducing the extent of further global warming. This obligation is called the 'National 2050 Climate Objective' and replaces the principal act's 'National Transition Objective'.

It amends the principal act and provides a framework to reduce GHGs in the following way:

- Section 5 establishes an objective of climate neutrality by 2050,
- Section 9 sets an interim target of a 51% reduction in GHG emissions by 2030, relative to a baseline of 2018,
- Section 6 provides a framework for the development of enabling plans and strategies to reach 2030 and 2050 targets through:
  a) Annual climate action plans,
  b) Five-yearly, long-term, climate-action strategies,
  c) Five-yearly carbon budgets,
  d) Sectoral emission ceilings, and a
  e) National adaptation framework,
- Section 10 strengthens the role of the CCAC, including its functions and membership,
- Section 16 requires all local authorities to prepare climate action plans, to be updated at least every five years (and which are to be considered when making development plans under the *Planning and Development Act 2000*), and
- Section 15 provides a stronger oversight role on climate reporting for the Oireachtas through committee.

Notable omissions from the act relate to a proposed ban on the sale of new (and the importation of) petrol and diesel vehicles by 2030 (which was included in the 2019 general scheme of the bill) and a ban on the importation of fracked gas and on liquified natural gas (LNG) terminals.

New policy instruments

Carbon budgets. Five-year carbon budgets (starting in 2021) will be proposed by the CCAC, finalised by the minister, and approved by the Government. A 'carbon-budget programme' will ensure a 15-year perspective by providing visibility at any given time on three successive budget targets. After a carbon budget is

approved, sectoral emissions ceilings will be determined by the Government – based on EPA emissions inventories, the carbon budget programme, and the 2021 Climate Action Plan. Any excess emissions will be carried forward to the next budget period, which will be reduced accordingly.

Strategic and planning framework. The act will require the minister (or in the case of the sectoral adaptation plan, each of the relevant ministers) to submit to Government for approval:

- Annual revisions of the Climate Action Plan, which will be the road maps to enable the Government to pursue the National 2050 Climate Objective,
- Long-term climate-action strategies for carbon neutrality will be prepared at least once every five years, and will outline, over a minimum 30-year period, the range of opportunities and transition pathways towards the National Climate Objective,
- National adaptation frameworks will focus on reducing vulnerability of the State to the negative effects of climate change, and availing of any positive impacts,
- Sectoral adaptation plans to facilitate adaptation to the effects of climate change in the sector(s) concerned.

Limitation of liability. Under section 4, the act does not impose financial penalties on any sector for failure to comply with the provisions of the act. All other remedies are still available, and the obligations imposed by the principal act remain justiciable before the courts (as confirmed by the FIE Supreme Court case). If the Government or any public body fails to deliver on its required obligations, the courts may be asked to compel them to act.

PIC: SHUTTERSTOCK

International developments

A significant new policy proposal ('FIT for 55') was announced in July 2021 by the European Commission, to accelerate the transition in sectors where decarbonisation is moving too slowly (primarily the energy, transport, buildings, and agriculture sectors). It includes a combination of stricter regulation and emissions standards for industry, carbon pricing and taxes, and rules to promote investment in low-carbon fuels, technologies, and infrastructure.

The 12 legislative proposals include amendments to existing measures (renewable energy, energy efficiency, carbon market, energy taxation, climate-effort sharing between member states, land use and forestry, and vehicle-emission standards) as well as new ones (such as, the Carbon Border Adjustment Mechanism (CBAM) and the Emissions Trading System (ETS) for transport and buildings).

Of all of these, carbon pricing (either through the ETS or carbon levies) will be the most important and controversial aspect of the package – to be debated in the European Parliament over the next two years – and one that was also embraced as a key policy driver for reducing carbon emissions by the G20 at their recent summit in Venice.

The package is likely to rely on further integration of energy markets across Europe, making energy-market integration a fundamental aspect of Europe's transition efforts. Energy interdependency simply means meeting different energy needs across the EU member states in a coordinated way. This would bring significant benefits, such as maintaining security of supply at a lower cost.

This aspect of the package will likely become even more central in the future, as Europe needs to scale up renewables and rely on electrification pathways to decarbonise significant parts of the economy that are large emitters (such as heating and transport). Hence, the importance of a more integrated power grid across Europe, operated efficiently and securely.

Further evidence of the major global shift in the energy paradigm came from the International Energy Agency (IEA) (traditionally a more conservative organisation in their views of the rate of change required to mitigate the effects of climate change) in their *Net Zero by 2050* report published earlier this year, warning that: "Achieving net-zero emissions by 2050 will require nothing short of the complete transformation of the global energy system … in how energy is produced, transported and used globally."

The IEA's reports are critically important, as their recommendations are relied on by many governments, businesses, and other institutions as the 'how-to-guide' for many of their energy-related decisions, actions, and investments. The report reduces the previous target for net zero emissions by 20 years and signals a radical transformation in the IEA's ambition that would see renewables overtake coal by 2026, passing oil and gas by 2030, and providing two-thirds of the global energy supply and almost 90% of electricity generation by 2050.

If the European Green Deal and the 'Fit for 55' package are the roadmap and battle plan for achieving the 'net zero' ambition, then the Sustainable Finance Package (taxonomy regulation, sustainable finance disclosure regulation, etc) is how the EU proposes to finance the transition, by integrating environmental social and governance considerations into investment decisions in order to facilitate the reallocation of both private and public capital into more sustainable activities.

The investment funds industry has reached a watershed moment, with almost half of the world's assets under management now committed to meet climate-change goals, in a shift that could have huge implications for larger companies. The Net Zero Asset Managers Initiative, launched in December 2020, aims to galvanise the asset-management industry to commit to a goal of net zero emissions by 2050. The initiative means that asset managers would be forced to divest their holdings in companies that are unwilling to align their corporate interests or behaviours in order to meet their net zero targets under the initiative.

Litigation and shareholder activism

This hardening of climate regulation is also influencing investor activism (as seen at recent AGMs for Amazon, Chevron, Exxon, Facebook, etc) and litigation in the courts. Environmental groups have successfully brought cases in the Netherlands, France, and Germany to establish that climate legislation hasn't gone far enough to protect citizens' fundamental rights to life and human dignity.

In May, a Dutch court ordered Shell plc to ensure that the aggregate annual volume of all CO_2 emissions of the Shell group, its suppliers, and customers is reduced by at least 45% by 2030, relative to 2019 levels. This ruling (pending appeal) could potentially lay the foundations for further climate-change litigation against non-state emitters of CO2.

Obstacles to success

Delivering on the 2021 act's commitments will have major implications across all sectors of society, the economy, and the environment. In June 2021, the IMF released a selected issues paper estimating that the Irish Government will need to invest €20 billion annually (or 5% of GDP) for the next ten years in climate-related infrastructures and mitigation measures to achieve the emissions reduction targets laid down in the act.

While the sum suggested by the IMF is colossal (and almost as much as the amount spent by Government on pandemic-related measures in 2020), the central point here is that the Government genuinely believes that Ireland can build a growth strategy around the net zero transition that will create new jobs and opportunities for future generations, which will offset the cost of this gargantuan investment.

Ireland's overall reduction in GHG emissions in 2020 was 6% (primarily due to COVID-19), and official data from November 2020 from the EPA showed that national GHG emissions declined in 2019 by 4.5% compared with 2018 levels to 60 million tonnes CO_2-equivalent, despite the economy continuing to grow.

Agriculture

Agricultural activities account for 35% of Ireland's annual GHGs, which is the highest share of emissions from agriculture across any European state. The IFA has voiced strong concerns in relation to the 'just transition' and 'climate justice' elements of the proposed legislation, which suggests that engaging with the agricultural sector will be a critical obstacle to overcome, as drastic sectoral cuts will be required – and these will be extremely challenging for farmers to achieve.

However, with great change comes great opportunities to diversify income streams for the sector. Almost every farm has the potential to generate renewable energy for

> A MAJOR CRITICISM OF THE PRINCIPAL ACT WAS ITS LACK OF SPECIFIC GHG EMISSIONS TARGETS AND, IN JULY 2020, THE SUPREME COURT DELIVERED A SEMINAL DECISION STRIKING DOWN THE NATIONAL MITIGATION PLAN IN *FRIENDS OF THE IRISH ENVIRONMENT V THE GOVERNMENT OF IRELAND & OTHERS*

THE 51% TARGET IS AMBITIOUS, AND NO OTHER COUNTRY IN THE WORLD, APART FROM DENMARK, HAS COMMITTED TO HALVING EMISSIONS IN A DECADE BASED ON 2018 LEVELS

its own use (or to produce energy feedstocks for others to generate) and, ultimately, to generate power to the national grid. A workable microgeneration support scheme (such as rooftop solar PV) could provide supplementary income for farmers and create much needed rural employment.

Bioenergy also has the potential to reduce the environmental impact of farming, in particular biogas produced by anaerobic digestion, which has significant benefits by way of reduction in emissions and is a mature technology in Britain and Europe. There is a compelling business case for an indigenous biomethane industry in Ireland, based largely on agricultural waste, as evidenced by the 2019 KPMG report. It concluded that an indigenous biomethane industry would stimulate the rural economy by promoting a circular economy through utilising agri by-products and grassland potential to create energy for homes and businesses, while promoting sustainable farming practices and abate over 2.6 million tonnes of CO_2 emissions per annum.

Ireland's commitments

The 51% target is ambitious, and no other country in the world, apart from Denmark, has committed to halving emissions in a decade based on 2018 levels. Ireland failed to meet both its EU 2020 commitments in terms of renewable energy (excluding the RES-E subtarget) and emissions reduction, and had to achieve compliance through the purchase of statistical transfers of renewable energy and emission-reduction credits from Denmark and Estonia at a cost of €50 million. All the technologies, concepts and interventions required to reach 'net zero' exist today in some form (with the less mature technologies, such as green hydrogen and carbon capture, less cost-effective and policy certain in the short term); however, they must be radically scaled up across the economy.

The act is a vitally significant step for the Irish State in pursuit of its climate objectives, but it remains to be seen whether the results achieved can match the ambition envisioned.

The purpose of climate legislation is to establish clear and legally binding targets that apply economy-wide, from which more detailed policies will flow and, thus, provide certainty to all parties that the Government is taking its climate responsibilities seriously.

From this perspective, the act has certainly achieved this goal, as it has now normalised climate action within the political sphere. However, the hardest challenge for the Government in achieving its commitments will be educating and convincing the general public, so they may understand and accept that achieving a decarbonised society by 2050 will be worth the increased costs and behavioural changes necessary as a society to attain it.

In conclusion, the words of Frans Timmermans (European Green Deal lead and executive vice-president of the European Commission) appear prophetic in saying that "this is the make-or-break decade in the fight against the climate and biodiversity crises". g

LOOK IT UP

CASES:

- *Friends of the Irish Environment v The Government of Ireland & Ors* [2020] IESC 49
- *Milieudefensie et al v Royal Dutch Shell plc* (ECLI: NL: RBDHA: 2021: 5337)

LEGISLATION:

- *Climate Action and Low Carbon Development Act 2015*
- *Climate Action and Low Carbon Development (Amendment) Act 2021*

LITERATURE:

- *Climate Change 2021: The Physical Science Basis – Summary for Policymakers* (Intergovernmental Panel on Climate Change, August 2021)
- 'European Green Deal: Commission proposes transformation of EU economy and society to meet climate ambitions' (European Commission press release, 14 July 2021)
- *IMF Selected Issues Paper – Ireland* (June 2021)
- *Ireland's National Energy and Climate Plan 2021-2030* (June 2020; updated 14 September 2021)
- *Net Zero by 2050: A Roadmap for the Global Energy Sector* (International Energy Agency, July 2021, third revision)
- *An Integrated Business Case for Biomethane in Ireland* (Renewable Gas Forum Ireland, October 2019)
- *Sustainable Finance Package* (European Commission, April 2021; last updated 4 June 2021)

MR BLUE SKY

Transglobal aviation leasing lawyer Donal Hanley talks to **Mary Hallissey** about a distinguished career that has spanned every continent with world-leading companies, where he has served at executive and non-executive board level

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

Donal Hanley reflects that the reason he didn't become a barrister was because he believed he wasn't good at thinking on his feet quickly enough. But given his blue-chip transcontinental career, the McCann FitzGerald-trained solicitor must surely have been nimble on his feet in spotting and seizing opportunities.

Hanley (57) realised early on that he wanted an international dimension to his work life, and thought that being a solicitor (rather than a Law Library-bound barrister) would give more scope for that.

ALL PICS: CIAN REDMOND

> HIS GREAT PASSION AT SCHOOL WAS CELTIC STUDIES, BUT HIS PRACTICAL-MINDED FATHER PULLED HIM ASIDE AND POINTED OUT THAT HE MIGHT GROW TO HATE THE THING HE LOVED IF HE COULDN'T GET A LIVING OUT OF IT. 'YOU LIKE ARGUING WITH ME, SO WHY DON'T YOU TRY LAW?'

The longed-for international dimension has followed in spades, with roles spanning every continent, at executive and non-executive board level. Hanley has lived in Dublin, London, Tokyo, Los Angeles, Montreal and Taipei, forging a distinguished career with leading aircraft-leasing companies.

His doctoral thesis became the basis for a best-selling book on aircraft-leasing law. As an aircraft finance expert, Dr Hanley is an instructor to International Air Transport Association (IATA) member airlines. And he is an adjunct professor teaching aircraft acquisition and finance law at Canada's prestigious McGill University.

He also led the start-up of a successful Egyptian joint-venture aircraft-leasing company, with the aid of a double tax treaty facilitated by the Irish embassy there. And he helped to build the Irish operations of a large aircraft-leasing company, Aviation Capital Group, to the point where it now has over US$1 billion in assets.

"I could have been a partner in a Dublin law firm, and lived in a fine Georgian or Victorian house," he muses. "That would have been wonderful. I took a different path and I'm glad I did.

"I understand how privileged and lucky I've been," he says bashfully. "I've had the privilege of working with some amazing people. It's great to stay in Ireland, it's a wonderful country, but for those who want to see the world, I don't think you'll ever regret it. You can always come back."

21st century man

The market may yet saturate in Dublin for law graduates, and Hanley stands as an example of the global possibilities out there. He offers some sage advice to early-career solicitors – always keep in touch with your network, and not just when you're looking for something: "Keep in touch for the small stuff as well." Hanley also emphasises the value of a good mentor: "I've been blessed with good mentors with all of my employers," he says.

Hanley has kept up with core friends and family in Ireland, while the thrill of travel has never gone stale for him. "When I was on the road negotiating leases – I was on an overnight flight from the Tibetan Plateau to Iceland – I remembered the days when the big thrill was to go to London!"

Having moved away aged 25, he describes the return to Ireland at 50 as a "reverse culture shock". He recently texted a friend to say he was on the No 42 bus from Malahide to 'An Lár', and felt like he was 20 again. "Nothing much ever changes on the northside!" came the answer.

He acknowledges that, once back in Ireland, he kept a lid on his opinions: "There is a limit to the views you are allowed to have if you're not living here or have been away a long time," he notes.

But the biggest single change he notices is the overall beneficial effect of immigration into Ireland. "Immigrants come to Ireland now for economic as much as for family reasons, because they see it simply as a prosperous north European country, which is something we've desperately being trying to come across as, for decades," he says. "Immigrants are helping us to get over our postcolonial baggage. So maybe it's helping us to normalise ourselves."

Hanley also notices the immigrant revitalisation of Irish towns, with little businesses starting up, in contrast to the traditional Celtic hostility to urban life. Immigrants often make more productive use of Irish town and city centres, he believes.

Hold on tight

Hanley's great passion at school in Belvedere College was Celtic Studies, but his practical-minded father pulled him aside and pointed out that he might grow to hate the thing he loved if he couldn't get a living out of it. "You like arguing with me, so why don't you try law?" suggested Hanley Senior.

Donal found he was quite taken with law at Trinity, and he did well, while also spending a lot of time in the Celtic Studies section of the library. "The academic demands for law at Trinity in those days

> THE GOVERNMENT MUST SERIOUSLY EXAMINE ITS PERFORMANCE DURING THE PANDEMIC TO SEE WHAT LESSONS CAN BE LEARNED, AND WHAT IT GOT RIGHT – AND WRONG. AVIATION WAS PARTICULARLY BADLY AFFECTED BY EFFECTIVE BANS ON TRAVEL

were quite gentlemanly," he muses.

Subsequently, as a graduate trainee in the finance department at McCann FitzGerald, Hanley was fascinated by the glamorous figure of consultant and arbitrator Max Abrahamson.

Abrahamson worked in global construction arbitration and was constantly jetting off, away from the economically depressed Ireland of the late 1980s. "In terms of lawyer lifestyles, he seemed very exciting in the staid world of solicitors in those days. He was always rushing out the door with a suitcase into a taxi, and he seemed to live a wonderful, international life," Hanley recalls.

An aircraft-finance stint in the McCann FitzGerald London office soon followed for Donal. The biggest client was Guinness Peat Aviation.

A planned move to New York fell through but, later, the opportunity came up to go to Tokyo, to work as a foreign law associate with a leading Japanese law firm. The connection was that the chairs of both McCann FitzGerald and Anderson Mori Tomotsune had been in Harvard together – and GPA was planning to expand into Japan.

Subsequently, Hanley was accepted on to the European Commission Executive Training Programme in Japan, which was a paid scholarship to study and work there. A move to Linklaters in Japan followed, still focused on the aircraft-leasing sector.

Calling America

"I've never worked as hard in my life or played as hard – they were wonderful colleagues. It was great fun," he says.

For personal reasons, he then planned to move to Los Angeles, where he had no connections. At this point, Hanley wanted an in-house job in aviation finance, in LA, ideally with a Japanese connection.

SLICE OF LIFE

■ *Best concert?*
Boney M at the RDS in 1978 – it has taken me until 2021 to admit that!

■ *Coffee or tea?*
Tea. Milk, one sugar, please!

■ *Must-have gadget?*
This is more a must-not-have gadget, but I hate keyless-ignition for cars.

■ *Most useful thing you own?*
Toothbrush.

■ *Favourite lunch companion, living or dead?*
Definitely living. Although some have been borderline!

■ *Most eventful work moment?*
A board meeting of an Egyptian joint-venture aircraft-leasing company in Cairo during the revolution. We heard tanks rumble outside the civil aviation ministry. The air force general chairing the meeting sent a junior to the window and asked: 'How many tanks, and which way are they pointing?'
'Out,' he answered.
'Good, then we are still in power! Stay at the window and tell me if they turn around.'

■ *What would you save from your burning house?*
Gaelic dialects books, especially those by Heinrich Wagner and Nils Holmer.

■ *Biggest influence on your life?*
Moto Proprio Summorum Pontificum of Pope Benedict XVI in 2007.

■ *What are you reading?*
Splendour and Scandal: The Office of Arms at Dublin Castle.

■ *Favourite drink?*
Suze or Negroni.

If you want something badly in your career, write it down, Hanley suggests, because that will help to crystallise the goal more accurately in your mind. Hanley got an introduction to a British diplomat, who fitted him in for a swift cocktail before going on to a smart dinner. There was no time to mess around. "Well, I'd done my writing exercise, and I told him what I wanted." A further introduction ensued, with the chief executive of a Japanese aircraft-leasing company in LA: "The diplomat wrote it down, like a prescription on a piece of paper. That resulted in a job offer."

Hanley then resigned from Linklaters – just before the job offer was rescinded, because of lack of budget approval. Linklaters allowed him to stay on, however, and some time later, the budget was approved.

He began work without fully agreeing terms, knowing that he trusted the people involved: "I spent six happy years with Mitsui, and was able to use my Japanese. I flew all over the world with my Japanese colleagues – they were great guys. We worked all day in English, then switched to Japanese in the evening."

But things changed after 9/11, as the aircraft-leasing industry contracted. He was invited to a Christmas party at Aviation Capital Group (ACG), which was expanding at the time. "Social occasions are where they reconnoitre you, to see if you can get on harmoniously with others. The ability to fit into the company culture and not cause chaos is huge," Hanley says, as a global career veteran.

However, he cautions that money alone should never be the motivating factor in any job change: "I would tell lawyers, never leave just because of more money. Leave because it's the right job for you. And never, ever burn your bridges. There are mergers and acquisitions. Don't be surprised if, six months later, your old company acquires your new company!"

He believes that there is always a path ahead, even if it's not the expected one: "Even if it doesn't work out the way you planned, it can be really interesting what comes up as an alternative."

Strange magic

Hanley spent 14 years with ACG, winding up as managing director of its Irish subsidiary, ACG Aircraft Leasing Ireland Limited. This enabled him to return to

> WHEN I WAS ON THE ROAD NEGOTIATING LEASES – I WAS ON AN OVERNIGHT FLIGHT FROM THE TIBETAN PLATEAU TO ICELAND – I REMEMBERED THE DAYS WHEN THE BIG THRILL WAS TO GO TO LONDON

Dublin, accompanied by his wife Helen, whom he met in Tokyo in November 2014.

He was also encouraged by Mitsui and ACG to burnish his academic credentials, and he embarked on an MBA, run by Concordia University and IATA in Montreal. His studies led on to a doctorate in aircraft leasing, completed while commuting between Los Angeles and Cairo. And out of his doctorate grew the definitive textbook on aviation leasing law – *Aircraft Operating Leasing: A Legal and Practical Analysis in the Context of Public and Private International Air Law*.

Against himself, he admits that he once walked into an upmarket London law bookshop and asked if the book was in stock. When the snooty assistant unwrapped a copy, Hanley revealed he was the author.

"How very good for you, sir!" replied the assistant.

Hanley ploughed on and offered to sign the book.

"No, that would make it second-hand, and it would lose all its value," the assistant responded haughtily.

Humbled and dejected, Hanley walked out into the rain: "A necessary tonic against hubris!" he adds.

Shine a little love

His PhD thesis had been pursued at Leiden University. But the Trinity graduate locked horns with the Dean there before it was approved. True to his Belvederean education, Hanley wrote the Jesuit motto AMDG (*Ad majorem Dei gloriam* – 'For the greater glory of God') on the inscription. The Dean objected, ordering its removal on the grounds that Leiden was "not Christian, but a free-speech university".

Hanley did some research and found that four dissertations had previously been approved that had been inscribed *Allahu Akbar* ('God is Great') on the title page. The university refused to budge, however, but also refused to allow future students to use *Allahu Akbar* – an outcome Hanley did not seek. The inscription did finally make it into the ultimately published book: "Some of my old Jesuit schoolmasters would be happy," Hanley chortles.

He now has a mixed portfolio of lecturing posts and non-executive directorships: "I wanted to be a solicitor hopping on planes to go and do business deals," he recalls. "I ended up doing that. I've been shown a lot of graces and privileges during my career, and anything that's gone right, I can't say it's due to my own intrinsic merit."

Don't bring me down

Hanley has trenchant observations on what is necessary to continue Ireland's success in aviation finance.

"The Government must seriously examine its performance during the pandemic to see what lessons can be learned, and what it got right – and wrong. Aviation was particularly badly affected by effective bans on travel.

"Regardless of one's views on the need for restrictions, the blurring of law and advice is not healthy for the rule of law. The courts need to be independent and not act as arms of the Cabinet. Sadly, they did not shine during this crisis, and showed a lack of independence that was hard to miss. That will be remembered later.

"Mandatory quarantine is one thing, but the effect on aviation of mandatory hotel quarantining was quite something else. And, actually, to charge travellers for detention was likely in breach of Ireland's international public-health commitments," he believes.

"The effect on expatriate aircraft-financing executives (among many others) here, who were effectively separated from their families overseas at a time when other countries were not imposing such restrictions, will not have helped. Combined with simultaneous anti-aviation rhetoric from the transport minister on environmental grounds, and a push to increase corporate tax levels, it may be that, without careful attention from the Government, the industry may see Ireland as no longer strongly committed either to aviation or the rule of law – neither of which would bode well," he warns.

AT A GLANCE

- Arbitration should be seriously considered as the primary dispute resolution process by any in-house counsel and/or solicitor for contracts with an international dimension
- Because of the inherent flexibility of the arbitral process and the speed at which remote proceedings have become the global norm, the choice of arbitration as an alternative dispute mechanism is more relevant today than ever
- And there are benefits to choosing Irish law as the substantive law, and Dublin as the seat for that arbitration

THE HOT SEAT

Practitioners can leverage the key elements of arbitration for the benefit of their organisation or client – thus ensuring an effective, efficient process and result. **Gavin Woods and Seán McCarthy** take sides

GAVIN WOODS IS A PARTNER IN THE LITIGATION, DISPUTE RESOLUTION AND INVESTIGATIONS GROUP AT ARTHUR COX. SEÁN McCARTHY IS A BARRISTER INVOLVED IN INTERNATIONAL ARBITRATION AND IS A MEMBER OF THE COMMITTEE OF YOUNG PRACTITIONERS ARBITRATION IRELAND

There has been significant disruption over the last few years to the traditional paths for the resolution of international disputes. There are a few reasons for this. In the case of London, Brexit has brought about potential challenges to its pre-eminent position as a centre for such disputes.

For other international hubs, like Paris, Geneva and New York, COVID-19 has accelerated the role of remote hearings as an essential element of any dispute-resolution process, as parties, experts and counsel have found that they need not travel and incur time and cost in order to achieve the same results. Because of the inherent flexibility of the arbitral process and the speed at which remote proceedings have become the global norm, the choice of arbitration as an alternative dispute mechanism is more relevant today than ever.

In this article, we examine why arbitration should be seriously considered as the primary dispute resolution process by any in-house counsel and/or solicitor for contracts with an international dimension, the benefits of choosing Irish law as the substantive law and Dublin as the seat for that arbitration, and the practical implications of doing so.

Armed with the appropriate knowledge and expertise, practitioners can leverage the key elements of arbitration for the benefit of their organisation or client, ensuring an effective and efficient process and result.

Why arbitration?

Arbitration offers a confidential and globally recognised process for resolving disputes efficiently through its flexibility of procedure, the integrated choice of trusted and independent decision-maker(s) with subject-matter expertise, and the strongest cross-border enforcement regime available.

PIC: SHUTTERSTOCK

These considerations are particularly important for organisations doing business in jurisdictions with which they are not overly familiar, safe in the knowledge that the practice of international arbitration is uniform around the world.

Arbitration is obviously not a new concept and, particularly outside of Ireland, has for many years been the preferred choice for a majority of parties involved in cross-border or multinational ventures, most notably in areas such as energy, construction, shipping and commodities.

In recent years, there has been a significant increase in the volume of arbitrations being referred to the leading international arbitral institutions. For example, according to the London Court of International Arbitration's (LCIA) annual casework report for 2020, there was an increase of 18% in the number of referrals to arbitration as against 2019, resulting in the highest number of cases ever referred. There is also an increasing trend towards a broader range of disputes being resolved through arbitration in the technology, finance, corporate and even environmental sectors.

Arbitration's advantages

For those in-house counsel deeply involved in the day-to-day practice of international arbitration on behalf of their organisations, the advantages of the arbitral process over litigation are clear.

Karl Hennessee (Airbus senior vice-president for litigation, investigations and regulatory affairs) says: "Our clear preference for arbitration over litigation (with only a few exceptions) is driven by the flexibility, speed, cost-savings and certainty that arbitration, when conducted in the spirit of efficient dispute resolution, offers. Litigation tends to take longer, cost more, and invite more unproductive procedural manoeuvring that can further damage the relationship between parties who are, at heart, trying to resolve disputes to move forward with a commercial relationship."

Maria Irene Perruccio (in-house counsel for international disputes at Webuild Group SpA – formerly Salini Impregilo) comments: "We prefer international arbitration because it provides a neutral adjudicatory body. Our counterparty is often a state entity, and state courts in certain geographical areas might be overly protective towards their state's public entities. In addition, we appreciate the enforceability of the award, the flexibility of the proceedings, and the fact that international arbitration is, in general, faster than litigation."


Arbitration: the next generation

> IRELAND HAS AN INTERNATIONAL 'BEST-IN-CLASS' STATUTORY FRAMEWORK TO FULLY SUPPORT ARBITRATIONS SEATED IN THIS JURISDICTION

Arbitration agreements

The most common method for parties to submit to arbitration is by including an arbitration agreement in their contract(s). A well-drafted arbitration agreement will usually identify the scope of subject matter that the parties agree to submit to arbitration, the number and method of appointment of the arbitrator(s), the legal seat of the arbitration, the substantive law of the arbitration, and any procedural rules that shall apply to the arbitration.

Most commonly, parties will agree to submit to the rules of an arbitral institution in order to resolve any potential future inconsistencies or lacunae that may arise in the arbitration agreement itself, and to ensure that any dispute will be administered efficiently on a time-and-cost basis.

There are a number of arbitral institutions around the globe that administer arbitrations for any parties who have agreed to resolve a dispute under the auspices of their corresponding rules. The rules that these institutions have created range from being broadly applicable to most types of commercial or private disputes, to those that are solely conceived for parties in sectors such as commodity trading, shipping and sport.

Most significantly for parties and practitioners, these rules govern the entire process, from the choice of seat and number of arbitrators, the appointment of the arbitrator(s), through to the form of exchange of pleadings and expert evidence, and the hearing and making of awards.

Recent innovations

The leading arbitral institutions regularly review and update their rules to ensure that they keep pace with the evolution of dispute resolution globally. Recent innovations include

> ARMED WITH THE APPROPRIATE KNOWLEDGE AND EXPERTISE, PRACTITIONERS CAN LEVERAGE THE KEY ELEMENTS OF ARBITRATION FOR THE BENEFIT OF THEIR ORGANISATION OR CLIENT, ENSURING AN EFFECTIVE AND EFFICIENT PROCESS AND RESULT

the introduction of expedited procedures, emergency arbitrator proceedings and, of course, remote hearings.

The arbitral institutions provide administrative and procedural support through the life cycle of each dispute and, as importantly, provide expertise in ensuring that disputes are resolved effectively and efficiently. Fees and costs for the services provided depend on the institutions and services required. The leading international arbitral institutions are the International Chamber of Commerce (ICC), the LCIA, and the International Centre for Dispute Resolution, the international division of the American Arbitration Association (AAA-ICDR).

From an in-house counsel perspective, the most important characteristics to look for when choosing an international arbitration institution are outlined by Karl Hennessee: "Speedy, credible and decisive address of not just the mundane, but the somewhat exotic issues that arise in arbitration. This is driven by human expertise, clear rules that evolve with time, and confidence to set a framework that allows proceedings to advance with certainty, without stepping on the toes of an arbitral tribunal. Obviously, being based in a jurisdiction with strong law and a culture of arbitration helps."

Maria Irene Perruccio adds: "We pay attention to the ability of the institution to keep the costs of the proceedings under control. We also appreciate institutions that can assist the parties in the constitution of the arbitral tribunal and provide a wide range of international and neutral nominees for the arbitrator's role."

Legislative structures

Ireland has an international 'best-in-class' statutory framework to fully support arbitrations seated in this jurisdiction.

- *UNCITRAL Model Law:* Ireland benefits from the most widely used and global standard in arbitration legislation, the *UNCITRAL Model Law on International Commercial Arbitration* (as implemented through the *Arbitration Act 2010*). More than 85 states have adopted legislation based on the model law to date and, as such, it allows practitioners from around the world to work seamlessly in relation to international arbitrations seated in Ireland.
- *New York Convention*: The *New York Convention of the Recognition and Enforcement of Foreign Arbitral Awards* has been a cornerstone of international arbitration for more than 60 years, as it ensures that an arbitral award is equally enforceable in any of the 168 contracting states. The convention makes the process of enforcing an arbitral award in another jurisdiction more effective than seeking to enforce a corresponding court judgment, particularly outside of EU and EFTA jurisdictions.
- *Arbitration Act 2010*: The act provides for robust and specialised support for ongoing arbitrations seated in the State and for streamlined applications for the setting aside, recognition, or enforcement of foreign arbitral awards through its nomination of the High Court as the relevant court, and by having a designated arbitration judge (Mr Justice Barniville prior to his appointment to the Court of Appeal). This ensures both consistency and sector-specific knowledge in all international arbitration-related matters heard in the State on the part of the judiciary.

Mr Justice Barniville and his predecessors have delivered a series of judgments over the past decades that have consistently shown judicial support for international arbitrations conducted in this jurisdiction. This is manifested through an unwillingness to interfere in arbitral processes outside of very limited and well-defined exceptions, and includes a readiness to support impending and ongoing arbitrations.

Further, the courts have been willing to take active measures, such as the granting of mandatory stays on litigation proceedings in light of *prima facie* evidence of the existence of an arbitration agreement between parties.

Above all, the pro-arbitration attitude of the judiciary has been seen through its adherence to the narrow interpretation of the grounds of challenge to the recognition/enforcement of foreign arbitral awards, shared with traditionally arbitration-friendly jurisdictions like England and Wales, France and Switzerland. g

The second part of this article (next issue) will further explore why Dublin is the perfect legal seat for arbitration.

LOOK IT UP

- *Arbitration Act 2010*
- *New York Convention of the Recognition and Enforcement of Foreign Arbitral Awards*
- *UNCITRAL Model Law on International Commercial Arbitration*

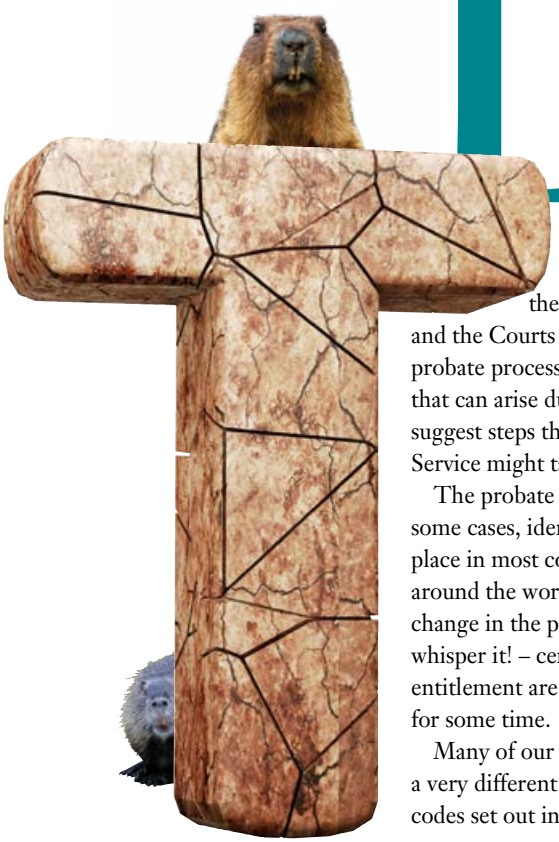
AT A GLANCE

- Most applications to probate offices come from solicitors – less than 10% are from personal litigants
- Problems with the current probate system include errors in applications, delays in processing resubmitted cases, limited resources, and the lack of a tracking system
- Solicitors reducing errors in applications would have the most significant impact

The Principal Probate Registry in Dublin experiences an error rate of over 60% in new applications for probate – dropping to just over 50% for second applications. **John Glennon** argues that solicitors need to play their part in reducing these rates

JOHN GLENNON IS A PROBATE OFFICER WITH THE COURTS SERVICE

GROUNDHOG DAY



This article aims to outline the role that the legal profession and the Courts Service play in the Irish probate process, outline some of the issues that can arise during the process, and suggest steps that solicitors and the Courts Service might take to improve the process.

The probate process is similar – and, in some cases, identical – to the systems in place in most common-law jurisdictions around the world. There has been very little change in the process over the years (or – whisper it! – centuries). Succession law and entitlement are well settled, and have been for some time.

Many of our continental neighbours have a very different process. The various civil codes set out in detail how, and to whom, assets are passed. Succession takes place seamlessly, and with very limited State intervention.

One aspect of the probate process that hasn't changed over the centuries is the reliance on paper at the core of the process. The trees of the world would probably be grateful for any change in that aspect. The Courts Service has been looking at technology to modernise the process, but no formal decision has yet been made in that regard.

The vast majority of applications for probate are made by solicitors. Less than 10% of applications are made by personal litigants. Intestacy applications have reduced steadily over the years, and now form less than 10% of all applications. Over 50% of

PIC: ALAMY

applications are now made to the Principal Probate Registry in Dublin. The District Probate Registries deal with the balance of applications.

In summary, the probate process is a long-established, paper-based system with well-established rules on entitlement administered through a State-funded series of offices.

Role of the probate offices

While probate offices have a variety of roles, the most important one is to assess applications submitted by solicitors. Staff are trained to assess applications by applying well-established laws and precedents. The assessment process is designed to ensure that the person applying is the person who, by law, is entitled to extract representation.

Establishing title in most cases is relatively straightforward, as the entitlement is clear. The probate officer or the relevant county registrar decides on entitlement, subject to an appeal to the High Court if there is any doubt.

The probate offices do not provide legal advice. The probate offices do not provide solicitors with the appropriate title. The probate offices do not pre-assess papers unless the application is complex.

The probate offices *do* provide guidance to solicitors in applications where the deceased died domiciled outside of Ireland and Britain. The probate offices *do* provide assistance to solicitors in complex cases, unusual cases, or rarely seen applications.

The resources of the offices are always stretched, and certain work has to be prioritised. At all times, priority is given to the processing of new applications. This is to ensure that there are enough applications on hand in which grants of probate or letters of administration can issue. To do otherwise would lead to a collapse in the entire system. This, of course, leads to delays in dealing with applications that are submitted on more than one occasion because of errors.

Current problems

So, what are the internal problems with the current probate system? I have already mentioned the delays in processing resubmitted cases.

It's impossible to provide a world-class

telephone service, correspondence service, and email service all at the same time. The resources just aren't there. The Dublin office alone receives well over 2,000 items of post per month. Our preference is to communicate by email, and when resources become scarce, email is prioritised.

We still receive considerable volumes of telephone calls, many of which are seeking information that is available elsewhere. Before ringing, solicitors should ask themselves whether the information could be obtained elsewhere, or whether it can be sought by means of an email.

There is a system for dealing with correspondence, most of which relates to applications already in the probate offices, or relate to new applications, and correspondence will always be dealt with.

There is no tracking system for applications, and it can be difficult to locate papers in a short period of time. This, I am sure, is frustrating for solicitors and for staff, but will not be resolved until an e-probate solution is in place.

We do not accept expedite applications. The reason is that the volume of expedite applications, if they were accepted, would make up over 50% of the grants issued every day – at least in Dublin. That would mean that the waiting times for applications where expedites weren't sought would double. It's a fairer system if all of the energies of the probate offices are directed towards assessing new applications, leading to an overall reduction in waiting times for all new applications. Managing expedite requests also adds another function to offices that are already stretched.

PIC: ALAMY

The role of the solicitor

The role of the solicitor is to take instructions from the client and, based on those instructions, to determine title and to submit a set of papers that will lead to the issue of a grant or letters of administration.

In advance of lodging papers, solicitors should ensure that the applicant is the person entitled, and ensure that the papers reflect that entitlement. In addition to their own training, solicitors have the resources of the Law Society available to them. There is the ever-present 'Mongey' (*Probate Practice in a Nutshell*), which I am not in the least embarrassed to say is my own first resource.

There are a number of well-regarded textbooks available for more detailed explanations of succession law. The Law Society also publishes excellent manuals on all aspects of probate and estate planning.

In the same way as I rely on my own colleagues, solicitors equally should not be embarrassed seeking advice or guidance from their colleagues.

Solicitors are obliged to ensure that all staff in their offices who are working on probate papers are appropriately trained and supported, be they qualified solicitors or legal executives.

> WE ARE WORKING ON IMPROVING OUR RESPONSE TO EMAILS AT PRESENT, AND THIS WORK WILL IMPROVE THE EXPERIENCE FOR SOLICITORS FOLLOWING UP ON CASES SUBMITTED TO THE PROBATE OFFICES. PARTICULAR FOCUS WILL BE PLACED ON EMAILS RELATING TO QUERIED CASES

THERE IS AN URGENT NEED TO REDUCE ERROR RATES SO THAT THE WAITING TIMES FOR APPLICATIONS CAN REDUCE TO A LEVEL THAT WILL SATISFY ALL OF THOSE PEOPLE RELIANT ON THE PROBATE SYSTEM

Papers should not be submitted unless they have been read through in advance of submission.

If errors occur in one application, those errors should not be repeated in subsequent applications. A former manager of mine had a policy of answering a question once – and it was up to the solicitor to remember the answer when confronted by the same question again. As the saying goes: 'Once is a mistake. Twice is a decision. More than that will not be forgiven.'

All lawyers should maintain precedents and understand the value of precedents. Probate offices keep detailed precedents and use them daily.

Improving the system

I hope that I have accurately set out the roles of probate offices and solicitors. It should be clear to anybody reading this article that the roles are interdependent. A well-structured, well-managed, well-resourced probate office with well-trained staff should be capable of processing relatively large volumes of applications.

High-quality applications with all of the relevant documentation included makes processing that bit easier.

There have been many changes introduced within probate offices, which were all designed to make the process easier to understand and easier to navigate. These changes have included:

- New form of oath and bond,
- Revised fee structure,
- Abolition of affidavits of market value,
- Reduction in the need for valuations,
- New Revenue Online System, and
- Clearer guidelines on issues, such as testamentary capacity.

While a considerable amount of work has been carried out on the probate pages on the Courts Service website, further work needs to be done to ensure that they are a more reliable and useful resource for solicitors when making applications to the probate offices.

We are still working on a system of work that best suits the post-COVID environment. I have already spoken about our preference for email to be used as the principal method of communication. We are working on improving our response to emails at present, and this work will improve the experience for solicitors following up on cases submitted to the probate offices. Particular focus will be placed on emails relating to queried cases.

Unacceptable error rates

I have actively pursued a policy of reducing the level of queries being raised by staff working in probate offices by setting parameters around query-raising, and by eliminating certain types of errors and, in other cases, reducing the number of queries raised on certain documents. Despite these changes, the error rate on papers submitted remains stubbornly high.

In Dublin at present, the error rate on new applications is running at over 60%. The error rate on papers submitted for a second time is over 50%. In my view, this level of error is unacceptable in a general sense. More importantly, it is artificially increasing the waiting time.

The waiting time is directly linked to the error rate. The higher the error rate, the longer the waiting period. Although I can't state this definitively, I believe that if the error rate were to reduce down to 20%, the waiting time would be nearer to one to two weeks.

The priority for probate offices is to process new applications. Resubmitted cases will take far longer to process.

The probate process itself has not changed much since the enactment of the *Succession Act*, but change has taken place within the probate offices in recent years. Aside from the development of an IT-based probate system, there may not be much change in the process itself from this point forward.

There is an urgent need to reduce error rates so that the waiting times for applications can reduce to a level that will satisfy all of those people reliant on the probate system.

The probate offices will look to see what further assistance can be provided through a more effective website. We will work on improving our communication processes using emails. We will continue to improve our internal processes.

Solicitors need to match that with a commitment to improve the quality of applications, which will reduce waiting times and make the overall probate experience a more satisfying one. It's in both our interests to make the necessary changes to reduce waiting times and, ultimately, to provide a more efficient system for the citizens of the State. g

AT A GLANCE

- Psychotherapeutic modes of supervision have been described as the 'gold standard' for psychological support for lawyers exposed to traumatic material
- The benefits of this type of supervision tend to relate to development or to protection, though there can be substantial overlap between both
- Interviews with legal practitioners reveal that supervision not only helps them cope, but also makes them better practitioners

A SAFE SPACE

Psychotherapeutic modes of supervision – already central to psychotherapeutic and counselling practice – are available to certain family-law practitioners in Britain. **Marc Mason** believes that lawyers work more effectively when they feel a sense of psychological safety

MARC MASON IS A SENIOR LECTURER AT WESTMINSTER LAW SCHOOL AND IS A COUNSELLOR IN PRIVATE PRACTICE (WWW.LAWYERTHERAPY.CO.UK)

When I began my career at the Bar, it was in the field of family law, with a caseload that was weighted towards child protection. From the outset, I was dealing with files and witnesses detailing acts that showed people at their worst. I read accounts of children being beaten, or evidence relating to them being sexually abused. I listened to parents' confessions of what they had done, and I listened to their fears of having their children taken away. I heard people who had once thought that they loved each other declare their hatred, and try to prove it through entrenched positions over the house, the bank account, or the venue at which they would hand over their children each week – often implicating me in these implicit vendettas.

Now, requalified as a therapist, I am required by my accrediting body to have regular supervision. I notice that I get enormous value from that hour

PIC: ALAMY

LAWYERS ARE EXPOSED TO CIRCUMSTANCES THAT CAN HAVE REAL IMPACTS ON THEIR MENTAL HEALTH. SUPERVISION CAN PROVIDE A SPACE TO EXPLORE THOSE CIRCUMSTANCES AND EXPERIENCES, FREE FROM THE JUDGEMENT AND STIGMA THEY MIGHT FEAR ELSEWHERE IN THEIR WORKING ENVIRONMENT

every fortnight with my supervisor, and I find myself wondering again – wouldn't lawyers find this valuable too?

The hour offers me opportunities for both protection and development. I'm often left feeling less stressed or negatively affected by the work, but also leave better able to communicate with my clients, to hear what they're saying to me, and to get a sense of what they might not be saying. In addition, I'm able to notice any patterns of behaviour between my clients and I that, otherwise, I might be too close to spot.

Role of supervision

Supervision is central to psychotherapeutic and counselling practice. In Britain, it is an ongoing requirement of practice for both trainee therapists and practitioners at all levels, including supervisors themselves. There are many models of supervision but, broadly, the practice involves elements of work review and professional development. It also involves learning through the supervisee's practice and through what could perhaps best be described as their 'self' – who I am when I'm with clients, how this affects them, how I feel when I'm with them, and how relational dynamics develop between us: these are all up for discussion in supervision.

It is, perhaps, this that distinguishes this approach the most. While some lawyers I've spoken to embrace this idea, I can also think of colleagues who I imagine wouldn't, on first blush, see this as relevant. But with some reflection, I think it becomes clear that it is – and must be. When I was in legal practice, I knew that any particular client would have got a different flavour of service from each of my colleagues in chambers. Solicitors know this, too, from their decisions around instructing counsel or referring to other colleagues, when they think about the best match for their client.

Because of these experiences, I was fascinated to see that psychotherapeutic modes of supervision are becoming available to lawyers – for example, the Association of Family Law Supervisors was recently launched in Britain to offer voluntary registration for those offering this type of supervision. I am interviewing some of the solicitors who are using these services as part of my wider research programme, looking at the psychology of legal practice. Already, some themes are emerging, both from existing research in this area and from the interviews.

Broadly, the benefits of this type of supervision can be thought of as either relating to development or to protection, although, of course, there is substantial overlap between these categories.

Becoming better practitioners

Solicitors I have interviewed so far have been unanimous in holding a strong view that supervision not only helps them cope, but also makes them better practitioners. This holds true both for those starting out in their careers and for those with decades of experience.

Common to all interviewees is the description of an experience where the client's behaviour or the lawyer/client relationship was confusing or difficult in some way for the solicitor. Supervision allows for exploration of these relationships, including why they might be arising – and strategies for either changing them or coping with them.

Interviewees also speak of a more general impact, where supervision allows them to develop their communication style and their way of being with the client. This allows the client, in turn, to feel heard and understood by their lawyer, and this has several benefits. Firstly, the client is more likely to trust the lawyer and disclose things that turn out to be really important to their case. Secondly, the solicitor can offer advice from a perspective that is human and transparent. By that, I mean that they are able to explain to the client their reasoning and motivation for their advice, and their wish for the client to follow a particular route, while at the same time acknowledging the client's own motivations and freedom to choose. Thirdly, and perhaps consequently, clients seem to start to recognise their solicitors as people and are more likely to recognise, in hindsight, circumstances where they chose not to follow the lawyer's advice, but would have benefited from doing so.

Impact protection

Supervision can also offer some protection against the impact of what is often difficult and demanding work. Some of these impacts are common to all members of the profession, while additional needs can be identified for those working with clients who might be expected to have suffered from traumatic events.

Significant work has been done, and is being done, to look at the way that the work that lawyers do affects their mental health and wellbeing. The work that has already been carried out has found that lawyers suffer disproportionately from stress, anxiety, depression, substance abuse, and suicidality (see James (2020) for a summary).

In Britain, the Junior Lawyers Division of the Law Society found that 48% of respondents experienced a mental-health problem in the month before their survey, and 60% had physical-health impacts from their mental ill-health.

In Ireland, an independent study commissioned by the Law Society in 2018 found that members frequently experience high levels of stress that negatively affects their mental health and wellbeing, with 57% describing 'very high' or 'extreme' levels of stress. The Law Society is also now engaging in its own 'Dignity Matters' survey, dealing with the important issue of bullying, harassment, and sexual harassment.

Globally, an International Bar Association (IBA) survey recently confirmed that wellbeing

> LAWYERS HAVE HIGHER RATES OF PESSIMISM, RISK AVERSION, AND SCEPTICISM, WHICH ALL LEAVE LAWYERS MORE SUSCEPTIBLE TO STRESS, DEPRESSION AND ANXIETY

> SUPERVISION NOT ONLY HELPS SOLICITORS COPE, BUT MAKES THEM BETTER PRACTITIONERS. THIS HOLDS TRUE BOTH FOR THOSE STARTING OUT IN THEIR CAREERS AND FOR THOSE WITH DECADES OF EXPERIENCE

is a concern to the profession, with wellbeing being particularly poor for women, those with disabilities, and ethnic-minority lawyers. These issues might be seen to be common to the profession as a whole, and relate to working conditions, practices, and cultures that place particular demands on solicitors.

Pervasive stigma

Sadly, research by Collier (2019) has also shown that there is pervasive stigma around disclosing mental-health problems in the profession, a finding supported by the IBA global survey. He also describes ongoing cultural issues around workloads, and personal tendencies towards perfectionism. This latter finding echoes other research, which has found that, as well as perfectionism, lawyers have higher rates of pessimism, risk aversion, and scepticism, which all leave lawyers more susceptible to stress, depression and anxiety.

These factors make compassion fatigue and burnout more likely, particularly for those working with clients who have, in some way, been exposed to trauma (see James). Family law, asylum law and criminal law are areas where it is easy to see how client experiences of traumatic events are commonplace and central to the work of lawyers. But they can often be found in other areas, such as housing, personal injury, and professional negligence.

Fleck and Francis, in their recently published book *Vicarious Trauma in the Legal Profession*, describe how being in the presence of those who are experiencing post-traumatic stress (for example, in the recounting of traumatic events) or how acting in a function similar to first responders (dealing with clients at the police station or in acute crisis) can lead to vicarious trauma – a cognitive change that leads us to see the world as inherently malevolent. This, in turn, can lead to burnout, compassion fatigue, and secondary traumatic stress. Other forms of indirect trauma can include the practitioner experiencing intrusive thoughts, images, or painful emotions. It is also important to note that these reactions are not indicative of something 'being wrong with' the practitioner, but rather can be seen as a normal response to an abnormal situation (James).

In these ways, lawyers are exposed to circumstances – either inherent to the working culture or in the particular experiences they explore with their clients – that can have real impacts on their mental health.

Gold standard

Supervision can provide a space to explore those circumstances and experiences, free from the judgement and stigma they might fear elsewhere in their working environment. Indeed, Fleck and Francis describe it as "the gold standard for psychological support" for lawyers exposed to traumatic material. It can allow the solicitor to become more aware of how the work is affecting them, to explore the support they might need, or to recognise the need for boundaries. It might also simply provide a space to work through and understand these experiences, which, in itself, provides sufficient support. All of these benefits are mentioned to a greater or lesser degree by those solicitors I have interviewed.

In summary then, supervision provides a safe, confidential, and non-judgemental space within a work context to significantly develop interpersonal skills, making lawyers more effective and more humane in their work. There are ethical arguments to be made for its use, as well as sound organisational arguments. For example, James cites research that lawyers work more effectively when they feel a sense of psychological safety.

Supervision offers a chance to work through issues that, in the long term, might otherwise lead to the lawyer suffering mental ill-health or increased stress and potentially lead to them leaving the profession. It seems clear that it is something that needs to be considered by organisations claiming to be trauma-informed practices – but also seems to be an important tool that promises to be part of a package that could address the important emerging issue of lawyers' poor state of wellbeing. g

LOOK IT UP

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THERE'S A NEW SHERIFF IN TOWN

Although Ireland is one of five member states that don't participate in the European Public Prosecutor's Office, the new body will have significant implications for the EU as a whole, writes **Joseph Maguire**

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

> IRELAND WILL CERTAINLY NEED TO CLOSELY WATCH ANY DEVELOPMENTS IN EPPO – AND AGREEING A WORKING ARRANGEMENT WITH EPPO WOULD BE A GOOD START

The author's views are personal and should not be construed as representing either the European Commission or the Chief State Solicitor's Office. See also the author's article 'Under the radar', in the October 2019 *Gazette*, p40

On 1 June 2021, a significant milestone in the development of EU criminal law and, in particular, the fight against cross-border fraud was achieved when the European Public Prosecutor's Office (EPPO) commenced its investigative and prosecutorial tasks.

Operating from new offices in John F Kennedy Avenue in Luxembourg (just around the corner from the Court of Justice and near the European Court of Auditors), EPPO is located in the heart of the EU district for justice that includes the protection of EU finances. This innovative and independent EU body also operates from the offices of the European Delegated Prosecutors located in the member states that participate in EPPO.

Commission vice-president Vera Jourová welcomed EPPO's commencement as a "strong signal in the fight against fraud, especially at a moment where Europe invests a lot of money in the recovery".

A fistful of dollars

Although Ireland is not one of the 22 participating member states of EPPO, Ireland can join at any time and, indeed, has transposed the connected *PIF Directive* (2017/1371) within the *Criminal Justice (Corruption Offences) Act 2018* and the *Criminal Justice (Theft and Fraud Offences) (Amendment) Act 2021*. The latter came into force on 14 April 2021 and includes an expanded definition of fraud affecting the Union's financial interests, encompassing VAT fraud and a new offence of misappropriation.

Anyone can now report a crime to EPPO via the 'Report a Crime' form on EPPO's website, so long as it affects the financial interests of the EU – a so-called 'PIF' offence (an acronym from French, *'La Protection des Intérêts Financiers de l'Union'*). EPPO is competent to investigate, prosecute, and bring to judgment the perpetrators of (and accomplices to) such offences committed after 20 November 2017 where committed:

- In whole or in part within the territory of one or several participating member states,
- By a national of a participating EU member state, or
- By a person subject to the EU staff regulations or conditions of employment.

This is provided for in articles 4, 22, 23 and 120 of the *EPPO Regulation* (2017/1939).

For non-participating member states – Ireland, Denmark, Poland, Hungary and Sweden (although Sweden is expected to join, perhaps next year) – OLAF (*Office Européen de Lutte Anti-fraud*, the European Anti-Fraud Office) will continue to play an important role in detecting, investigating, and preventing fraud with EU funds. However, unlike EPPO, it has no prosecutorial function. It is up to the national authorities to decide what action to take after OLAF completes its administrative investigations, when it may issue judicial recommendations to the national prosecution authorities to pursue indictments.

The searchers

On 5 July 2021, a working arrangement was signed between OLAF and EPPO to establish close cooperation in the exercise of their investigative and prosecutorial mandates, in particular through the exchange of information and mutual support, including personal data. On 23 December 2020, OLAF's legal framework had already been revised by Regulation 2020/2223 (amending Regulation 883/2013) to facilitate cooperation with EPPO.

PIC: ALAMY/GAZETTE STUDIO

Particularly in EPPO's early years of operation, OLAF is ideally equipped to assist EPPO with its expertise, forensic analyses, and as a privileged source of information for EPPO. Complementary investigations by OLAF will also be possible, provided that they do not duplicate EPPO's work.

Hence, while EPPO is certainly the most interesting Union office to operate in the criminal law sphere across the EU, with unprecedented prosecutorial powers, EPPO will benefit from partnerships with well-established EU institutions, agencies, and offices – namely the European Court of Auditors (with which it signed a working arrangement on 3 September 2021), Europol (January 2021 working arrangement), Eurojust (February 2021 working arrangement), as well as OLAF.

True grit

In her inaugural speech as the European chief prosecutor, Laura Codruta Kövesi stressed that fraud with public funds is "a serious threat to democracy". On the commencement of EPPO's investigative and prosecutorial tasks on 1 June 2021, she pointed out that EPPO's "decisions will directly affect the fundamental rights of European citizens. We're the first really sharp tool to defend the rule of law in the EU."

It is worth highlighting that article 4(g) of Regulation 2020/2092 (on a general regime of conditionality for the protection of the Union budget) specifically provides that breaches of the principles of the rule of law shall concern "effective and timely cooperation with OLAF and, subject to the participation of the member state concerned, with EPPO in their investigations or prosecutions pursuant to the applicable Union acts, in accordance with the principle of sincere cooperation".

In this regard, the European chief prosecutor has been critical of Slovenia's delays relating to the appointment of European-delegated prosecutors.

High noon

While Hungary and Poland are not participating in EPPO, rule-of-law issues in those member states are very much in the news. At the time of writing, both countries await a positive assessment of their recovery and resilience plans in order to allow them to obtain substantial EU funds to deal with the consequences of the COVID-19 pandemic.

Hungary, however, signed a working arrangement with EPPO on 6 April 2021 to facilitate the practical implementation of the existing legal framework for judicial cooperation in criminal matters, to exchange strategic information, and to establish other forms of operational and institutional cooperation. Poland has also taken some preparatory steps to cooperate with EPPO, such as drafting changes to its criminal procedure code that could assist EPPO by availing of various EU instruments for judicial cooperation in criminal matters.

Ireland will certainly need to closely watch any developments in EPPO – and agreeing a working arrangement with EPPO would be a good start. The fine new building in Luxembourg that is home to EPPO has the potential to make a real difference in protecting EU funds against criminality and, at this early stage of EPPO's operations, it is an opportune time for Ireland to become involved. g

RIGHT OF AUDIENCE

In April, the Supreme Court held that a visiting German lawyer could be heard by that court, despite the lawyer's non-compliance with the strict EU conditions for trans-EU representation. **Duncan Grehan** explains

DUNCAN GREHAN IS A MEMBER OF THE LAW SOCIETY'S EU AND INTERNATIONAL AFFAIRS COMMITTEE

IN RELATION TO A VISITING EU LAWYER APPLICANT FOR A RIGHT OF AUDIENCE AND REPRESENTATION HERE, IT IS NECESSARY TO ENSURE COMPLIANCE WITH SUPREME COURT PRACTICE DIRECTION 11

News from the EU and International Affairs Committee. Edited by TP Kennedy, Director of Education

On 23 April 2021, in *Klohn v An Bord Pleanála* ([2021] IESC 30), the Supreme Court held that a visiting German lawyer could represent, appear, advocate and be heard by that court on behalf of the German national appellant, despite the lawyer's non-compliance with the strict legal conditions to her EU, international, and domestic-law right to provide legal services before the courts of an EU member state. The decision is in line with fundamental rights of access to justice, to the courts, and to an equivalent and effective remedy and fair hearing, which Ireland's laws and its courts must provide.

The exceptional decision was reached despite the advices requested and submitted to the court by the notice parties – the Law Society, the Bar and the Attorney General – that the application omitted basic required proofs. The law requires a visiting EU-state qualified lawyer, who is not established in Ireland and who wishes to provide this type of service, to aver and exhibit facts and qualification documents by affidavit filed with the Supreme Court registrar to prove eligibility to qualify, and also to work in conjunction with a local solicitor and/or barrister accountable to the authorised authority (the Law Society of Ireland, the Benchers of the King's Inns, or the superior courts). The lawyer in this case did not do this but, for exceptional reasons and with regard to the ruling of the Court of Justice of the EU (CJEU) that an exception arose that the Supreme Court must assess, she has been permitted to provide the required services and to appear and advocate for her client.

Conditional fundamental rights

The lawyer's rights to freedom of movement and to represent a client before the courts of a host country other than her home country where she is qualified are basic.

The fundamental right to freedom of movement is a core right that is part of public international law (*European Convention on Human Rights*, protocol 4, article 2; *EU Charter of Fundamental Rights*, article 45; *Universal Declaration of Human Rights*, article 13).

The convention provides a right to a fair trial without unfair delay (article 6) and a right to an effective remedy (article 13). This is subject to the principle of a margin of appreciation by which the national authority (such as a regulator or court) may engage its system of regulation, which must respect these rights proportionate to the public interest. The charter provides equivalent rights (article 47) to all EU nationals, subject to the principle of a margin of discretion to the local member state authority in selecting the regulatory regime of implementation, application, and interpretation always having regard to the public interest.

Article 46 of the convention makes the decisions of the European Court of Human Rights (ECtHR) binding on the contracting states. Article 260 of the *Treaty on the Functioning of the EU* sets out a similar rule.

By the *ECHR Act 2003*, section 2, the Irish courts must interpret and apply the law in a way compatible with the State's duties under the convention. Section 3(1) provides that "every organ of the State shall perform its functions in a manner compatible with the State's obligations under the convention's provisions" (a breach gives an individual a right to claim damages within one year). Section 4(a) requires the Irish courts to take judicial notice of the judgments of the ECtHR. The CJEU has identified a similar principle as EU law.

This interpretative obligation is qualified by the *contra legem* rule, as explained in Case C-105/03, *Pupino* (at paragraph 47): "The principle of conforming interpretation cannot serve as the basis for an interpretation of national law *contra legem*. That principle does, however, require that, where necessary, the national court considers the whole of national law in order to assess how far it can be applied in such a way as not to produce a result contrary to that envisaged [by the relevant EU law]".

PIC: SHUTTERSTOCK

Thus, when national law conflicts with EU law, the latter prevails. This principle is incorporated into article 29.4.6 of the Constitution. (Worryingly for the architecture of the EU, this principle of EU law in recent times appears not to have been accepted by the superior courts of Poland, Germany and Belgium.)

So, while the national authority selects how the transposition into local law of its international law duties is to be done, it must not conflict with those duties. (This is also generally in line with how EU directives are distinguishable from EU regulations – the former being implemented as the local member state authority selects; and the latter having direct effect, irrespective of any existing local implementing regulations.)

SPECIALIST VISITING LAWYERS WITH EXPERIENCE OF SPECIALIST IRISH PROCEDURAL LAWS MAY EXCEPTIONALLY BE PERMITTED TO ADVOCATE FOR THEIR CLIENT BEFORE THE SUPERIOR COURTS OF IRELAND WITHOUT WORKING IN CONJUNCTION WITH AN ESTABLISHED IRISH QUALIFIED LAWYER

Movement of lawyers

EU law distinguishes and regulates EU lawyers' movement rights across the EU by reference to establishment rights or to the temporary provision of legal services. The entitlement of a visiting lawyer to appear before the courts here is governed by:

- The *European Communities (Lawyers Establishment) Regulations 2003* (SI 732/2003) which transposed the *Lawyers Establishment Directive* (98/5/EC), or
- The *European Communities (Freedom to Provide Services) (Lawyers) Regulations 1979-2015* (as amended from time to time to extend the listing of recognised member state lawyer titles, such as 'solicitor' or '*Rechtsanwalt*'), which transpose the 77/249/EEC *Lawyers Services Directive* into Irish law.

Ancillary to this regulatory structure is Directive 2005/36/EC (the *Mutual Recognition of Qualifications Directive*), enabling EU lawyers the freedom to move and practise in the EU 27 states under their home and host countries' titles, subject to conditions being met. It works to aid the *Establishment* and *Lawyers Services Directives* and to get recognition of the qualifications for immediate establishment under the professional lawyer title of the host member state.

As article 6 of the *Establishment Directive* makes clear, the lawyer "shall be subject to the same rules of professional conduct as lawyers practising under the relevant professional title of the host member state in respect of all activities he pursues in its territory".

'Visiting lawyer', as opposed to an established lawyer, is defined by 2(1) of the 1979 *Services Regulations* and requires mandatory details, among other things, for verification of qualification by affidavit and that (s)he works in conjunction with a qualified Irish lawyer, which affidavit is then to be lodged with the Supreme Court registrar.

Right to represent

The Supreme Court ruling in *Klohn* was aided by the CJEU replies to questions it had referred to clarify (judgment dated 10 March 2021 in Case C-739/10, *VK v An Bord Pleanála*), in which the CJEU concluded, in principle, that the Irish regulation is not in breach of European law. Having reviewed detailed written submissions from the three notice parties, the Supreme Court followed the *contra legem* principle and made an exception to the general Irish law and also to the transposed EU law on who may represent, advocate, appear and be heard by the Supreme Court.

It is for the national courts to assess if the conditions to any remedy undermine the core of the convention and charter, the right of access to justice, and that in doing so there is proportionality in its decision. The domestic court must have regard to the outlook of the case succeeding, the importance of what is at stake, the complexities of applicable law and of procedure, the applicant's capacity to represent himself effectively, and the cost risks (see CJEU ruling in Case C-279/09, *DEB GmbH*).

The regulatory system on entitlement to representation in court across the EU states can differ. Under German (Case 427/85 [1988]) and French law (Case C-294/89 [1991]), a litigant may choose to be represented in certain circumstances by a person who is not a qualified lawyer. In Ireland, the "fundamental rule is that only persons who enjoy a right of audience before our courts are the parties themselves, when not legally represented, a solicitor duly and properly instructed, and counsel duly and properly instructed by a solicitor to appear for a party" (Fennelly J, *In re Coffey* [2013] IESC 11; see also *Coffey v EPA* [2013 IESC 31], [2014] 2 IR 125, as cited in the Attorney General's submissions, paragraph 47). Fennelly J explains: "The limitation of the right of audience to professionally qualified persons is designed to serve the interests of the administration of justice and thus the public interest." Further: "The courts have, on rare occasions, permitted exceptions to the strict application of that rule, where it would work particular injustice."

In Ireland, legal representation before the courts is not mandatory, save for companies (but even the 1969 *Battle* principle affecting companies was reaffirmed in 2018 by the Supreme Court in *AIB v Aqua Fresh Fish* ([2018] IESC 49) "except in exceptional circumstances" undefined). Lay litigants here must represent themselves and cannot be represented, unlike in Germany or France, by a non-lawyer. They can get assistance from a person not entitled to represent them (a 'McKenzie Friend'), but that person has no right to act as an advocate nor conduct the litigation in any way (see High Court Practice Direction 72).

In relation to a visiting EU lawyer applicant for a right of audience and representation here, it is necessary to ensure compliance with Supreme Court Practice Direction 11 (22 May 2006, on the *European Communities (Freedom to Provide Services) (Lawyers) Regulations 1979-2004*), which lists the procedure by affidavit sworn in Ireland by which a visiting lawyer which should establish her qualifications, as per regulation 7 of the 1979 regulations.

The *Klohn* decision

The applicant German lawyer, Rain Barbara Öhlig, had not complied with the strict legal requirements to meet eligibility: she failed to adequately detail and vouch in her affidavit her

professional qualification and its provenance, nor did she identify any local Irish lawyer accountable to the Irish courts and in conjunction with whom she would work (the latter condition is set by article 5 of the *Services Directive* and transposed into Irish law by regulation 6 of the 1979 *Services Regulations*).

She had, for a lengthy period, been a registered established lawyer in Ireland but, before the application, she had been deregistered. She had been involved in a number of Irish court hearings concerning matters of environmental and related laws. She is qualified in Germany, although she offered little evidence of her establishment there. She had already represented Mr Klohn in this case at various stages of its processing through the tiers of the Irish courts, and also twice before the CJEU in relation to EU law questions in this matter, referred to it by the Irish courts.

In its decision, the Supreme Court cited the 10 March 2021 judgment of the CJEU:

- "That, however, the application of the requirement to appear in court accompanied by an Irish qualified lawyer, in all cases and without exception, would be in breach of European Union law, such that the requirement in question must be disapplied in cases where it goes beyond what is necessary in order to attain the objective of the proper administration of justice, specifically in cases where the visiting lawyer, by virtue of his or her professional experience, is capable of representing the litigant in the same way as a lawyer who practises habitually before the Irish courts,
- That it is a matter for the national court concerned ... to make an assessment as to whether the circumstances of the case in question are such that the national measure must be disapplied on that basis."

The notice parties had taken a neutral view in their submissions and left it to the Supreme Court to assess the justification in making an exception to the law's requirements. The Supreme Court took on board the requested written submissions filed by Öhlig in support of her being an exception to the law and, in those circumstances, having regard to its duty to ensure that EU law and its interpretation principles prevail (the comparative ECHR laws and principles were not raised), and having been placed on notice at an earlier stage of the proceedings of the Irish laws by the written submissions of the three notice parties, the Supreme Court decided: "In those circumstances, it is the court's assessment that it is appropriate that Ms Öhlig be permitted to represent Mr Klohn without the need to be accompanied by an Irish qualified lawyer."

Legem before wicket

Specialist visiting lawyers with experience of specialist Irish procedural laws may exceptionally be permitted to advocate for their client before the superior courts of Ireland without working in conjunction with an established Irish qualified lawyer.

On 3 August 2021, in a fourth Supreme Court judgment in these lengthy proceedings of the plaintiff German national/Ireland resident Volkmar Klohn, which he commenced well over a decade ago, Clarke CJ awarded him his full costs of the appeal, including those associated with the hearing concerning his legal representation, and also the two references to the CJEU. The taxing master had earlier adjudicated costs against him of €86,000 in the underlying environmental proceedings, which he had lost. But, in its first reference, the CJEU then held that those costs must be assessed on a 'not prohibitively expensive' (NPE) basis.

Clarke CJ, therefore, overturned the taxed assessment sum, but not the order, and lowered dramatically the ordered costs to €1,250. He took into account the plaintiff's financial position and worth, in line with the caveat pointed out by the CJEU (paragraph 71 of its first judgment) on the Supreme Court's duty to interpret national law in conformity with EU law "insofar as the force of *res judicata* attaching to the decision as to how costs are to be borne, which has become final, does not preclude this, which it is for the national court to determine".

This is yet another case where the EU *contra legem* principle to be followed by national courts is not absolute. It is subject to the national court's margin of appreciation and determination in cases that have become *res judicata*, "even where it is clear that European Union law was misapplied or wrongly interpreted in the case in question" (Clarke CJ, paragraph 3.2). g

> THE DECISION IS IN LINE WITH FUNDAMENTAL RIGHTS OF ACCESS TO JUSTICE, TO THE COURTS, AND TO AN EQUIVALENT AND EFFECTIVE REMEDY AND FAIR HEARING, WHICH IRELAND'S LAWS AND ITS COURTS MUST PROVIDE

CONVEYANCING COMMITTEE

FAMILY LAW DECLARATIONS AND REGISTRATION OF TITLE – A REMINDER AND UPDATE

The Conveyancing Committee receives regular queries from practitioners about the best conveyancing practice in relation to family-law declarations since the PRA stopped reviewing them as part of its registration procedure.

Despite the fact that the PRA does not review the situation regarding family law as part of the registration procedure, the committee is of the opinion that, in order to discharge their duty of care to purchasers, solicitors should continue to ensure that they obtain family-law declarations in the appropriate format in every conveyancing transaction, and furnish these to the PRA when applying for registration of their client's deed.

In *Guckian v Brennan* ([1981] IR 478), the High Court held that purchasers are entitled to rely on the register as conclusive evidence of the title of the owner of property, as is made quite clear by section 31 of the *Registration of Title Act*. That case was a test case on foot of a vendor and purchaser summons, backed by the committee, to prevent the growing practice at that time of solicitors seeking family-law documentation in relation to previous transactions, instead of relying on the PRA register as conclusive evidence.

In that case, the judge said that the Registrar of Titles had a duty to register only valid transfers and, in the circumstances, it is still the committee's recommendation that family-law declarations are essential to registration of title, and solicitors should continue to lodge them in the PRA with applications for registration. The committee is of the firm opinion that the PRA is not correct to elect to take the view that purchasers' solicitors are responsible for ensuring that all is in order in relation to family-law documentation and that it, the PRA, may rely on that assumption to discharge its duty to register only valid transfers.

The committee has been asked what a solicitor is to do in regard to prior family-law documentation when preparing a contract for sale. The committee is quite clear that a contract for the sale of registered land should be prepared on the basis that the purchaser will be entitled to rely on the conclusiveness of the register where the vendor is registered as owner in the Land Registry, and a purchaser's solicitor should not seek any prior family-law documentation.

The position is different if the vendor of a registered property is selling as the person entitled to be registered as owner. If the transfer to the vendor has not been registered in the Land Registry, the purchaser should inquire into the family-law documentation that the vendor has relied on when purchasing.

If the property is the subject of a first registration application that has not been completed, the purchaser's solicitor should inquire into the family-law status of all relevant prior transactions as part of the normal investigation of the Registry of Deeds title to the property.

The committee has also been asked what a purchaser's solicitor should do with the prior family-law documentation when the purchaser has been registered as owner in the Land Registry. The committee had previously advised that such documentation should be retained with the title documentation. The committee has reconsidered this view, and now believes that prior family-law declarations should be retained by the purchaser's solicitor, rather than being included with the title documentation, where it might be discarded as being no longer relevant. This is because the purchaser is the party who may need it in the case of some issue arising in that regard. The purchaser's solicitor should keep such documentation with the conveyancing file for the recommended period before shredding. The period currently recommended by the Law Society for retention is 13 years, but practitioners may have their own policies.

CONVEYANCING COMMITTEE

CONVEYANCING SEARCHES AND GDPR

Statutory data-protection duties apply to solicitors, as data controllers, as they apply to other individuals and companies processing personal data.

In processing the personal data of third parties (for example, the other party to a conveyance), solicitors need to be clear on the legal basis for the processing.

When personal data is furnished to law searchers to carry out conveyancing searches on closing, law firms should bear in mind that all controllers who engage processors to process personal data on their behalf are obliged to enter into a data-processing contract, and article 28(3) of the GDPR sets out the terms that must be stipulated in the contract.

You should ensure that any data-processing contract with your law searchers to which you are a party is up to date and fully in compliance with the GDPR, and that it contains, at a minimum, the provisions that are prescribed and mandatory under article 28(3) GDPR.

Law firms should identify processors carrying out data processing on their behalf, and ensure that they undertake appropriate due diligence. The Law Society has published guidance and templates which may be of assistance at www.lawsociety.ie/solicitors/regulations/data-protection. There is also guidance and resources on the Data Protection Commissioner's website, www.dataprotection.ie.

CONVEYANCING COMMITTEE

LAND REGISTRY FEE EXEMPTION FOR E-CHARGES

REGISTRATION FEE FOR LAND REGISTRY CHARGE, CREATED THROUGH E-REGISTRATION SYSTEM, REDUCED TO €0

From 1 January 2021, for a period of three years, an application to register a charge using the Property Registration Authority (PRA) eRegistration system is exempt from Land Registry fees. This fee incentivisation initiative is designed to encourage use of the eRegistration system by conveyancing practitioners. The previous fee of €175 is reduced to €0 when the charge is created through the system, which can be accessed at www.eregistration.ie.

The PRA announced the fees exemption pursuant to SI 544/2020 – *Registration of Deeds and Title Act 2006 (Fees) Order 2020*.

Using the eRegistration system practitioners can:

- Correspond electronically with the PRA,
- Use information directly from the digital Land Register,
- Circulate documents in a secure workspace,
- Pay fees by variable direct debit,
- Lodge better-quality applications, leading to fewer application queries/rejections by the PRA, and
- Ensure faster completion of registration.

The measure applies to charges of an entire folio only (Form 51) and is not available for charges over part of a folio.

Deeds of transfer for entire folios can also be created in the system, and the Form 17 can be auto-populated. Both the transfer and charge must be printed and executed with wet signatures, and then lodged as normal before a pending dealing will appear on the folio.

eRegistration is separate to the landdirect.ie service and, hence, practitioners who are not already on the system will need to apply for access rights by completing the application form. There are two stages to using the system, and these are set out in the user guide available at www.eregistration.ie/documents/user_guide_processing_applications_dec_13.pdf.

Use of the full functionality allows for the issuing of a dealing number before the paper application is lodged in the Land Registry; however, the application itself will not be processed until the Land Registry has received the transfer, charge, and Form 17, and any fees have been approved.

However, as Form 51 charges are generated by lenders, it puts the onus on their legal teams to make use of this functionality.

CONVEYANCING COMMITTEE

EASEMENTS INFORMATION BANK

In order to assist those seeking guidance and information on easements, the Conveyancing Committee has pulled together the main resources, so that they are all easily accessible in one location.

You can link to this information bank by clicking on the link 'Easements Information Bank – resources on prescriptive easements' in any of the following tabs/subpages of the committee's webpage:

- Current issues,
- News and events, or
- Resources.

This repository of materials will be added to from time to time as additional resources become available.

GUIDANCE AND ETHICS COMMITTEE AND YOUNGER MEMBERS COMMITTEE

TEN STEPS TO USING SOCIAL MEDIA

1. What is social media? Social media refers to any form of internet-based network or application (app) where users can create, share, and interact with each other's content. Well-known examples include Facebook, Instagram, Twitter, YouTube, Snapchat and LinkedIn.

2. Recognise the benefits. Social media can be an effective way to market and advertise your firm and the services you provide. Using social media can increase people's awareness of your firm by reaching a wider audience than more traditional media outlets. You can optimise your firm's presence on internet-based searches through social-media activity, allowing potential clients to find you online quicker and easier.

3. Be aware of the shortcomings. Content published on social media is generally publicly available and may not always be easily removable. Even where a firm attempts to remove published content, it might be possible for a third party to retain photos of that content and publish it separately. In general, a firm will not be able to control comments and replies to content from third parties – some of which might be critical of the content or the firm.

4. Understand your audience. Different demographics tend to use different social-media platforms. For example, LinkedIn is generally used by professionals, while Snapchat is generally used by teenagers and younger people. The message you wish to convey and the audience you wish to reach should inform which social-media platform(s) you use. By doing some research, you will learn which demographics use which platforms and what type of content is most popular. One of the advantages of using social media is that a new demographic of potential clients (which would otherwise have missed you) may become aware of your firm.

5. Develop your professional profile. Social media can also be used by individual solicitors who want to demonstrate their expertise in a particular practice area or are seeking new employment opportunities. For example, LinkedIn is often used by employers and recruiters to approach potential candidates and to advertise vacancies. However, you should also consider what you publish on other social-media platforms (especially more personal or informal ones), as potential employers and clients may see any publicly available profile of you across various social-media platforms.

6. Set social-media goals and objectives. As part of establishing a social-media presence, firms should consider what objectives they would like to achieve by using social media. For example, social-media activity can be used as a tool for attracting potential clients to your firm's website. Having a branded website with links to it across your social-media profiles is a good start. Your firm's website should be mobile friendly and easy to navigate.

7. Track your performance. Firms can measure the effectiveness of their social-media activity by tracking the level of interest their content attracts. Many social-media platforms provide detailed analytics to business users, which include how many times a piece of content was viewed and how many users clicked through to the business website from a social-media platform. It can be difficult to measure a general increase in brand awareness, but the business analytics are very good indicators.

8. Getting the most out of it. Encourage staff to partake in the firm's social-media strategy by creating a content plan and timetable for your firm's blog and social-media platforms. Postings should contain new, useful, and relevant content – for example, your firm's achievements, news, recent judgments, and changes in the law. Regular social-media activity keeps your firm in the minds of potential clients.

9. Compliance. The same ethical and legal considerations that solicitors are required to follow in their day-to-day work also applies to their conduct online. For example, considerations regarding client confidentiality, data protection, and defamation all apply to any content published on social media. The advertising of legal services regulations also applies to your firm's social-media profile and postings. If your firm is active on social media, you should have a social-media policy, which should include items such as who will operate the firm's social-media accounts and the process for deciding what content is published.

10. Keeping up to date through social media. Social media can be a quick and easy tool for solicitors to keep up to date with legal developments and case law. Various organisations – such as the Law Society, Courts Service and the Workplace Relations Commission – have social-media accounts and regularly publish relevant updates for solicitors. The Law Society also publishes the *Legal eZine for Members*, which contains helpful summaries of the latest news on various legal topics. g

WILLS

Bell, Helen Monica Mary (otherwise Mona Bell) (deceased), late of 28 Hastings Street, Ringsend, Dublin 4, who died on 20 September 2019. Would any person having knowledge of the whereabouts of any will made by the above-named deceased, or if any firm is holding same, please contact Regina O'Brien, Ó Scanaill & Company, Solicitors, Columba House, Airside, Swords, Co Dublin; tel: 01 813 7500, email: rob@scanlaw.ie

Byrne, Eamon (deceased), late of 2 Convent Road, Wicklow Town, Co Wicklow, and formerly of 88 St Begnet's Villas, Dalkey, Co Dublin. Would any person having knowledge of the whereabouts of any will made by the above-named deceased, who died on 10 August 2021, please contact Patrick O'Toole, Solicitors, 5 Church Street, Wicklow Town, Co Wicklow; DX 46 006 Wicklow; tel: 0404 68000, email: reception@patrickotoolesolicitors.ie

Churm, Christopher Ignatius (orse Christy) (deceased), late of 16 Ravensdale Close, Kimmage, Dublin 12, also of 49 Eton Square, Terenure, Dublin 6, and also of 87 Beechwood Avenue Lower, Ranelagh, Dublin 6, and formerly of Lisalway, Castleplunkett, Castlerea, Co Roscommon, who died on 19 August 2021. Would any person having knowledge of a will made by the above-named deceased, or if any firm is holding same, please contact Tom O'Grady Solicitors, Market Square, Mountrath, Co Laois; tel: 057 873 2214, email: tomogradysolicitors@gmail.com

Cody, Catherine (otherwise Kay) (deceased), late of 4 Windermere Court, Bishopstown, Cork, who died on 20 August 2021. Would any person having knowledge of the whereabouts of any will made by the above-named deceased, or if any firm is holding same, please contact Regina O'Brien, Ó Scanaill & Company, Solicitors, Columba House, Airside, Swords, Co Dublin; tel: 01 813 7500, email: rob@scanlaw.ie

Dooley, Daniel J (deceased), late of Cullane North, Ballyanders, Co Limerick, and formerly Knocklong, Co Limerick, who died on 26 June 2021. Would any solicitor or person having knowledge and details of a will made by the above-named deceased please contact Claire Tuohy, Holmes O'Malley Sexton Solicitors LLP, Bishopsgate, Henry Street, Limerick; tel: 061 445 566, email: claire.tuohy@homsassist.ie

Doran, Patrick (deceased), late of Tomacork, Carnew, Co Wicklow, who died on 16 May 2021. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Pauline O'Toole, solicitor, Main Street, Carnew, Co Wicklow; tel: 053 942 3596, email: info@otoolesolicitors.com

Dwyer, Miriam (Mary) (née Toner) (deceased), late of 26 Emmet Road, Inchicore, Dublin 8, who died on 22 September 2019. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Mrs Anna Paton, 77 Argyle Gardens, Upminster, Essex, RM14 3EX, United Kingdom; tel: 00 44 1708 609 606 or 00 44 77 10 20 43 36 (mobile), email: anna.paton@hotmail.co.uk

Egan, Delia (deceased), late of Upper Mace, Claremorris, Co Mayo, and formerly of Aughtaboy, Claremorris, Co Mayo, who died on 26 May 2021 at The Queen of Peace Nursing Home, Knock, Claremorris, Co Mayo. Would any person having knowledge of the whereabouts of any will made or purported to have been made by the above-named deceased, or if any firm is holding same, please contact P O'Connor & Son, Solicitors, Swinford, Co Mayo; tel: 094 925 1333, email: law@poconsol.ie

Gorman, James Christopher (deceased), late of 165 Griffith Avenue, Drumcondra, Dublin 9, who died on 3 August 2021. 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 O'Donohoe Solicitors, 11 Fairview, Dublin 3; tel: 01 833 2204, email: amcloughlin@odonohoes.com; ref: MOD/AML

Henderson, Barbara (deceased), late of 16 Wellpark Avenue, Drumcondra, Dublin 9, who died on 2 April 2020. 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 Brabazon Solicitors, 4 Raheny Shopping Centre, Howth Road, Raheny, Dublin 5; tel: 01 831 2466, email: tom@brabazonsolicitors.ie

RATES

PROFESSIONAL NOTICE RATES

RATES IN THE PROFESSIONAL NOTICES SECTION ARE AS FOLLOWS:

- **Wills** – €155 (incl VAT at 23%)
- **Title deeds** – €310 per deed (incl VAT at 23%)
- **Employment/miscellaneous** – €155 (incl VAT at 23%)

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

ALL NOTICES MUST BE PAID FOR PRIOR TO PUBLICATION. ALL NOTICES MUST BE EMAILED TO catherine.kearney@lawsociety.ie and PAYMENT MADE BY ELECTRONIC FUNDS TRANSFER (EFT). The Law Society's EFT details will be supplied following receipt of your email. **Deadline for November 2021 *Gazette*: 20 October 2021.**

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

Karicos, Henrietta (deceased), late of 3 Sackville Court, Blessington Street, Dublin 7. Would any person having knowledge of any will made by the above-named deceased please contact Mallon & Co, Solicitors, Station Master's House, 16 Station Road, Maghera, BT46 5BS; tel: 00 44 028 7964 2670

Kavanagh, John (deceased), date of birth: 17/9/1971, died 27/7/2021, late of 342 Orwell Park Close, Templeogue, D6W (also 89 The Crescent Building, Park West, D12). Would any person having knowledge of any will made by the above-named please contact Deborah Ray; tel: 087 974 8292, email: deb.ben@hotmail.com

Kelly, Edward Michael (deceased), late of 242 St James Road, Greenhills, Dublin 12, who died on 20 May 2020. Would any person having knowledge of any will made by the above-named deceased please contact Johnston Solicitors, 306 Ballyfermot Road, Ballyfermot, Dublin 10; email: info@johnstonsolicitors.ie

McDonagh, Elizabeth (deceased), late of Bundara (also Bun Daire), Kinnegad, Co Westmeath, and late of Newbridge, Co Kildare, who died on 1 August 2021. Would any person having knowledge of the whereabouts of any will executed by the above-named deceased please contact Hamilton Sheahan and Company, Solicitors, Main Street, Kinnegad, Co Westmeath; DX 235001 Kinnegad; tel: 044 937 5040, email: roisin@hamiltonsheahan.ie

McGarry, Anthony (otherwise Tony) (deceased), late of 66 Lakelands Avenue, Stillorgan, Co Dublin. Would any person having knowledge of a will made by the above-named deceased, who died on 18 June 2021, please contact Smith Foy & Partners, Solicitors, 59 Fitzwilliam Square, Dublin 2; tel: 01 676 0531, fax 01 676 7065, email: anne.kelleher@smithfoy.ie

McKenna, Kevin (deceased), late of 6 Old Market Green, Balbriggan, Co Dublin, who died on 16 July 2021. Would any person holding or having knowledge of a will made and executed by the above-named deceased please contact McGrady & Company, Solicitors, 28 Drogheda Street, Balbriggan, Co Dublin; DX 96005; tel: 01 841 2966, email: info@mcgrady.ie

Madden, Albert (deceased), late of Townaghbrack (orse Townabrack), Monasteraden, Co Sligo, who died on 6 March 2021. Would any person having knowledge of the whereabouts of any will made by the above-named deceased, or if any firm is holding same, please contact Kenneth McDonnell, solicitor, New Street, Ballaghaderreen, Co. Roscommon; DX 131 006 Ballaghaderreen; tel: 094 986 1511, email: info@kennethmcdonnellsolicitors.ie

Murphy, John (deceased) (medical practitioner), late of 4 Seaview, Sea Road, Blackrock, Dundalk, Co Louth, and who practised at 58 McSweeney Street, Dundalk, Co Louth, who was born on 6 November 1962 and who died on 28 August 2019. Would any person having knowl-

LEGAL PRACTICE FOR SALE

Sole principal of well-established thriving and progressive firm with wide client-base business, mainly in the areas of personal injury litigation, conveyancing (both residential and non-residential) and probate, selling practice which is situated in the North East in purpose-built office.

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Reply to box no 01/09/2021 (c/o *Law Society Gazette*, Blackhall Place, Dublin 7)

edge of any will made by the above-named deceased please contact McArdle & Company LLP Solicitors of 20 Seatown Place, Dundalk, Co Louth; email: sharon@mcardleandcompany.ie

O'Connell, John Joseph, (deceased), late of Coolroemore, Banteer, Co Cork, and 56 Ramsden Street, Clifton Hill, Melbourne, Victoria, Australia, and 16 Silver Ridge Road, Point Lonsdale, Victoria 3068, Australia, who was born on 14 September 1926 and who died on 29 November 2020. Would any person having knowledge of any will made by the above-named deceased please contact Dan O'Connor, James Lucey & Sons LLP Solicitors, Kanturk, Co Cork; tel: 029 50300, fax: 029 50738, email: dan@luceylaw.ie

Quinn, Patrick (otherwise Paddy) (deceased), late of Carn, Ballybofey, Co Donegal, who was born on 3 March 1934 and who died on 24 November 2015. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact McElhinney & Associates, Solicitors, Drumboe Lodge, Stranorlar, Co Donegal; tel: 074 91 75989, email: admin@mcelhinneyassociates.com

Ryan, Anthony Daniel (otherwise Dan Ryan), late of Glebe Cross, Drombane, Thurles, Co Tipperary, and also Room 1, Unit A Community Hospital of The Assumption, Thurles, Co Tipperary who died on 6 October 2020. Would any person having knowledge of any will made by the above-named deceased please contact O'Shea & Co, Solicitors, De Valera Street, Youghal, Co Cork; email: info@osheasols.ie

Tierney, Sean (deceased), late of Termon Post Office, Virginia, Co Cavan, who died on 26 July 2021. Would any person having knowledge of a will made by the above-named deceased please contact Rita Martin, Rita Martin and Company, Solicitors, Main Street, Virginia, Co Cavan; tel: 049 854 9940, email: info@ritamartin.ie

MISCELLANEOUS

In the estate of Henrietta Karicos (deceased), late of 3 Sackville Court, Blessington Street, Dublin 7. Notice is hereby given pursuant to section 28 of the *Trustee Act (Northern Ireland) 1958* that any creditors, beneficiaries, or any other persons having a claim against or an interest in the estate of the above-named deceased, who died on 27 December 2019, are hereby required to send particulars thereof to the undersigned solicitors acting for the personal representative of the above-named deceased on or before 9 December 2021, after which date the estate will be distributed having regard only to the claims and interests of which they have had notice.

Date: 8 October 2021

Signed: Mallon & Co Solicitors, Station Master's House, 16 Station Road, Maghera, BT46 5BS

TITLE DEEDS

In the matter of the *Landlord and Tenant (Ground Rents) Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of an application by Asset Resi 3 Limited, and in the matter of the property known as 11 Kenilworth Park, Harold's Cross, Dublin 6

Take notice any person having an interest in the freehold estate of the property known as 11 Kenilworth Park, Harold's Cross, Dublin 6, held under an indenture of lease dated 2 May 1899 and made between John Healy of the one part and John William Morgan of the other part for the term of 196 years from 5 March 1899, subject to an initial annual rent of £5, 10s.

Take notice that Asset Resi 3 Limited intends to submit an application to the county registrar for the county and city of Dublin for the acquisition of the freehold interest in the aforementioned property and that any party asserting a superior interest in the aforementioned property is called upon to furnish evidence of such title to the aforementioned property to the undermentioned solicitors within 21 days from the date of this notice.

Take notice that, in default of such notice being received, the applicant intends to proceed with the application before the county registrar at the end of 21 days from the date of this notice for such directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest or interests, including the freehold reversion, to the aforementioned property is unknown or unascertained.

Date: 8 October 2021

Signed: Mason Hayes & Curran (solicitors for the applicant), South Bank House, Barrow Street, Dublin 4

RECRUITMENT

Wolfe & Co LLP, Solicitors, Skibbereen, Co Cork are seeking an experienced conveyancing/probate solicitor. Attractive package and good future prospects. Email response and CV to helen.collins@wolfe.ie

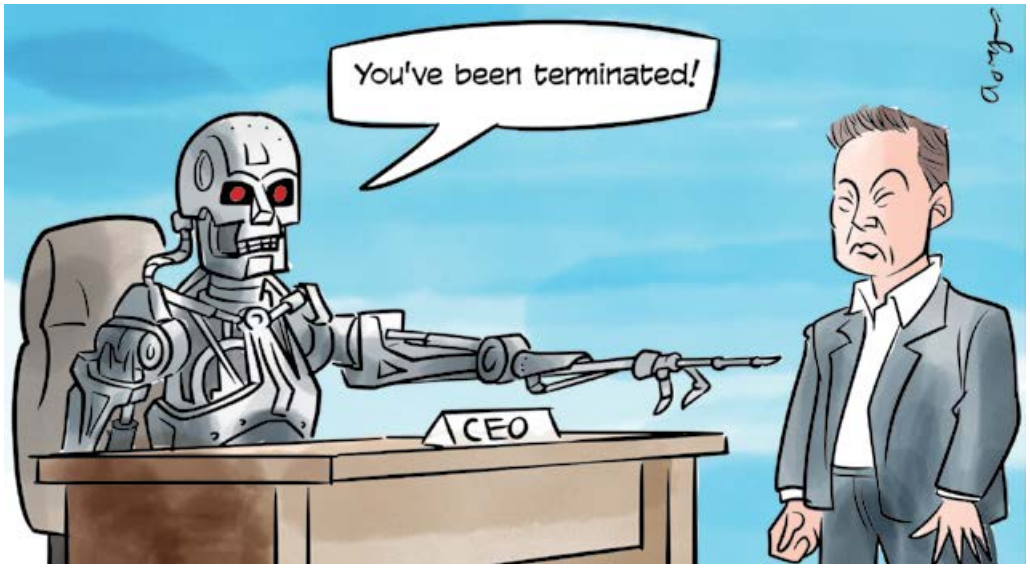
PRO BONOBO

WHO ORDERED THE ANDROID ARMY?

Tesla boss Elon Musk plans to launch a humanoid robot next year, CNBC.com reports. The machine will do dangerous or boring work people don't like, such as management consultancy.

According to a recent presentation, the life-size robot will have human-like hands and feet and a visual sensor to help it see.

Ironically, the Tesla boss has long been warning about the dangers of AI-robots, including possible *Terminator*-like outcomes. "It's intended to be friendly, of course," Musk said during the 'Tesla Bot' announcement, "and navigate through a world built for humans – grinding their bones underfoot!" Well, not that last bit.



Suggestions that his robot army will be used to ensure domination of Mars in the ongoing Branson-Bezos tech-bro rivalry have yet to be commented on by anyone other than the *Gazette*.

MUMMY MUMMY MO' MONEY

Austrian police have discovered the body of an 89-year-old woman, who died more than a year ago and was mummified in the cellar by her son so as to continue receiving her benefits, *The Guardian* reports.

The 66-year-old son admitted that he froze her body with icepacks in the basement after she died.

He then wrapped her in bandages and covered her with cat litter until she was mummified.

The suspect got his mother's benefits by post every month, but a new postman recently asked to see the beneficiary. When the son refused, the postman reported it.

The man pocketed €50,000 since June 2020. An autopsy ruled that he had not killed his mother.

D'OH, A DEER

Australian authorities have fined two nude sunbathers for breaching a COVID lockdown after they ran into a forest when they were surprised by a deer – and got lost, *The Sydney Morning Herald* reports.

Emergency crews found a naked 30-year-old man with a backpack on a track and, close by, a "partially clothed" 49-year-old.

The police commissioner said: "Not only did they require assistance from the State Emergency Service and police to rescue them, they also both received a ticket for $1,000." He added: "It's difficult to legislate against idiots."

HITMAN MISSES FRAUD TARGET

A South Carolina lawyer tried to arrange his own murder so that his son would get a $10 million insurance pay-out – but the 'have-a-go' hitman missed his target, NPR.org reports.

Alex Murdaugh initially said he pulled his car over on a lonely road after a warning light activated, and that a man passing in a truck asked if he was having trouble, but then shot at him. It turned out that Murdaugh had given Curtis Smith, the would-be assassin, the gun. However, the shot only grazed his head, fracturing his skull. The lawyer then called 911, while Smith drove off and disposed of the gun. Smith, a former client of Murdaugh's, subsequently confessed and was charged with assisted suicide, assault and battery, and insurance fraud, among other things.

Murdaugh is a member of a prominent legal family in South Carolina. His wife and other son were found shot dead in as yet unexplained circumstances earlier this year. g

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