gazette
LAW SOCIETY

LAW SOCIETY OF IRELAND

‘IMMEDIATE AND TERRIBLE WAR’

The people behind the 1921 Treaty

EY, EY, OH!

The *Gazette* speaks to Alan Murphy, head of EY Law in Ireland

BATTLESHIPS

What the law says about military exercises in Irish waters and our EEZ

RULES OF WAR

Russian war crimes, the invasion of Ukraine and the application of IHL principles

9 771393 695025 04
€4 APRIL 2022

navigating your interactive

gazette

LAW SOCIETY

PREVIOUS PAGE

CONTENTS PAGE

NEXT PAGE

... enjoy

IMPORTANT NOTICE FOR ONLINE READERS

In order to enhance your enjoyment of the online, interactive version of the *Gazette*, readers are strongly advised to download the magazine first to their computer or device.

Prior to downloading the *Gazette*, make sure that you are using the most up-to-date versions of your favourite browser.

IMPORTANT NOTE ON PAGE VIEW

If you are reading the downloaded PDF in two-page view, ensure that you uncheck the 'Show cover in two page view' option. This can be found in the 'Page display' option under the 'View' tab. You should be seeing this page right beside the cover in the correct two-page view.

gazette
LAW SOCIETY

Editor: Mark McDermott FIIC ● **Deputy editor:** Dr Garrett O'Boyle ● **Art director:** Nuala Redmond
Editorial secretary: Catherine Kearney ● **Advertising manager:** Seán Ó hOisín

Volume 116, number 3

Subscriptions: €65 (€95 overseas)

Blackhall Place, Dublin 7
tel: 01 672 4828
fax: 01 672 4801
email: gazette@lawsociety.ie

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

COMMERCIAL ADVERTISING:
Contact Seán Ó hOisín, 10 Arran Road, Dublin 9
mobile: 086 811 7116, tel: 01 837 5018
email: sean@lawsociety.ie
See the *Gazette* rate card online at
www.lawsociety.ie/gazette-rates

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

Printing: Boylan Print Group, Drogheda

A magazine for a healthier planet

Your *Gazette* uses carbon-balanced and FSC certified paper from sustainable, ecologically managed forests. Visit www.carbonbalancedpaper.com and www.fsc.org. The packaging is 100% compostable and the magazine is 100% recyclable so, if disposing of it, place it in your green bin.

FEATURES

REGULARS

Defending the rule of law

The rule of law is a principle that should never be taken for granted. This is evident on a number of fronts at present. The most obvious is the Russian invasion of Ukraine, which has highlighted the importance of the rule of law in international relations, and the humanitarian consequences of breaching it (see this *Gazette*, p46).

It is appropriate then, that in our efforts to protect the rule of law in Ukraine, we understand the significance of the sanctions that have been – and continue to be – introduced globally against Russia and Belarus over this invasion.

The Law Society has established a webpage that provides detailed help for solicitors and law firms in how they should respond to the sanctions that are rapidly increasing in number and scope. All practitioners should inform themselves about these helpful resources in order to ensure compliance with the EU's sanctions and restrictive measures (see p9 of this *Gazette*).

Democratic backsliding

What may be less apparent in the ongoing battle to protect the rule of law is taking place in Poland, which has shown remarkable generosity and fortitude in opening its borders to refugees fleeing from the war in Ukraine.

The European Court of Human Rights has said that Poland's disciplinary chamber is not an independent court, due to the way that judges are being appointed. The court has stated that this is part of a larger policy to undermine the rule of law and to violate judicial independence, in favour of strengthening the executive and legislative branches.

The court ruled on 15 March (by 16 votes to 1) that there had been a violation of article 6 (right to a fair trial) of the *European Convention on Human Rights* – a significant ruling, says the dean of the Warsaw Bar Council, Mikolaj Pietrzak.

Access to justice

Chief Justice Donal O'Donnell launched the *Access to Justice Report* in the Ballymun Community Law Centre on 22 March. Speaking to the topic, he said: "Current events show that the Western liberal-democratic model is a fragile one, which we cannot take for granted. The existence of an independent court system in which justice is administered without fear or favour, affection or ill-will, is not a luxury or an optional extra."

The chief justice praised the hard work that has been done by all participants in the Access to Justice Working Group, including the Law Society, the Bar Council, the Legal Aid Board, and senior members of the judiciary.

International Women's Day

I wish to thank all of you who took part and helped organise the Law Society's International Women's Day webinar on 8 March. The discussions centred on the positive changes that have taken place in the administration of justice during the pandemic. Many speakers agreed that a sizeable number of those changes should be retained, especially where the benefits have led to more inclusive workplaces. We agreed that, while progress has been made, there is much more to be done in terms of equality, diversity, and inclusion.

Being open to new ways of working has encouraged a greater level of diversity in our workplaces. Giving women of all ages the opportunity to have a greater say in the running of their solicitors' workplaces is not only good for business, but good for the rule of law.

> BEING OPEN TO NEW WAYS OF WORKING HAS ENCOURAGED A GREATER LEVEL OF DIVERSITY IN OUR WORKPLACES

Finally, I had the privilege of speaking on RTÉ *Radió na Gaeltachta* on St Patrick's Day, and at a school the same week where two trainee solicitors delivered a Street Law programme *as Gaeilge* for *Seachtain na Gaeilge*. I would encourage all solicitors to use their Irish, as well as the Law Society's supports for the language, in the public interest. g

Michelle Ní Longáin

MICHELLE NÍ LONGÁIN,
PRESIDENT

THE BIG PICTURE

THE CALM BEFORE THE STORM

Ukrainian soldiers patrol near barricades placed on the main street near Kyiv's Independence Monument on 3 March. Russian forces continue to attempt to encircle the Ukrainian capital, although they have faced stiff resistance and logistical challenges since Russia launched its full-scale invasion of Ukraine on 24 February. According to the Humanitarian Data Exchange on 25 March, a total of 3.7 million Ukrainians have fled into neighbouring countries since the start of the invasion. An estimated 6.5 million people have been internally displaced

PIC: AYTAC UNAL/ANADOLU AGENCY VIA GETTY IMAGES

ADR Committee's 'hybrid theory' workshop

Pictured at the Alternative Dispute Resolution Committee's domestic arbitration workshop for members of the Society's Arbitration Panel on 10 February are Bill Holohan SC and Mr Justice Michael Peart

David Gill and James Bridgeman SC

ADR Committee members: John Lunney, Helen Kilroy and Brian McMullin

Moses supposes...

PPC1 student Miah Phelan Sweeney organised a fundraiser in conjunction with the Blackhall Students' Connect Social Committee to raise money for Women's Aid. The fundraiser gave students the opportunity to donate and send roses to other PPC1 students at the annual PPC1 Ball in Tullamore on 17 February. The team raised over €1,000 for the charity. Enjoying the event were Olwyn Ryan, Miah Phelan Sweeney, and Elaine McCarthy

Waterford's speakers' corner

ALL PICS: GARRETT FITZGERALD PHOTOGRAPHY

At the Waterford Law Society-sponsored public speaking competition in Waterford Institute of Technology on 10 March were *(front, l to r)*: Ryan Campbell, Jennifer Osadolor, Annie McDonald and Georgia Nelson; *(back, l to r)*: Sean Ormonde (adjudicator), Deirdre Adams (law lecturer, WIT), competition winner Emily Lundy, Olivia McCann (president, Waterford Law Society), and Ken Cunningham (adjudicator)

Members of the Waterford Law Society at a recent committee meeting *(front, l to r)*: Paul Murran, Ciara Pierce, Olivia McCann (president), Morrette Kinsella and Frank Halley; *(back, l to r)*: Dermot O'Byrne, Anna Purcell, Sonya Fox, Gill Mahony, Derry O'Carroll and Richard Halley

Wi-Fi upgrade at Four Courts' rooms

● The reopening of the Four Courts in September 2021 led to a significantly greater use of video calls, which put additional strain on the Wi-Fi in the Law Society's Consultation Rooms.

The Society's IT team undertook a major survey and upgrade, which resulted in increasing the bandwidth from 10Mb to 100Mb. This has eliminated a number of blackspots throughout the consultation-room area, with high-quality Wi-Fi now available throughout the facility. Further upgrades are scheduled to take place during the long vacation. The Four Courts team will continue to monitor the service to ensure it fulfils members' needs.

● The Friary Café in the Four Courts reopened on Monday 21 March, providing room service and take-away only, for the present. This will be kept under ongoing review, but the aim is to restore full service as soon as practical.

Crypto warning

● The Central Bank has issued a fresh warning on the risks of investing in crypto-assets.

Such assets are highly risky and speculative. In particular, people need to be alert to the risks of misleading advertisements, particularly on social media, where 'influencers' are being paid to advertise crypto-assets, the regulator said.

Boosting inclusive participation

● Changes in the administration of justice during the pandemic that made the workplace more inclusive should be retained, a Law Society International Women's Day (IWD) webinar heard on 8 March

Imelda Reynolds, the first female managing partner at Beauchamps, Dublin, said that post-pandemic employees should be cherished. This meant respecting differences and enabling all employees to fulfil their potential, and "to be their best person at work and, indeed, at home". The world was changing very fast, she said, and the difficulty of retaining talent was now very real, post COVID.

Matheson lawyer and founder of Diversity in Law, Tarisai May Chidawanyika, said that, as a woman from a minority background, she occasionally experienced 'imposter syndrome' because there weren't many people similar to her in the workplace. "I'm constantly working on this by shifting my perspective and reminding myself how hard I have worked," she said.

PIC: CIAN REDMOND

Ní Longáin: important to amplify voices and encourage participation

Recalling qualifying in 1987, DPP Catherine Pierse said that jobs had been scarce then, and most people felt grateful simply to be in employment: "It was recessionary times and there were no jobs," she said. This experience heightened her awareness that it was at entry level that the barriers could be highest – especially in securing that first traineeship. "The next battle is economic barriers to access to the profession," the DPP said, adding that she hoped, in the future, that it would become less and less remarkable to have people of diverse backgrounds in leadership positions.

Chief State Solicitor Maria Browne said that making the workplace a more creative place that encouraged a wider exchange of ideas from different perspectives was important. She also said that she wished she had known earlier about career possibilities, but her generation simply felt lucky to have a job. She commented that she was in a position of relative luxury in terms of female representation in her organisation, but that greater diversity from other minority groups would be welcome.

Rounding up the event, the webinar's moderator, Law Society President Michelle Ní Longáin, commented that there was always more work to be done, and added that the Law Society was always open to hearing different voices in the profession – especially those of younger members. While working in a more collaborative fashion might be a stereotypical view of women in leadership, the president said that it remained important to amplify voices and encourage participation.

President celebrates *Seachtain na Gaeilge*

● During *Seachtain na Gaeilge* (1-17 March) – the festival that celebrates the Irish language – Law Society President Michelle Ní Longáin visited Scoil Chaitríona in Dublin to speak with transition-year students, *as Gaeilge*, about the law and her role as president. She also shared advice on the pathways to becoming a solicitor.

Trainee solicitors Felim Ó Maolmhána and Hannah McLoughlin delivered a Street Law session in Irish to help students engage with the law and their rights. Students also received a copy of the Law Society's new brochure in the Irish language, *Ag Obair mar Aturnae* (*Becoming a Solicitor*), which is available to download on the Society's website.

PIC: CIAN REDMOND

Law Society launches Ukraine sanctions resource hub

PIC: CIAN REDMOND

● The Law Society has launched a new resource hub to help solicitors ensure compliance with the sanctions introduced across the EU against Russia and Belarus over the invasion of Ukraine.

The Society's webpage (lawsociety.ie/solicitors/practising/sanctions) provides detailed help to solicitors and law firms in terms of how they should respond to the sanctions that are now rapidly increasing in number and scope.

These sanctions cover a wide variety of elements, such as financial services (for example, asset freezes), immigration (including visa and travel bans), and trade (for example, import and export restrictions).

The Society reminds practitioners that it is a criminal offence not to comply with these sanctions and that failure to do so could also result in severe reputational damage. "The legal profession also needs to be extra alert due to the risk that countries/people subject to sanctions may start looking for ways to move assets to avoid sanctions. Solicitors should make compliance with these sanctions a top priority."

The Society states that "due to the inherent nature of sanctions, their rapid expansion, the variety of legal services they may apply to, there is no definitive 'one-size-fits-all' approach".

However, it provides a highly useful and detailed guide to the "initial key steps" that can be followed by members of the profession in order to ensure compliance. "By following these steps, your firm will have effectively developed an up-to-date sanctions risk assessment, as well as a policy on sanctions compliance," the Law Society says. "It is important to capture the risks assessed, and the steps taken, to be able to demonstrate compliance."

To this end, the Society recommends that practitioners should "document the steps you take under each of the five suggested key steps".

PIC: ALEXANDROS MICHAILIDIS/SHUTTERSTOCK

Members of the EU Parliament show their support for Ukraine at the extraordinary plenary session in Brussels on 1 March 2022

Sign up for YMC's online CPD

● The Younger Members Committee (YMC) and Law Society Professional Training have joined forces again this year to present a new online information series, which began on 22 March.

Each session will attract 0.5 CPD credits. A total of four CPD credits can be obtained for attending all eight sessions, which includes a mix of 'general' and 'management and professional development skills' (by e-learning).

Each information session is free, and will take place at 7pm on Tuesday evenings, lasting for 30 minutes. While there is no charge, those attending are required to register in advance.

The aim is to provide summary information on each topic covered, with suggestions for follow-up. A member of the YMC will discuss each topic with an expert in the relevant field:

- **5 April: Newly qualified solicitors – tips for a successful first year in practice,**
- **12 April: Time management – setting good working habits,**
- **3 May: Current legislation on cannabis – an overview of the decriminalisation and regulation of the production and sale of cannabis,**
- **17 May: Ethics,**
- **31 May: *Pro bono* work/public interest law.**

All sessions will be held on Zoom, and solicitors and trainees are welcome to participate. For more information and to register, visit lawsociety.ie/LSPT.

ENDANGERED LAWYERS

ABDERRAZAK KILANI, TUNISIA

Abderrazak Kilani (67) received the 2011 CCBE Human Rights Award, in his capacity as president of the Tunisian Bar Association, for his and his bar's commitment to human rights, in particular during the 'Jasmin Revolution' (2010-11), which started the Arab Spring.

He was known for his human-rights activism when he was elected president of the Tunisian Association of Young Lawyers for a term in 1990/91.

In 1992, he founded the Maghreb Union of Young Lawyers and was the co-founder and general secretary of the Tunisia Centre for Lawyers' Autonomy. He was also a coordinator of the defence committee for Mohamed Abbou, a prominent lawyer and politician from 2011 onwards. He was a member of the National Committee for the Promotion of Human Rights. As a law professor, he gave over 400 law lectures on different cases in Tunisian law over a six-year period.

In 2011, after the overthrow of the Ben Ali dictatorship, he became Deputy Prime Minister for Relations with the Constituent Assembly and from 2013 was the permanent ambassador of Tunisia to the UN at Geneva.

There have been numerous changes of government since the Jasmin Revolution, leading to some loss of faith in democracy. This came to a head on 25 July 2021, when President Kais Saied suspended the Assembly of the Representatives of the People and dismissed the government. The president's decisions were denounced by human-rights organisations and considered by many as a 'self-coup'. The actions came after a series of protests against economic difficulties, and a significant rise in COVID-19 cases in Tunisia, which led to the collapse of the Tunisian health system. Other state institutions are also being dismantled or are under threat, including the independent judiciary, and there is every indication that President Saied is assuming dictatorship powers.

On 3 March 2022, Abderrazak Kilani was imprisoned following a hearing before a military court on charges of belonging to an assembly likely to "disturb public order" and whose purpose is to "commit an offence or to oppose the execution of a law", and "insulting a public official by words and threats in the exercise of his duties". Seeking to visit a client hospitalised under house arrest as a member of his defence team, Kilani had challenged the security personnel who refused them access.

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

Hybrid domestic arbitration workshop

Alison Kelleher (chair, ADR Committee), Michelle Ní Longáin (Law Society president), and Éamonn Conlon (vice-chair, ADR Committee)

On 10 February, Law Society President Michelle Ní Longáin and the Alternative Dispute Resolution Committee hosted a domestic arbitration workshop for members of the Society's Arbitration Panel. This hybrid event provided an opportunity for panel members to explore issues of interest arising from domestic arbitration practice.

Well-known staff retire

Two long-standing Society staff members have decided to hang up their gloves. Committee executive Catherine O'Flaherty is retiring after 25 years of dedicated service, while head of support services Keith O'Malley leaves after nearly 13 years.

Catherine started in 1997 as a solicitor in Practice Closures, before also taking on the role of secretary to the Conveyancing Committee. Her expertise and knowledge, and her ability to stay on top of the many frequent changes to conveyancing law, made her an invaluable asset to the Society and its members.

Keith joined the Society in 2009 and provided career-management support to the large number of solicitors who found themselves out of work after the 2008 economic crash. Much of Keith's success came from the fact that he made himself available to solicitors past the normal 9 to 5.

We wish them both a long and happy retirement.

Stamps celebrate sportswomen

An Post has unveiled a booklet of six stamps celebrating some of Ireland's leading sportswomen, including solicitor and hockey star Nikki Evans, who has spent a decade as a member of the Irish women's hockey team.

The corporate lawyer, who works with Mason Hayes and Curran LLP, is one of a number of Irish sportswomen excelling internationally and now honoured by the postal service.

Evans is part of the history-making team that won a silver medal at the 2018 Hockey World Cup and qualified for the Tokyo 2020 Olympics.

The athletes being honoured on the Irish Women in Sport stamps are:

- Sonia O'Sullivan – Ireland's most successful track-and-field female athlete, winning 16 major World, European and Olympic medals,
- Katie Taylor and Kellie Harrington – Olympic boxing gold medallists,
- Ireland's women's hockey team – silver medallists at the 2018 World Cup, who have again qualified for the 2022 finals,
- Ellen Keane – paralympic swimmer who won a gold medal in 2021, and
- Rachael Blackmore – the first female jockey to become the leading jockey at the Cheltenham Festival with six victories, and first female Aintree Grand National winner in the event's 182-year history.

Speaking at the unveiling of the stamps at the GPO on 3 March, Minister of State Hildegard Naughton said that all of the women featured on the stamps were key role models for girls and women across the country: "We have a lot to be proud of in Ireland when it comes to our female athletes, who have led the way for women in sport on the global stage."

New partner for ByrneWallace

ByrneWallace's tax practice has announced the appointment of Lee Squires as partner and head of indirect taxes. Squires is a tri-qualified solicitor in Ireland, England and Wales, and Northern Ireland. He was previously head of indirect tax at a leading global law firm in London.

IRISH RULE OF LAW INTERNATIONAL

A YEAR OF PROGRESS

The year 2021 was a year of real progress for IRLI. Our work continued apace across several countries. We firmly believe that 2022 will bring even further advancement, particularly given the amazing generosity of solicitors around the country in contributing to IRLI when completing the practising certificate application/renewal forms in recent weeks.

IRLI celebrated ten years of working in Malawi with Irish Aid in 2021. Despite the difficulties of the COVID-19 pandemic, we reached 415 prisoners with cell visits and 'camp courts' (bail hearings in prisons where detainees, often held for years in pre-trial detention, obtain bail).

Ten children graduated from our 'Mwai Wosinthika' child-diversion programme, and we assisted 134 children appearing before the Child Justice Court. We also moved beyond the Central Region in Malawi for the first time, and now have a lawyer working in the Southern Region.

In Tanzania, our work (also supported by Irish Aid), along with our local partners, resulted in extensive training for 52 criminal-justice chain actors in Mpwapwa. It was very well received and led to marked improvements in the processing of cases of child sexual abuse. A total of 143 child survivors obtained psychosocial support in order to assist them to recover from trauma as part of our work there. We also hosted conferences on further improving work on child sexual-abuse cases at a national level, and transposing the lessons learned in Mpwapwa. Our work also involved interaction between the gardaí , the PSNI, and the judiciary from both jurisdictions on the island of Ireland with their counterparts in Tanzania.

Our South Africa commercial law programme (generously supported by Matheson) had to be slightly delayed and moved online, but it is now fully operational. Preparations continue for new programmes in Zambia. We have harnessed the skills of Irish lawyers from a number of firms to assist with *pro bono* research for human-rights work in Africa and Asia.

IRLI, along with the Law Society, the Bar of Ireland, the Judges' Association of Ireland, and the International Women Judges' Association, has been heavily involved in assisting ten female Afghan judges and their families in moving to Ireland and starting new lives here. Finally, we have completed an organisational review and have established our new five-year strategic plan, so the work continues.

Aonghus Kelly is executive director of Irish Rule of Law International.

Danger of disconnect between law and public

The law could become 'dangerously disconnected' from the public it is meant to serve, the Chief Justice has warned.

Speaking at the launch of the *Access to Justice Working Group Report* in the Ballymun Community Law Centre on 22 March, Donal O'Donnell said that there was a difference between resorting to court as a serious step not lightly taken, and access to justice being difficult, if not impossible, for ordinary people.

"If people cannot have disputes that are important to them resolved definitively by an independent court, then the law becomes dangerously disconnected from the public it is meant to serve," he commented. This risks a "cavernous discrepancy" opening between what the law says, and what the law is understood to do.

"The existence of an independent courts system in which justice is administered without fear or favour, affection or ill-will, is not a luxury or an optional extra," he added.

Courts, with all their inefficiencies and frustrations, are central to the existence of the liberal democratic society and its values, which are under threat today. Access to justice is not access to courts, he concluded, it is access to information about legal rights and the law, and the courts system. (See Gazette.ie for in-depth report.)

MHC queries PI mediation claims

Lawyers at Mason Hayes & Curran (MHC) have given a guarded welcome to new legislation on the Personal Injuries Assessment Board (PIAB), but have raised questions about whether the introduction of mediation into the process will achieve the intended reduction in costs.

Last month, Minister of State Robert Troy said that drafting would begin on the *Personal Injuries Resolution Board Bill*. Under the proposed legislation, the personal-injuries body would be able to offer mediation as a means of resolving a claim.

In a note on the firm's website, however, MHC lawyers say that the bill is silent about who would ultimately be responsible for the costs of an unsuccessful mediator or mediation process: "Accordingly, it is currently unclear whether the intended significant reduction in costs will actually be achievable, when the entire cost of the mediation is factored in."

Robert Troy TD

The note also points out that practitioners have expressed concerns that the introduction of mediation may in fact create additional delays or add additional costs to the process by effectively adding another layer to the existing system.

Minister Troy had told the Seanad last month that mediation offered by PIAB would follow recognised principles – including being a fully voluntary process, ensuring confidentiality and impartiality, and providing the opportunity for the parties to determine the issues that required resolution. He had added that mediation would not affect the timeline for assessment of a claim, pointing out that the board would still be obliged to assess claims within nine months of confirmation of the respondent's consent to the assessment process.

Ardchúrsa Cleachtadh Dlí

The PPC2 elective Advanced Legal Practice Irish/*Ardchúrsa Cleachtadh Dlí as Gaeilge* is open to practising solicitors who wish to be registered on the Irish Language Register (Law Society)/*Clár na Gaeilge (An Dlí-Chumann)* on meeting the attendance, coursework and assessment criteria. A Leaving Certificate higher-level standard of Irish is the minimum entry standard.

The course runs from 13 April until 16 June, and contact hours are usually Thursday evenings from 6-8pm. The course is delivered in a 'blended learning' format – that is, a mixture of online and face-to-face attendance, with online tasks to be completed between weekly sessions. It is recommended that course participants have a good level of IT skills.

Classes are divided into small workshops that build on prior completion of individual and collaborative coursework. Assessment combines continuous assessment of these weekly online submissions, a group drafting exercise, and individual oral presentations.

The fee for 2022 is €625. Online registration is open, and the course brochure and application form are available for download on the Law Society's website at lawsociety.ie/alpi.aspx. Participation can be used to count towards the discharge of a practitioner's CPD requirements.

More information on the register/*clár* can be found at lawsociety.ie/find-a-solicitor/clar-na-gaeilge or contact Aisling Byrne (course executive) at a.byrne@lawsociety.ie, tel: 01 881 5709.

The run is back in town!

● After a two-year pandemic passover, the Calcutta Run is again set to take place as a 'live event' on 28 May. In eight weeks' time, Blackhall Place will be ready to welcome 1,000-plus participants, 200 volunteers and staff, as well as charity partners, sponsors, and the very important Finish Line Festival bar and barbecue.

All participants, of any level, can either run or walk the usual 5k and 10k routes starting from the Law Society HQ, heading up Arbour Hill through Park Gate, and winding through the Phoenix Park, before heading back to the finish line at Blackhall.

It was 2019 when the last 'live' run took place, so this is a day we have all been waiting for. Come along with your colleagues, friends, family and kids, and make a day of it. Enjoy the Finish Line Festival, music, DJ, food, and kids' activities (there will be kids' mini-athletics and prizes to be won, as well as free face-painting).

Not only has the run returned to Blackhall, but the Cork run will also take place on 29 May. As well as that, the inaugural Tag Rugby Tournament will kick off in TUD on 21 May, and a Calcutta Run Golf Tournament will tee off in Castleknock Golf Club on 27 May.

There are plenty of events to sign up to, and all the proceeds will go to projects run by the Peter McVerry Trust and The Hope Foundation, supporting those experiencing homelessness in both Ireland and Kolkata. Please show your support and register a team or individually at www.calcuttarun.com. For further information, email: hilary@calcuttarun.com.

Armstrong Teasdale lands in D2

● Top-200 US law firm Armstrong Teasdale has opened a new office in Dublin 2. It plans to concentrate on corporate and capital markets, intellectual property, and employment and immigration law.

The Fitzwilliam Hall branch will be led by Daniel O'Connell, while Yvonne Costello (partner) will be responsible for the firm's expansion.

"Post-Brexit, it was absolutely essential that Armstrong Teasdale establish a concrete presence in Dublin," O'Connell said. "Together with a clear client focus, we are committed to establishing a strong presence in Ireland through the addition of a highly talented team to broaden our capabilities."

O'Connell has over 30 years' experience, having had a substantial corporate practice representing clients in a diverse range of industries. During his time as managing partner of Kerman & Co (a firm acquired by Armstrong Teasdale in February 2021), he was responsible for running the firm's Dublin office.

Costello practises in corporate matters, as well as mergers and acquisitions. She is a is a dual-qualified solicitor in England and Ireland, and is an associate of the Irish Taxation Institute.

Armstrong Teasdale's Daniel O'Connell and Yvonne Costello

The Missouri firm's chair, David Braswell, said the Dublin office would initially focus on "building-out its expertise".

"Dublin is a key stepping stone in our European expansion plans," said Braswell. "We now have important footholds in both the UK and EU markets in a post-Brexit environment, and are better positioned to serve our clients in Europe and beyond. We look forward to the Dublin office serving as a catalyst for our ongoing global growth plans."

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

The ring of confidence

Q I am new enough to the solicitors' profession. I started working in a big Dublin law firm five years ago. I enjoy the content of my work and, generally, I get on great with colleagues. I have noticed an issue in my work, though, that I am a bit embarrassed about revealing. I get nervous and fearful when I have to speak to anyone in management – I feel very self-conscious, and I find it much harder to express myself competently. Please help!

A Firstly, well done on identifying your fear. Having an awareness of it is half the battle. Our fears are normally driven by limiting beliefs, which may have been formed in our earlier years, or as a result of a negative experience. In your case, perhaps something in the past caused you to be embarrassed or humiliated by an authority figure – a parent or teacher, for example. Like Roald Dahl's *Matilda*, were you taught to believe that adults were smarter than you, that their opinions had more value than yours? As adults, we no longer believe this at a conscious level. However, at a deeper level, we may be behaving as though we are automatically 'lesser' than those above us in the hierarchy. We often fear being judged by such people. We may have felt embarrassed or dismissed by them in previous conversations, which confirms our fear.

Let's examine this fear of senior management.

How is this fear affecting my ability to fulfil my potential? Do I shy away from putting my hand up for opportunities because it would mean I would have to work directly with a certain partner? Do I resist offering my opinion on a subject I have researched because the senior associate has said something to the contrary?

What is the impact of me not fulfilling my potential? Am I being overlooked for promotion? Do I feel too burned-out to make an authentic and meaningful contribution to my firm and our clients because I hide my unique gifts and knowledge? Do I wish for the weekend each week because I don't feel I have any control over my own confidence and happiness from Monday to Friday?

What would happen if I felt confident in my dealings with senior people? I would see senior management as people who have been doing this longer than me, and that they are not perfect. I don't need to put them up on a pedestal. I would talk to them as peers who are supporting my growth. I would believe that progress is better than perfection, and that I am showing up each day to improve as an individual, and not to prove to anyone that I am good enough to be in this law firm.

You see, fear is always a choice. How others make us feel is also a choice.

Let's say you knock on the partner's door to go through the legal opinion you have been drafting for them and they bark: "Not now, I am going on a call. Call back after 7pm and make sure it's ready for my review." You go back to your desk, and you can't help feeling rejected and terrified that if the draft is not perfect, they are going to think you're not good enough. You get into a spiral of unhelpful thoughts like: "They never have time for me. They think I am useless. In fact, maybe I'll say I had to rush out so I don't have to face them this evening."

While this is an understandable reaction, it is not helpful and compassionate. We need to remember that our worth is not measured by our productivity, how others treat us, or by any other external indicator. We can choose to react to this situation in a way that is more supportive of our growth, with 'self-talk', like: "Their shortness has nothing to do with me. I am doing my best, based on the skills and resources I have available to me. I am fully capable of managing myself with this partner as we both want to deliver the best outcome for our client."

We have the power to choose whether to be critical of ourselves or to choose helpful, empowering thoughts, and treat ourselves like we would our best friend. In all reality, why wouldn't we? You have already identified your fear. You can also overcome it! g

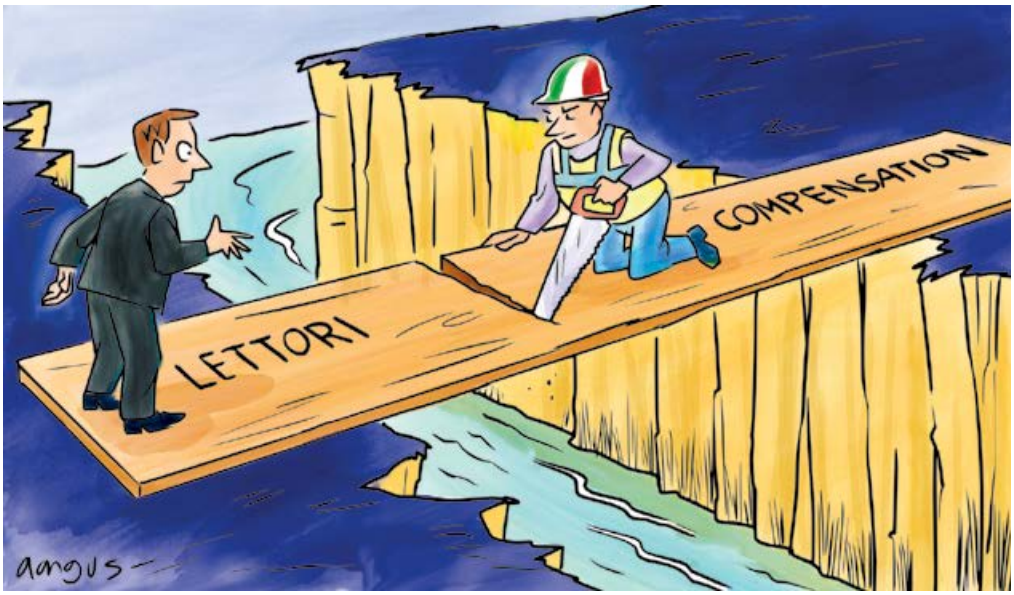
To submit an issue that you'd like to see addressed in this column, email professionalwellbeing@lawsociety.ie. Confidentiality is guaranteed.

The question and response in this column are hypothetical and were written by Norma O'Sullivan, people development consultant at The Way Home Consulting. 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.

Will Italian universities compensate *lettori*?

From: David Petrie (chair, Associazione Lettori di Lingua Straniera in Italia/Association of Foreign Lecturers in Italy), Via Cavone 8, Procida 80079, Italy



Kurt Rollin ('Ignorance of case law almost cost us dearly', March *Gazette*, p19) chastises his fellow non-native teaching assistants in Italian universities for having signed a petition asking for a stay on proceedings and an investigation into the European Commission's handling of our complaint into discrimination based on nationality during the Santer Commission's tenure, stretching from January 1995 until 15 March 1999, when it resigned *en masse* following an independent report on allegations of fraud, corruption and mismanagement.

First, a small correction – the petition in question, dated 6 July 2000, was addressed to Commission President Romano Prodi, not Commissioner Kinnock, as can be readily ascertained from public records.

Similarly verifiable is that there were 466 signatories to the petition (including myself) from 28 Italian universities; considerably more than a handful that your readers may infer from Mr Rollin's use of the term 'some colleagues'.

Mr Rollin is silent on our questioning the wisdom of the infringement case proceeding, as it stood, leaving your readers to wonder why we should appear to be acting against our own interests.

Commissioner Padraig Flynn had responsibility for Social Affairs and Employment in the Santer Commission. We had very serious misgivings about how our complaint was being dealt with – and in particular on how, without notifying us, the commission, following information received from the Italian authorities, altered its pleadings in law in ongoing infringement proceedings. The petition contained evidence presented by our lawyer, Prof Avv Lorenzo Picotti, stating that "the commission accepted the deliberately instrumental, unfounded and unproved justifications which have been presented as facts in the defence arguments by the Italian government on the basis of partial information, obvious omissions and, at times, complete and utter falsehoods [and] has taken a position which is, from a legal perspective, incomplete, imprecise, unclear and contradictory".

We were further alarmed by the fact that Commissioner Flynn had appointed a legal expert, Bruno Nascembene (professor of labour law at the University of Milan) to advise him on our complaint. Without wishing to cast any aspersions on Prof Nascembene's integrity (he very gracefully received me in his office in Milan), it seemed that anything he might say would be indelibly tainted with apparent bias, especially since Milan University was one of the universities cited by the commission in its pleadings in law.

I complained to the European Ombudsman and gave him a copy of our petition to President Prodi. The ombudsman reported on 13 September 2000 (Case 161/99/IJH).

The ombudsman put the following on record: that I had become concerned that the Italian authorities were supplying false information to the commission and that the commission, in negotiations with the Italian authorities, was weakening its position as stated in its reasoned opinion of 16 May 1997; that I met with Commissioner Flynn on 1 February 1999 and provided him with a copy of a criminal complaint concerning the false information supplied to the commission by the Italian authorities, as well as an analysis of the legal situation written by Prof Picotti; that assistants at Naples University had called on the Italian public prosecutor to bring criminal proceedings against the public officials who had prepared the Italian reply to the commission's supplementary letter of formal notice of July 1998; that, at the same meeting, I learnt that the commission had already, on 29 January 1999 (two days earlier and without informing us), sent another reasoned opinion, and that subsequently I discovered that the commission had modified the first ground of infringement and dropped the second ground entirely.

I quote from the ombudsman's conclusion, substantially upholding our complaint: "The commission's undertaking that it will ensure that a complainant is informed of its intention to close a case, and its reasons, accords with one of the basic requirements of fair administrative procedure, namely that a person should have the right to submit comments before a decision affecting his or her interests is taken. In the present case, before concluding the administrative stage of the article 226 procedure, the commission fundamentally altered the basis on which it was dealing with the complainant's

case, in a way which the complainant considered highly damaging to his interests. The commission should, therefore, have applied the same procedure as when it decides to close a case, thereby giving the complainant the possibility to put forward views and criticisms concerning the commission's point of view."

Mr Rollin applauds Mr Rodgers (author of '*Lettori* of the law', Jan/Feb *Gazette*, p52) and himself for having had to "acquire an understanding of EU law" and become "students of EU law thereafter".

Yet this vainglorious assertion is undermined by his failure to show even a rudimentary understanding of the relationship that the Court of Justice of the European Union (CJEU) has to domestic tribunals. He asserts that the Grand Chamber of the Court in Case C-119/04 "awards us the settlements for reconstruction of career we now welcome".

It does nothing of the kind. Nor does that assertion remotely paraphrase anything the court said. The CJEU does not award settlements – that falls within the jurisdiction of the national authorities.

What the court did, was to express a view on Italian Decree Law 2 of 15 January 2004 and its compatibility with EU law. The court stated, at paragraphs 39 and 40: "Decree Law No 2/2004 cannot therefore be regarded as having provided an incorrect legal framework for the purposes of enabling each of the universities in question to reconstruct precisely the career of former assistants. It remains to be ascertained whether the measures taken by the universities in question after the adoption of Decree Law No 2/2004 achieved the declared objectives."

The commission now acknowledges that those declared objectives have not been achieved – hence its recent letter of formal notice to Italy (23 September 2021).

Almost six months have passed, and there is nothing to suggest that the Italian universities are about to compensate hundreds of us for arrears in wages, seniority, and pensions.

Colleagues with up to 35 years' experience received a net salary last month of €1,078 – half of what Italian colleagues on the same salary scale received.

Far from being ignorant of our plight, we are acutely aware of it, as our monthly payslips or reduced pensions arrive each month.

We are unrepentant in pursuing our attempts to hold the disgraced Santer Commission to account, and we hold no grudge against the von der Leyen Commission for what happened over 22 years ago.

We hope and trust that the current commissioner, Nicolas Schmit, will prove successful in persuading the villain in this case – the recalcitrant Italian state – to change its ways or, failing that, finally bring Italy to book in what would be the seventh case before the CJEU.

Go ahead... make my day

From: Liam Hipwell, Liam Hipwell & Co, Solicitors, 18 Monck Street, Wexford

I read the article in the Jan/Feb 2022 issue of the *Gazette*, titled 'Law of the land'. The photograph of Clint Eastwood both frightened and inspired me. I include, below, an imagined discussion between myself ('LH' – a solicitor in trepidation) and a 'fretting client' (FC) on the intricacies of the doctrine of lost modern grant.

FC – "I was reading in the *Farmer's Journal* that the registration of my right of way for my coastal property is gone."
LH – "Well, early days, but we have been granted some respite."
FC – "What was it all about?"
LH – "Partially an update of the 'doctrine of lost modern grant'."
FC – "I did not lose any documentation."
LH – "No, no, nothing to do with you – but a benign judicial construction."
FC – "'Judicial' – you mean *they* lost the grant?"
LH – "No, no – not lost, but deemed lost. But there's no grant, that is, document as such."
FC – "*I'm* lost."
LH – "Well, it goes back to 1189."
FC – "1189?"
LH – "Sort of. In simple terms, a claim (in your case, a right of way) cannot be set aside simply by proof that the enjoyment did not go back to 1189."
FC – "Can I summarise this – 'lost' means 'nothing lost', and 'modern' means '1189 grant is not a legal document'?"
LH – [Changing subject] "Well, at any rate, the Government has solved the problem."
FC – "You mean, they have found the grant?"
LH – "Well, not quite, but they have restored it."
FC – "You mean 'deemed found'?"
LH – "Well, yes, something like that."
FC – "Am I safe?"
LH – "Well, can you establish user of the right of way, as of right, from 1189?" [I *knew* that was the wrong question!]
FC – "Is this fiction?"
LH – "Well, actually, you are not far wrong – it is a legal fiction."
FC – "I don't understand this law at all."
LH – "I am having difficulties myself. [Thinks: "I dare not mention foreshore or State property, as I am in enough trouble."] Helpfully there is a very good book on rights of way/easements called *Bland on Easements*."
FC – "Bland? There's nothing remotely bland about this complex issue! I have known you for many years as a solicitor but, in this case, do you mind if I get a second opinion?"
LH – [Thinks: Relief!]

LEGAL COSTS

McCANN SADLIER

ACCOUNTANTS

YOUR LEGAL COSTS PARTNER

McCann Sadlier, Legal Costs Accountants has over 100 years of combined legal costs experience. We are a results driven team of legal costs practitioners supported by specialised staff. We believe it is vital to be alert in respect of all developments in this ever-changing area of the law, enabling us to provide solid and up to date advice.

Central to our practice is the swift attention to the preparation of bills of costs for adjudication, opposing bills or general advices in every area of litigation and non-contentious business.

All of our practitioners are members of the Institute of Legal Costs Accountants.

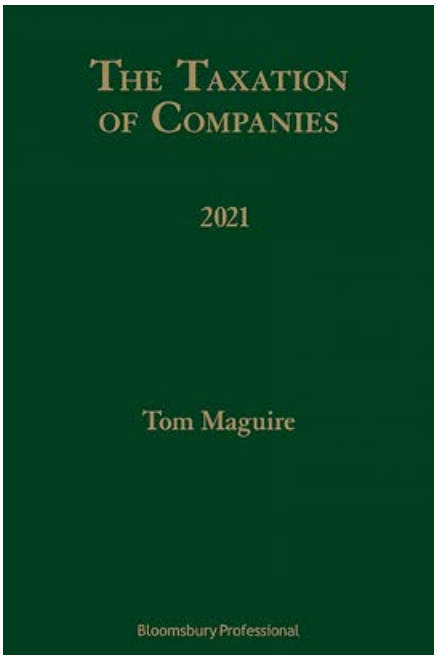
EXPEDIENT **EXPERT** SECURE

T 01 8407069 **E** INFO@McCANNSADLIER.IE **W** McCANNSADLIER.IE

SWORDS: 11 NORTH STREET BUSINESS PARK, SWORDS, DUBLIN, K67 XH29. DX 91010
BLACKROCK: 12 PRIORY OFFICE PARK, STILLORGAN ROAD, BLACKROCK, DUBLIN, A94 N2V3. DX 7003

The Taxation of Companies 2021

Tom Maguire. Bloomsbury Professional, www.bloomsburyprofessional.com. Price: €245 (incl VAT).



This is the 25th edition of *The Taxation of Companies* (previously *Feeney: The Taxation of Companies*) and now authored by Tom Maguire. It sets out the current taxation areas of interest and relevance to companies. It continues to be a leading go-to textbook for guidance by practitioners.

This edition contains 15 chapters with numerous sections. It has been updated for the substantial recent changes in corporation tax and European developments, which will result in significant changes for companies.

The text of the chapter on international tax issues has been expanded to cover the changes to the transfer-pricing provision, and to the hybrid and controlled foreign-company rules.

It provides useful guidance on the *Mergers Directive* and also provides up-to-date information on mandatory disclosures, including the *DAC6: EU Mandatory Disclosure Regime*.

It has a comprehensive chapter on double taxation relief; there is useful guidance on the COVID Restrictions Support Scheme (CRSS); and there is also a section covering the accelerated loss relief introduced by the *Financial Provisions (COVID-19) (No 2) Act 2020* (introduced as a temporary acceleration of corporation tax loss relief during the COVID period).

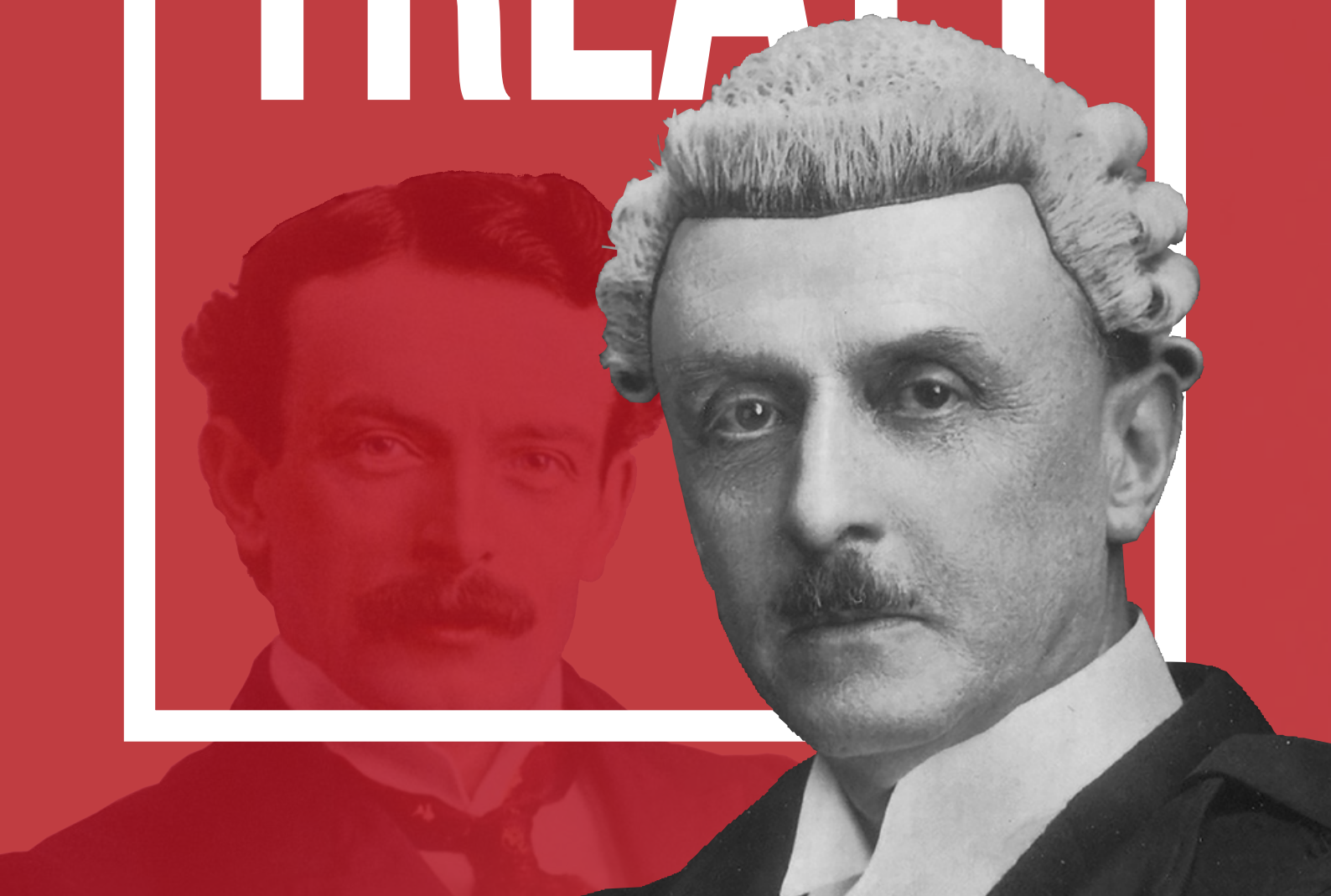
There is a chapter dedicated to special types of companies, including funds structures and real-estate investment trusts, as well as sections on companies in partnerships and companies receiving patent income.

For practitioners, there is a very helpful section dealing with companies and shareholders, and transactions related to the share capital, as well as a comprehensive chapter on distributions and buy-back of shares.

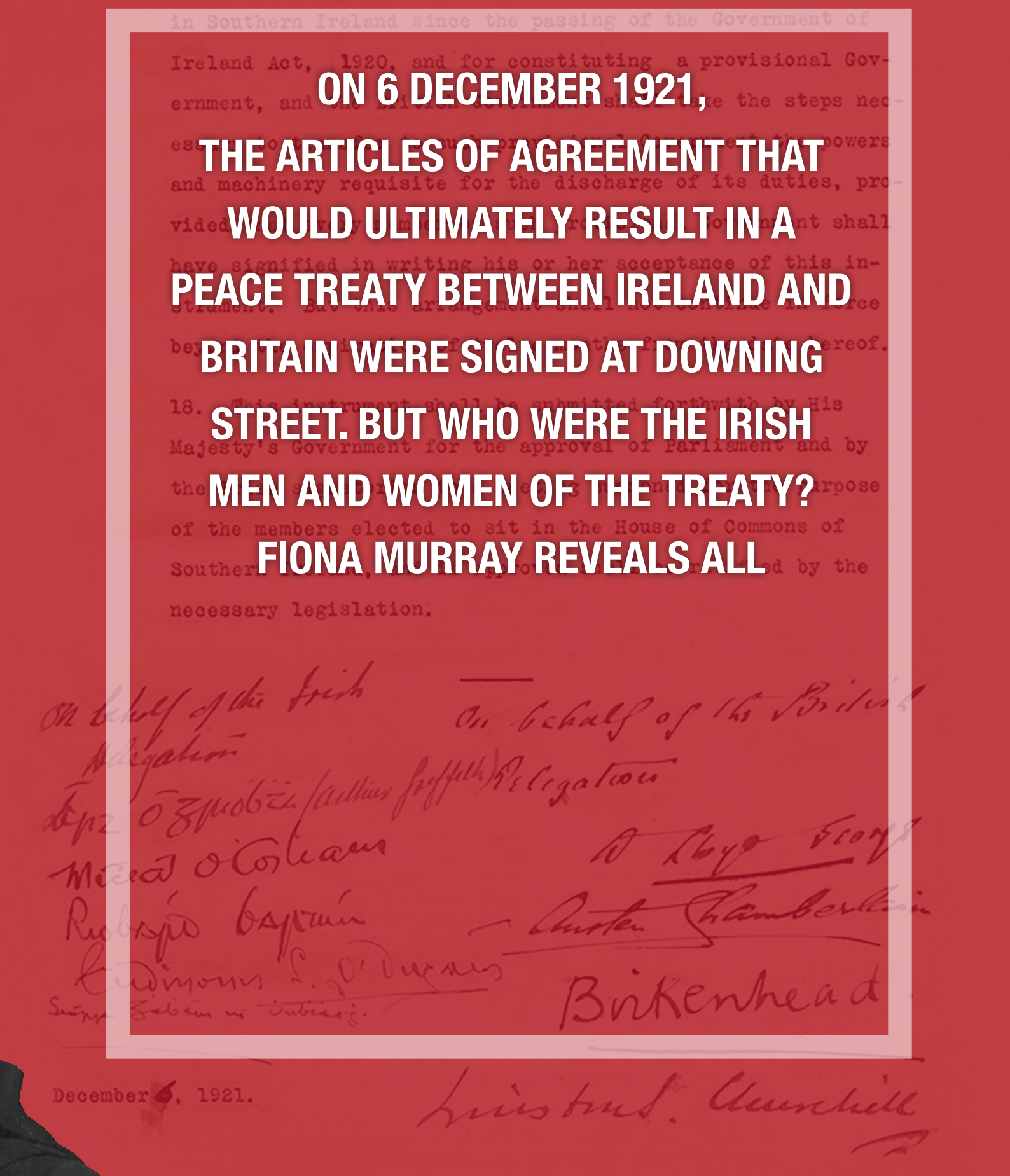
This book continues to be an excellent resource for lawyers practising in the area of taxation, with examples, guidance, and useful case law, including a commentary on recently decided tax cases on topical issues in Ireland and Britain.

Michelle McLoughlin is principal of M McLoughlin & Co, Solicitors, Co Sligo.

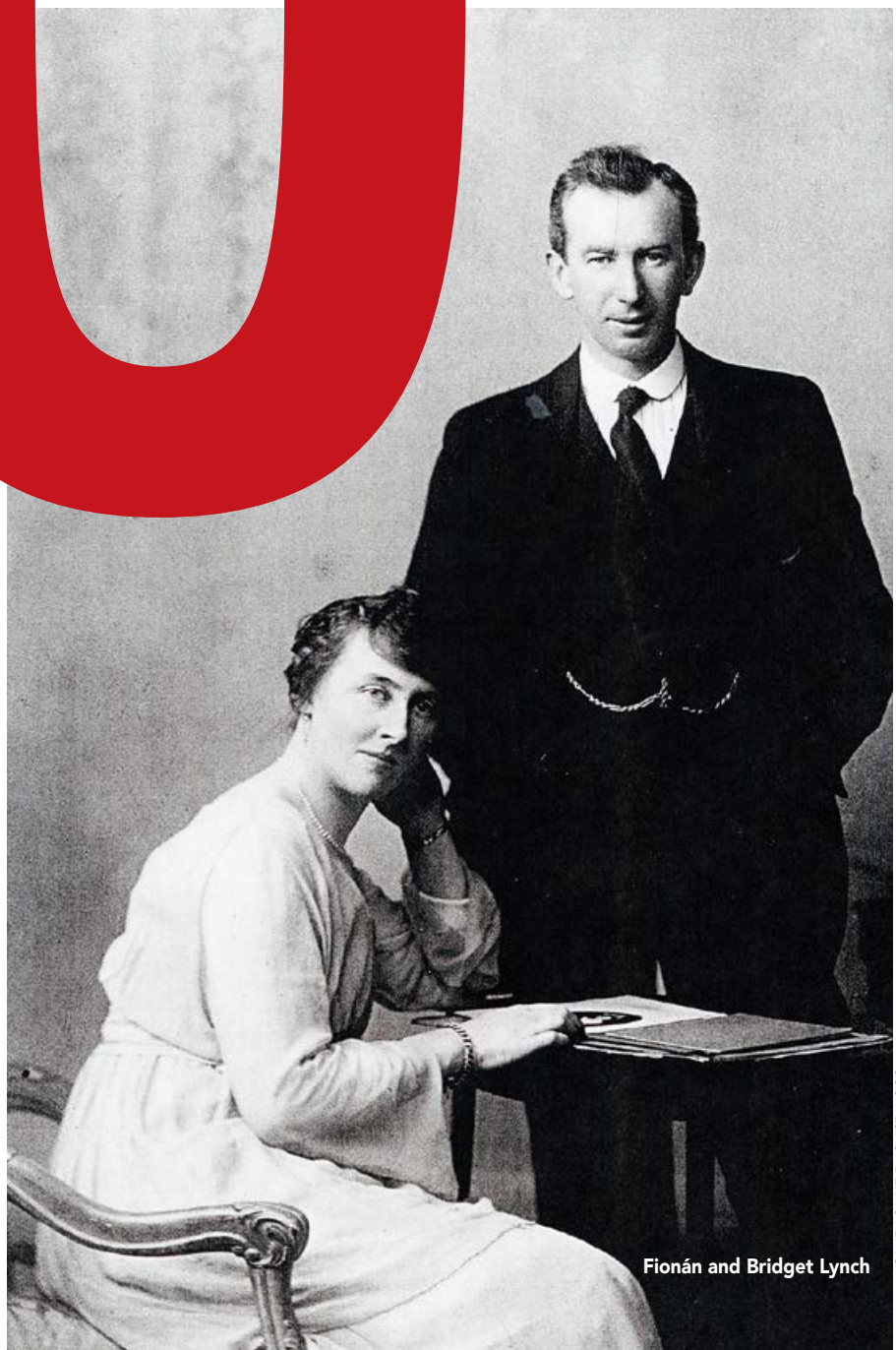
THE TREATY



ON 6 DECEMBER 1921, THE ARTICLES OF AGREEMENT THAT WOULD ULTIMATELY RESULT IN A PEACE TREATY BETWEEN IRELAND AND BRITAIN WERE SIGNED AT DOWNING STREET. BUT WHO WERE THE IRISH MEN AND WOMEN OF THE TREATY? FIONA MURRAY REVEALS ALL



On 24 June 1921, following the six most violent months of the Irish War of Independence, British Prime Minister David Lloyd George invited Éamon de Valera and Sir James Craig to a conference in London "to explore to the utmost the possibility of a settlement". After the coming into force of the truce on 11 July, de Valera led a delegation to London, meeting privately with Lloyd



Fionán and Bridget Lynch

COURTESY OF DERMOT LYNCH

> IN LATE SEPTEMBER AND EARLY OCTOBER, 21 ADVISERS AND STAFF WERE APPOINTED TO THE DELEGATION

PIC: DESMOND FITZGERALD PHOTOGRAPHS, P89/PH171. REPRODUCED BY KIND PERMISSION OF UCD ARCHIVES

Solicitors Eamon Duggan and George Gavan Duffy leaving 10 Downing Street during the course of the Treaty negotiations. Both men were to become the two legal signatories of the Treaty

> A CENTURY LATER, IT IS APPROPRIATE TO RECOGNISE THE CONTRIBUTIONS OF ALL INVOLVED, PARTICULARLY THOSE WHO WORKED QUIETLY IN THE BACKGROUND IN THE HOPE OF CREATING AN INDEPENDENT AND VIABLE STATE

George on four occasions. Exchanges between Dublin and London continued through August, culminating on 7 September with a letter from Lloyd George to de Valera, inviting the Irish side to send a delegation to Inverness on 20 September.

A temporary collapse of negotiations, however, meant that Lloyd George had to issue a fresh invitation on 29 September, this time to a conference in London on 11 October. This was accepted by de Valera, and the delegation left Ireland for Holyhead on 8 and 9 October. On 6 December 1921, after two months of intense negotiations, the articles of agreement that would ultimately result in a peace treaty between Ireland and Great Britain were signed at Downing Street.

Behind the scenes

One hundred years later, only the names of the five signatories – Arthur Griffith, Michael Collins, Robert Barton, George Gavan Duffy and Eamon Duggan – are generally remembered. Yet many other Irish men and women had a role to play behind the scenes, although up to now their personal contributions have been unknown or unrecognised. Who were these people, and why were they chosen for such an important mission?

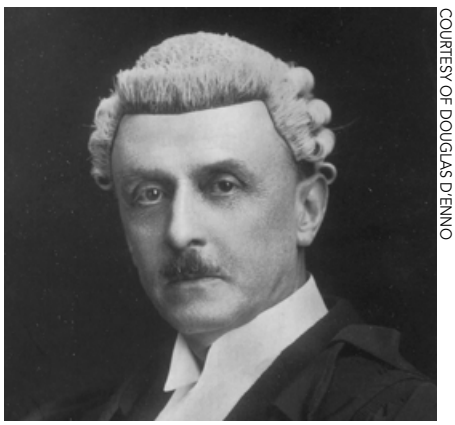
Following recent extensive research by a group of descendants, the names of around 70 delegation members and support staff who were based in London for the period of the negotiations have been identified. As well as the five plenipotentiaries, there were four secretaries and 21 advisers and staff. Nine of these – a high proportion – were (or would later become) members of the legal profession.

Five secretarial assistants provided administrative support, and there were also two chaperones, 14 bodyguards/security staff, seven dispatch carriers, and 12 key members of the household staff.

Those involved came from a variety of backgrounds, and included landed gentry, farmers, teachers, artisans, and small shopkeepers. Collectively, they represented the striking diversity of the movement for Irish freedom. Their personal stories warrant being told.

Plenipotentiary selection

The make-up of the Irish delegation was determined by the seven-member Cabinet in Dublin on 9 September and would later be sanctioned at a meeting of the Dáil on 14 September. De Valera refused to lead the deputation, instead proposing Griffith as chairman, with Collins as second in command. Collins demurred



COURTESY OF DOUGLAS D'ENNO

John Chartres was assigned the key task of drafting the constitutional terms for Ireland's future relationship with the British Crown

COURTESY OF ROSE MARY O'BRIEN AND RUTH BOURKE

Gerty Conry was appointed as private secretary to Arthur Griffith, and would later act as private secretary to a succession of attorneys general

COURTESY OF THE MURRAY FAMILY

Diarmaid Fawsitt was appointed the Republic's first consul general to the USA in 1919. He would later pursue a legal career

This photo of the Irish delegation was taken at Hans Place, London. *(Front, l to r)*: Joseph McGrath, Lily O'Brennan, David Robinson, Ellie Lyons, May Duggan, Bridget Lynch, Kathleen McKenna, Alice Lyons, and Fionán Lynch, *(back, l to r)*: Michael Knightly, John Chartres, George Gavan Duffy, Robert Barton, Eamon Duggan, Arthur Griffith and Erskine Childers

at first, feeling that he was not enough of a politician for such a task, but in the end consented.

Of the four remaining Cabinet ministers, both Cathal Brugha and Austin Stack refused, disclaiming any skill at negotiations, while WT Cosgrave was not considered. Robert Barton (minister for economic affairs), proposed by Collins, accepted with diffidence, in view of the other refusals. The remaining positions were filled by two solicitors, Eamon Duggan and George Gavan Duffy.

Duggan was nominated by Collins, who had been impressed by the skills he had demonstrated when he had accompanied de Valera to London as chief Irish liaison officer during the truce. The son of an RIC officer, Duggan had served his apprenticeship as an articled clerk to a solicitor in Dublin, eventually qualifying in 1914 and setting up a practice at 66 Dame Street. In 1915, he took a case for tenants of the Swifte estate near Longwood in Co Meath in order to get their rights to their lands recognised. The following year, he acted as solicitor for the next of kin during the inquest into the death of the 1916 rebel Thomas Ashe while on hunger strike. Duggan's role in the delegation would largely involve liaison with the various British officials.

Gavan Duffy, son of the Young Irelander Charles Gavan Duffy, had been educated in France and in England. After qualifying with a solicitor's firm in 1907, he practised in London. He defended Roger Casement at his trial for high treason in 1916, an event that affected him deeply. Gavan Duffy was called to the Irish Bar in 1917 and, in later years, would go on to have a distinguished legal career, becoming involved in some notable constitutional cases. Appointed a judge of the High Court in 1936, he would act as an unofficial adviser to de Valera during the drafting of the 1937 Constitution and would become President of the High Court in 1946.

Delegation secretaries

At the 14 September Cabinet meeting, four delegation secretaries were appointed. Robert Erskine Childers (author of *The Riddle of the Sands*) had originally been proposed by Collins as a potential delegate, but de Valera had suggested him for chief secretary instead, due to his knowledge of constitutional procedure and general secretarial expertise. Childers read law at Trinity College, Cambridge, and briefly studied for the Bar in 1893 before being accepted for clerkship in the House of Commons in 1895. He was familiar with the machinery of Westminster

and had studied the political and diplomatic stratagems of earlier colonial negotiations.

John Chartres – at 59, the oldest member of the delegation – was appointed second secretary. He had entered King's Inns in 1884, and the following year was admitted to membership of the Inn of the Middle Temple in London, where he was Powell prizeman in common law. However, he was not called to the Bar of England and Wales until 1908, practising on the South-Eastern Circuit. Between 1912 and 1917, he wrote several law books, largely of judicial interpretations. Given his legal experience, Chartres was assigned the key task during the treaty negotiations of drafting the constitutional terms for Ireland's future relationship with the British Crown. In a 14 October memorandum to Griffith, he suggested a formula that he felt provided the germ of a compromise that would satisfy both sides. Part of his proposal would later be embodied in article 4 of the Treaty.

Fionán Lynch, who had trained as a national teacher, was appointed assistant secretary to the delegation, but did not attend the conference meetings, since his duties were in logistics: organising meetings, accommodation, and transport. In later years, while continuing to act as TD for Kerry, he developed a legal practice in the midlands, having been called to the Irish Bar in 1931. Evidently held in high regard by both sides, in 1944 he was appointed to the Circuit Court bench for Donegal and Sligo by the de Valera government, even though he was a Fine Gael politician.

Diarmuid O'Hegarty was appointed as cabinet secretary to the delegation, having acted as clerk of the first Dáil and Dáil cabinet secretary, coordinating the work of various departments and having a critical role in the effective operation of government on the run.

Expert advisers and staff

Throughout late September and early October, 21 advisers and staff were appointed to the delegation. Two staff members, Joseph McGrath (later director of the Irish Hospitals' Sweepstake) and Daniel McCarthy (who had been an effective director of elections for Sinn Féin) travelled to London in advance and rented two houses in Knightsbridge, at 22 Hans Place and 15 Cadogan Gardens. Of the other four staff members, one was David Robinson (secretary of the Irish White Cross). He had served his solicitor's apprenticeship in Dublin with his cousin's firm, A&J Robinson, qualifying in 1906, but had then emigrated to Canada for some years.

> AS WELL AS THE FIVE PLENIPOTENTIARIES, THERE WERE FOUR SECRETARIES AND 21 ADVISERS AND STAFF. NINE OF THESE – A HIGH PROPORTION – WERE (OR WOULD LATER BECOME) MEMBERS OF THE LEGAL PROFESSION

There were four economic advisers, one of whom, Lionel Smith-Gordon, had studied law at Oxford. He had written extensively on the cooperative movement and, in 1919, had been appointed managing director of the newly founded Irish National Land Bank.

Another adviser, Diarmaid Fawsitt, had been appointed the Republican shadow government's first consul general to the USA, in 1919. He would later pursue a legal career. Called to the Bar in 1928 after studying at King's Inns, he subsequently devilled for Gavan Duffy. In 1956, he was appointed as a judge to the Eastern Circuit. The other economics experts were academics: Charles Oldham (professor of national economics at UCD), and Timothy Smiddy (professor of economics and commerce at UCC). During the negotiations, the latter would provide Collins with a key briefing document on the issue of Irish debt to Britain.

The three financial advisers were Henry Mangan (city accountant of Dublin Corporation) who had instructed Collins in finance when he became minister, John J Murphy (deputy city treasurer of Dublin Corporation), and Joseph Brennan (secretary of the Department of Finance and later governor of the Central Bank), who would draw up eight explanatory papers outlining Ireland's position in relation to matters such as the national revenue and liability for the imperial national debt.

George Murnaghan, who had trained as a solicitor in Omagh and was a partner in the law firm Shields & Murnaghan, was a legal adviser, while Sean Milroy, who had escaped from Lincoln jail with de Valera in 1918, acted as adviser on Ulster. Desmond FitzGerald was appointed publicity director, with journalist Michael Knightly as press officer. Ned Broy (later to be Garda Commissioner) advised on security and acted as Collins' personal typist and

FROM THE COLLECTION OF ERSKINE CHILDERS

Robert Erskine Childers read law at university and briefly studied for the Bar in 1893

factotum, while 'Ginger' O'Connell, Emmet Dalton and Eoin O'Duffy (the future Blueshirt leader) were defence advisers.

The women of the delegation

No women were appointed as delegates. Countess Markievicz was originally considered by de Valera, but was not ultimately nominated. Mary McSwiney, sister of the martyred Lord Mayor of Cork and a prominent figure in the movement, was apparently judged to be too extreme. Thus, the only female members of the London secretariat were the five secretarial staff – all trusted employees.

Ellie Lyons and her sister Alice had been working for Collins in the finance office as stenographers, while Gerty Conry had been employed by O'Hegarty in the secretariat of the Dáil. Kathleen McKenna, who had worked with FitzGerald on the production of the Republican newsletter, *The Irish Bulletin*, was appointed private secretary to Griffith. She would later act as private secretary to a succession of attorneys general, including John Costello, JJ O'Byrne, and the later Chief Justice Conor A Maguire.

The oldest of this group, Lily O'Brennan (an executive member of Cumann na mBan and sister-in-law of the executed 1916 leader Eamon Ceannt) had been part of the July delegation to London led by de Valera. The wives of two plenipotentiaries also had a role to play: May Duggan and Bridget Lynch were appointed by the Dáil as chaperones to the five single women, and also acted as hostesses for the delegation.

Security and dispatch carriers

Security was a major concern, including the fear of hired assassins. For his protection in London, Collins placed his trust in the members of his band of young and devoted gunmen, known as 'The Squad' – four of whom he brought over specially to act as his bodyguards.

Kathleen McKenna, in her memoirs, would later describe them as "jovial boisterous men who preferred horseplay to formalities". For additional security, eight members of the London IRA, trained and trustworthy men, acted as guards for the two London houses.

Since the Irish side didn't trust the English postal system, confidential communication either within London or with the Cabinet in Dublin had to be transmitted by couriers. While most were former members of Collins' intelligence staff, two were women. Molly Flannery Woods, a well-known Sinn Féin activist, travelled over to London on at least three occasions, accompanied by her 15-year-old daughter Maureen, who carried dispatches destined for Hans Place stitched into her fur collar.

The 17-year-old Seán MacBride, whose later public career would form a central part of the history of mid-20th century Ireland, was officially listed as a 'messenger' for the delegation. Son of the executed Major John MacBride and his wife Maud Gonne, he was already an able guerrilla fighter by 1921, and he was personally asked by Collins to accompany the delegation to London.

During the negotiations, MacBride travelled to Dublin by the night mail – an arduous journey of 11 hours – at least twice a week, delivering dispatches directly to de Valera, as well as private letters from Collins to his IRB friends. MacBride would go on to study law at UCD in 1924 and was called to the Bar in 1937. As a barrister, he frequently defended IRA prisoners of the State, and would later be appointed secretary general of the International Commission of Jurists.

Household staff

Since the senior domestic staff members in the two houses would be in close contact with the delegates, it was essential that trustworthy people be hired for these positions. Recruited in Dublin, they included the housekeeper of the Westbrook Hotel, as well as staff from the Gresham Hotel. Collins particularly asked that some of the people who had helped him while he was on the run be included, and specifically invited John O'Brien (head wine waiter at the Gresham) and his brother Eddie, allegedly to ensure that he was not poisoned during the negotiations.

The cook, Mary Folkard from Oldcastle, Co Meath, was a source of fascination to both British and US journalists, who termed her "the mother of the whole party" and wrote: "It's said in Downing Street that it's her seasoning puts so much pep in the Irish delegates." Her views on cooking, particularly potatoes, were eagerly sought.

The junior domestic staff – housemaids, assistant cooks, cleaners, and others – were recruited from some of the London-Irish clubs. Evidently, an Irish atmosphere prevailed below stairs, with the staff even holding a Hallowe'en party in the kitchen on 31 October.

Human cost

On 7 December 1921, the day after the signing, the *Irish Independent* appeared to recognise the human cost behind this accomplishment, stating: "It will be for historians to chronicle the valiant and persistent efforts, the ceaseless mental and physical strain, and the stupendous responsibility of the ordeal."

A century later, it is appropriate to recognise the contributions of all involved, particularly those who worked quietly in the background in the hope of creating an independent and viable state, and who helped to turn the unlikely proposition of a Treaty agreement in October 1921 into reality on 6 December. g

---

Fiona Murray is a native of Cork and a granddaughter of Judge Diarmaid Fawsitt. An Oxford history postgraduate, she is co-editor of a recent book about the members of the delegation. The Men and Women of the Anglo-Irish Treaty Delegations 1921 *(Laurelmount Press, 2021) is written and produced by descendants as a limited commemorative edition. It is not currently for sale, but copies are available in local libraries throughout Ireland. A copy has also been donated to the Law Society Library.*

FIRST WE TAKE MANHATTAN

Alan Murphy has moved from managing partner of Eversheds Sutherland Ireland to being head of EY Law Ireland – the global consultancy leviathan's beachhead in the Irish legal market. Ireland is late to the 'internationalisation party', he tells Mary Hallissey

Monaghan man Alan Murphy has seen the full arc of globalisation in the Irish law market during his career. As a young lawyer working for well-known property solicitor Rory O'Donnell, he saw the relationship develop between international firm Eversheds and O'Donnell Sweeney, which later became Eversheds O'Donnell Sweeney in the early 2000s.

When he started his career, there were no international law firms here. Now, he's heading up EY Law in Ireland. EY Law is a significant presence globally, but somewhat of an unknown in this country. But that's all about to change, Murphy says: "Ireland is late to the party in terms of internationalisation."

ALL PICS: CIAN REDMOND



Having moved on from Eversheds Sutherland last year, he says: "We would for years, in my former parish, have been the only ones. The next stage is for the law to develop in tandem – in unison – with other disciplines, because it's interesting for lawyers and accountants and consultants to work together."

Each discipline brings different educational backgrounds and training, and that has benefits for the client, he feels – law is now transformed in terms of the opportunities out there. "I believe that lawyers have a huge amount to give to industry. I would have the utmost respect for my accountant colleagues who have brought [their skills] to wider business."

I'm your man

EY Law had a presence in Britain for years before deciding to enter the Irish market, and Murphy was headhunted last year to lead the 'disruptive initiative', which now has 12 lawyers and plans to grow to 50 by 2025.

"It was the right time in my career to do it. I do believe this model is part of the future of law – and I've always been very interested in the future of law," he says, describing the challenge of starting as the lone employee of EY Law in Ireland last March as "very energising".

Murphy says that clients have themselves defined the 'value proposition' with their desire to streamline costs by integrating tax and legal advice into one service. Ultimately, he believes that clients will seek value as their needs evolve and change, and that movement is in line with the internationalisation of law.

Of course, multidisciplinary partnerships are not permitted in this jurisdiction. EY Law is a standalone legal firm that is affiliated with EY Law Global and EY Ireland/Global, but not owned or operated by either. But the fact that EY Law is able to offer legal services across a range of legal disciplines, Murphy says, "enables us to take a truly sectoral approach". For example, an international company seeking to headquarter in Ireland can go to EY Law for IP, tax, and corporate-structure advice – all in one shop.

> IT'S ALMOST IMPOSSIBLE FOR LAW FIRMS TO BE ABLE TO PROVIDE THAT FULL, INTEGRATED, END-TO-END OFFERING. I THINK THAT IT'S INTERESTING TIMES … IT'S A CHANGING AND EVOLVING MARKET, AND THE MARKET WAS STATIC FOR A VERY LONG TIME

He feels that EY Law's integrated culture and broader team culture will also bring efficiencies: "It strengthens what you're offering, both the expertise and the service are sharpened."

"It's almost impossible for law firms to be able to provide that full, integrated, end-to-end offering," he suggests, noting that, for many law firms, the model of long-term investment doesn't suit. "I think that it's interesting times … it's a changing and evolving market, and the market was static for a very long time."

Going home

Blockages in London because of Brexit may work to Ireland's advantage, Murphy believes. He has already observed a flow of talent and industry into the country: "I would never welcome Brexit, but I think that there are opportunities. We will always move in the direction of the wider business."

From his perspective as a former Eversheds Sutherland board member who had a European role, he believes that the Irish workforce is talented and productive, motivated, and hard-working – though with weaknesses in language skills.

"Ireland is a good place to live, and it's a good place to bring up a family, but we're a good place to do business as well. We were very active in the market in terms of seeking talent, with a deliberate strategy to go for senior people first – to get the best in the market in particular

practice areas that we are seeking to operate in," Murphy explains, adding: "We are already moving on to the next wave of that."

In September, leaders were appointed for four initial practice areas – commercial real estate, employment law, technology and commercial, and corporate and M&A restructuring. "We're already actively looking at energy and sustainability, and financial services, which would probably principally be around regulatory. We were very focused in our strategy to get our senior hires on board so they could build out the teams."

EY Law already has offices in Cork, Galway and Waterford. "We were keen, from the outset, to have geographical spread in terms of law, because law firms have, historically, been a little bit reluctant to do that. So, we saw a very good opportunity." The virtual world allows integration from a distance in a way that wasn't previously possible, he notes.

Everybody knows

Murphy did English and history at Queen's University, Belfast. He has been thankful for the broad perspective a study of the humanities has given him in his career. "I'm a bit prejudiced because I come from an arts background, but I am in favour of a broad educational base. "There's enough time to specialise, and a lot of the law isn't about the pure technical advice – it's about approach, it's about style, it's about being a trusted advisor."

He reflects that, while training in a larger firm has its advantages – in terms of resources and access to learning and development – general practice also has numerous upsides.

Murphy trained with Keenan Johnson in his practice in Ballymote, Sligo, where the craft of law was taken very seriously. It was difficult to get a traineeship at the time, and he recounts how he resorted to pretending to be a client to get in the door while traipsing around firms with his CV.

A three-year stint at John A Sinnott in Enniscorthy, Wexford, followed, where he specialised in real estate.

"When I moved to Dublin, I moved to AC Forde and Co, which was a very good banking and real-estate firm. Then, because I had specialised as a real-estate lawyer, I moved to Sweeney O'Donnell because Rory O'Donnell was possibly, as they say, the best conveyancer and property lawyer in the country at that time. He was phenomenal," he recalls.

When hiring now, Murphy looks for excellent technical knowledge and skill, good instincts, common sense, collegiality – and, of course, integrity. He also seeks an element of entrepreneurial zeal and the ability to embrace something new.

"Emotional intelligence is massively important, and sometimes it's not rated," he says. "There's a lot of opportunity in Ireland, with technological and pharma innovation, and financial-services growth. You would hope that it will continue like that."

SLICE OF LIFE

- ***Greatest achievement to date?***
Personally, being the father of three individuals and trying to be the best dad I can.

- ***Do you keep fit?***
I am an appalling sportsman, but I do try to keep fit. During lockdown, I took up a form of meandering cycling, and I value the time it gives me to think and breathe.

- ***What are you reading?***
Little Fires Everywhere, by Celeste Ng (I recommend it!)

- ***Best news sources?***
The broadsheets – both online and in print.

- ***Current viewing?***
The Edge of War, on Netflix. Fascinating.

- ***Favourite tipple?***
Red wine (preferably a full-bodied Spanish or Italian).

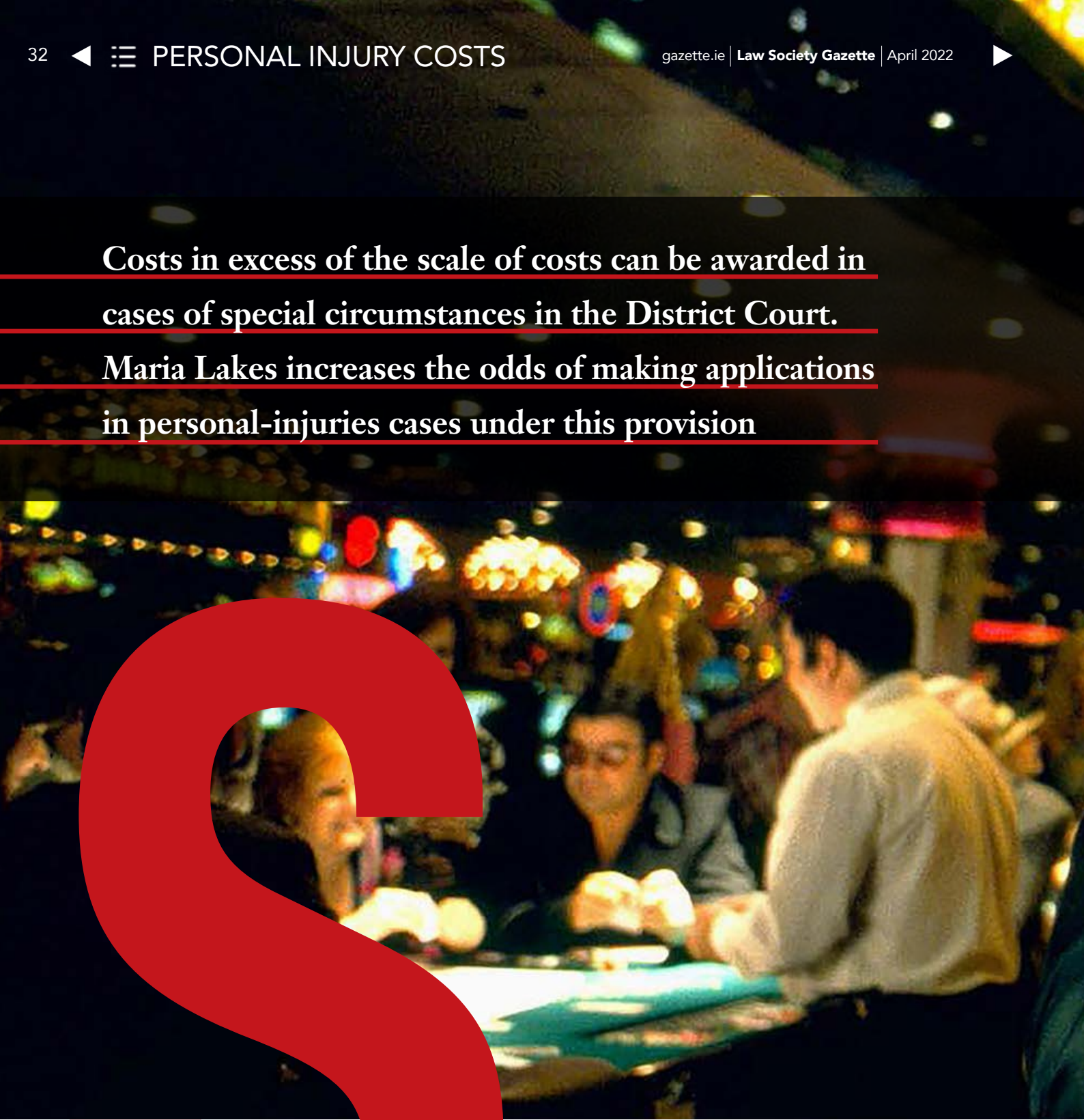
- ***Ideal lunch companion?***
My wife, Marie.

- ***Favourite musician?***
Leonard Cohen – a true performer.

- ***Must-have gadget?***
A good book or, failing that, Alexa – for some Ennio Morricone at full volume.

Mary Hallissey is a journalist with the Law Society Gazette.

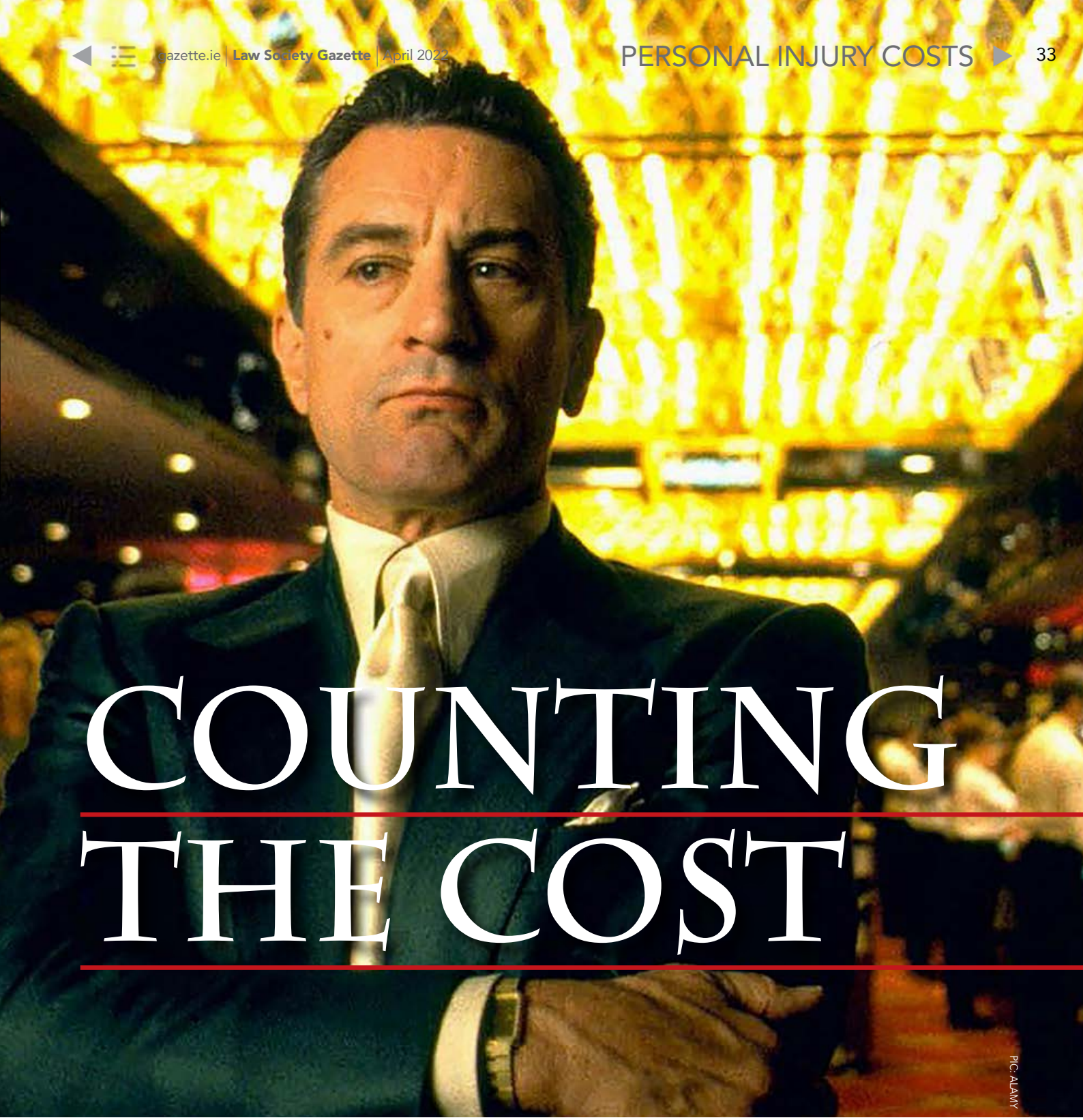
Costs in excess of the scale of costs can be awarded in cases of special circumstances in the District Court. Maria Lakes increases the odds of making applications in personal-injuries cases under this provision



Since the introduction of the Judicial Council's *Personal Injuries Guidelines*, there has been much speculation regarding the volume of personal-injury claims that will be prosecuted in the District Court.

It is clear that many cases that would have been prosecuted within the Circuit Court will now fall comfortably within the District Court jurisdiction. Further, some Circuit Court cases will ultimately attract District Court-level damages.

There is significant concern that victims of minor injuries will find it difficult, if not impossible, to secure legal representation to take such claims, as they will



COUNTING THE COST

PIC: ALAMY

not be economically viable. This concern arises from the fact that the District Court Schedule of Costs has not been revised, as required by statute, since its introduction in 2014. Therefore, the scale costs are out of line with the actual costs incurred in prosecuting such cases.

In addition, the reduction of damages provided by the guidelines, and the Personal Injuries Assessment Board process continuing to be a non-recoverable cost for victims, does not assist in accessing legal services on a contingency basis. In reality, the non-recoverable costs associated with prosecuting a minor personal-injury claim could render the compensation awarded meaningless.

Personal-injury solicitors have a real concern that the combination of the failure to revise the District Court's scale of costs and the introduction of the guidelines will result in the denial of access to legal services, and thus the denial of access to justice. There is no access to justice without access to legal representation.

In assessing the viability of minor personal-injury claims, it is essential to have a comprehensive understanding of the costs regime within the *District Court Rules*. In this regard, there appears

> THERE APPEARS TO BE A MISUNDERSTANDING AMONG PRACTITIONERS WHO BELIEVE THAT THE DISTRICT COURT RULES ONLY PROVIDE FOR SCALE OF COSTS. THIS IS NOT, IN FACT, THE CASE. THERE IS SIGNIFICANT JUDICIAL DISCRETION AS REGARDS DISTRICT COURT COSTS

to be a misunderstanding among practitioners who believe that the rules only provide for scale of costs. This is not, in fact, the case. There is significant judicial discretion as regards District Court costs, which will support victims of minor personal injuries to access legal representation.

The rules

The rules set out the scale of costs that apply to personal-injury claims. Order 53, rule 2 of the *District Court Rules* (as amended) provides:

"1) Save as otherwise provided, the costs specified in each scale in the Schedule of Costs are the only lawful costs.

2) The court may, where appropriate in the special circumstances of a case, to be specified by the court, award an amount for costs and/or counsel's fees in excess of the amount provided in the Schedule of Costs.

3) The costs in the Schedule of Costs are in every instance exclusive of and in addition to any sum allowed as recovery of value-added tax and all actual and necessary outlay as is allowed.

4) The Schedule of Costs must be revised no less frequently than once every three years.

5) In any case where the court is of the opinion that there is no appropriate scale of costs provided, it may measure the costs.

6) In this rule: 'actual and necessary outlay' must include a sum for miscellaneous outlays set out under the heading 'Schedule of Outlays' in the Schedule of Costs to include postage, photocopying, registered post, fax and sundries and the Schedule of Costs must also be read accordingly."

Despite the statutory mandate that the scale of costs be revised no less than once every three years, these costs have remained unchanged since their introduction in 2014. Representations have been made to the District Court Rules Committee by the Law Society and the Bar Council for these costs to be revised. Despite these submissions, no revision of the scale of costs has taken place.

The costs associated with running a solicitor's practice have increased significantly since 2014. Further, the cases that will now fall within the District Court jurisdiction as a result of the introduction of the guidelines are cases never intended to be subject to this scale of costs.

Personal-injuries litigation has become more complex in the past eight years, and it is simply incomprehensible that the guidelines were introduced without this issue being addressed.

However, the rules do not require all cases to attract scale of costs, and the solution to ensuring access to justice lies within order 53 – rules 2(2) and 2(5).

Special circumstances

Under order 53, rule 2(2), costs in excess of the scale of costs can be awarded in cases of special circumstances. A number of applications are known to have been made successfully within the past six months under this provision. These applications were made in cases involving Circuit Court cases ultimately attracting District Court-level damages and District Court claims.

Order 53, rule 3 outlines the information and documentation that is required in such applications:

"1) Where a party intends to apply for costs otherwise than in accordance with the Schedule of Costs, that party must have available in court any information or document which establishes the special circumstances in the case which to support such an application.

2) Where a party applies for an item of cost not provided for in the Schedule of Costs to be allowed, that party must have available in court any information or document which establishes that the item of cost was necessary or reasonable to be incurred, and documents vouching the cost (if already incurred or paid) or providing an estimate of such cost.

3) Where a party applies for the costs of a civil proceeding, that party must have available in court information or documents sufficient to confirm the

particular pre-hearing steps taken or applications made in the proceeding (including particulars, discovery, applications for judgment on affidavit or judgment in default and any case management hearing) so as to enable the proper amount of costs to be determined."

This provision allows practitioners to apply to the court for costs in excess of the scale of costs.

The judge hearing such application will have had the benefit of hearing the substantive action, and will be familiar with the complexities involved and issues in dispute.

In the case of a Circuit Court hearing that ultimately attracts a District Court-level award, the court can use this provision to determine if it was, in fact, appropriate for the case to be brought in the Circuit Court, despite the level of compensation achieved, and can exercise discretion as regards the costs awarded.

Once the judge makes an order of special circumstances, it is open to the judge to measure the costs. In this regard, solicitors should anticipate such applications and ensure that their file is prepared for the hearing and the costs application, should it arise. This preparatory work is akin to preparing a file for taxation. Should the judge wish to measure the costs immediately, the solicitor would need to outline the work completed to the court in full. Further, counsel's costs can also be measured, and drafting costs can be sought and measured, if awarded.

Applications under order 53, rule 2(2), have also been made successfully in rulings of infant settlements, and costs have been measured either by the judge or by way of referral to the county registrar in Circuit Court matters.

The county registrar has the authority to measure costs when directed by a Circuit Court judge under order 18, rule 6, of the *Circuit Court Rules*: "The county registrar shall have power, when directed by the judge or empowered by these rules, to tax all bills of costs, including costs as between solicitor and client, and shall certify the amount properly due thereon. In every case he shall measure the costs by fixing a reasonable sum in respect of the entire bill or any particular item therein."

No appropriate scale

Under order 53, rule 2(5), there is a general judicial discretion to measure costs where there is no appropriate scale.

In circumstances where the scale of costs has not been revised in breach of statutory requirements, it is arguable that there is no longer any appropriate scale in existence, and therefore all District Court costs should be measured.

In personal-injury claims, the introduction of the guidelines has radically changed the nature of cases attracting District Court costs. Thus, it is fair to say that such cases should be considered as cases of special circumstances or for which there is no appropriate scale. When introduced in 2014, the scale of costs was not intended to apply to such cases, and the application of same would not only deny access to justice, but would eliminate a legal remedy for victims.

PIC: ALAMY

> THE DISTRICT COURT SCALE OF COSTS HAVE NOT BEEN REVISED, AS REQUIRED BY STATUTE, SINCE THEIR INTRODUCTION IN 2014. THEREFORE, THE SCALE COSTS ARE OUT OF LINE WITH THE ACTUAL COSTS INCURRED IN PROSECUTING SUCH CASES

Legal remedy

To continue to facilitate our clients in exercising their legal entitlements as innocent victims of personal injuries, we must ask our judges to facilitate this legal remedy. We must get back to basics, examine the provisions of the *District Court Rules*, and ensure that applications under order 53, rules 2(2) and 2(5) become the norm.

The introduction of the guidelines was not intended to eliminate a legal remedy for victims by making minor personal-injury claims uneconomic. We, as solicitors, have the tools at our disposal to ensure that our clients' rights are safeguarded.

Maria Lakes is partner in Tracey Solicitors, Dublin 2.

WIPE OUT

ARE WEB-SURFERS IN IRELAND – PARTICULARLY CHILDREN – SUFFICIENTLY PROTECTED BY LAW FROM HARASSMENT AND ONLINE HARM? CLARE DALY EXAMINES THE EXISTING LEGISLATION, SURVEYS THE MISSED OPPORTUNITIES, AND WARNS ABOUT THE FREAK WAVES THAT LIE AHEAD

It is clear that legal remedies are required to tackle harmful content online. Cyberbullying and online harassment have been increasing in ferocity and frequency over recent years, particularly during lockdown. Studies have shown that harmful online interactions and incidents can cause very real, lifelong harm to the victims. Irish legislation has been evolving in recent times to meet a chorus of calls for reform.

The *Harassment, Harmful Communications and Related Offences Act 2020* came into law on 10 February 2021. The act creates new offences in relation to harassment and harmful communications, both online and offline, and provides for the anonymity of victims of those

PIC: ALAMY

offences. Known as 'Coco's Law', this act prohibits image-based abuse and carries significant penalties. In terms of cyberbullying, this law also provides stronger measures against harassment.

While this legislation is necessary and welcome, there is still much to do to make the online world safer for all users. The emergence of widely available internet access, availed of by old and young alike, has created huge opportunities for knowledge sharing and information.

Such opportunity, however, comes with its own threats and risks, particularly for our young people. As cyberpsychology expert Prof Mary Aiken points out: "The internet was designed on the premise that all users are equal – this is not true, some users are more vulnerable than others, and children are particularly vulnerable."

Head in the sand?

It has been said that cyberbullying is unlike anything faced by previous generations, because children can be contacted by their oppressors at every location – even within the safety of their own homes. The relentless and borderless nature of cyberbullying and harassment results in a unique kind of torment. With 93% of children surveyed saying they own their own smart device, and 84% of those aged eight to 12 on social media, the breadth and scope of exposure is concerning.

Research by Cybersafe Kids revealed that 29% of pre-teen children reported at least one bullying experience. A third (32%) of children using social media are posting videos of themselves online, and a third are interacting with strangers online. A quarter of children said that they had come across content online that upset or scared them.

Online harms are not limited to children. Recently, one in five adults reported that they have experienced harm online or on social media. Research carried out by the Department of Justice has found that one in 20 people claim to have had an intimate image of themselves shared online or on social media without their consent. These are sobering statistics.

In hot water

The *Non-Fatal Offences Against the Person Act 1997* currently provides the central mechanism for dealing with cyberbullying behaviour, with section 10 prohibiting the harassment of another "by persistently following, watching, pestering, besetting or communicating with him or her" such that "by his or her acts intentionally or recklessly, seriously interferes with the other's peace and privacy or causes alarm, distress or harm to the other".

The recent Supreme Court decision of *DPP v Doherty* held that harassment can include communication not directly addressed to, or sent to, a victim. Subsequently, section 10 was amended to provide for indirect harassment, that being persistent communication *about* a person. Accordingly, indirect online posts being made about someone (as opposed to directly to a victim) could come within the ambit of the offence.

The offence of harassment is designed to capture *persistent* communications, and one-off posts online would not fall foul of the legislation, irrespective of the capacity of such a post for duplication, permanence, and potential global reach.

The *Harassment, Harmful Communications and Related Offences Act 2020* provides for two new offences to deal with the non-consensual distribution of intimate images.

Section 2 prohibits distributing, publishing, or threatening to distribute or publish an intimate image without consent with intent or recklessness as to whether harm is caused, including psychological harm.

It is irrelevant that a person may have consented to the taking of an image if it is subsequently published or distributed without their consent. This offence will carry a maximum penalty of an unlimited fine and/or seven years' imprisonment.

Section 3 creates the offence of recording, distributing, or publishing an intimate image without consent. This is a strict-liability offence that attracts a maximum penalty of €5,000 and/or 12 months' imprisonment.

The posting of intimate images online, without consent, often arises after an intimate relationship has ended. Significantly, that act provides that it will be an aggravating factor for the purposes of sentencing if the perpetrator was in an intimate relationship with the victim, as inserted by this act into section 40(5) of the *Domestic Violence Act 2018*. The act also provides for the anonymity of the victim. Notably, where a child under the age of 17 is charged with an offence under this act, the consent of the DPP is required before proceedings shall be taken.

Section 4 creates the offence of distributing, publishing, or sending

"RECENTLY, ONE IN FIVE ADULTS REPORTED THAT THEY HAVE EXPERIENCED HARM ONLINE OR ON SOCIAL MEDIA. RESEARCH CARRIED OUT BY THE DEPARTMENT OF JUSTICE HAS FOUND THAT ONE IN 20 PEOPLE CLAIM TO HAVE HAD AN INTIMATE IMAGE OF THEMSELVES SHARED ONLINE OR ON SOCIAL MEDIA WITHOUT THEIR CONSENT

any threatening or grossly offensive communication about or to another person, with the intent to cause harm. This section will criminalise one-off offensive communications. It is applicable to a communication sent online or offline, and will carry a maximum penalty of a fine and/or two years' imprisonment.

'Grossly offensive' communication is not defined in the legislation. However, it is not a new term. For instance, grossly offensive, or indecent, obscene or menacing communication via telephone is prohibited by the *Post Office (Amendment) Act 1951* (as amended by the *Communications Regulation (Amendment) Act 2007*. Similarly worded legislation in Britain, and ancillary guidance, recommends that grossly offensive communication is one which is beyond that which is tolerable in an open and diverse society.

Missing the boat?

Perhaps there were missed opportunities within this act to criminalise other forms of sexual harassment that don't appear to be covered by existing legislation.

For instance, Britain's *Online Safety Bill* contains a new criminal offence of 'cyber-flashing', defined as the sending of unsolicited sexual images.

Section 45 of the *Sexual Offences Act 2017* in Ireland criminalises exposure and offensive conduct of a sexual nature. The offence arises where the person engaged in this behaviour in a public place – defined as "any place to which the public have access whether as of right or by permission, and whether subject to or free of charge"– which, it appears, is intended to apply to physical spaces only.

Further, child-protection concerns arise in terms of increasing reports of older children and teens engaged in sending sexual images/messages to their peers, referred to as 'sexting'.

The ending of a relationship and the subsequent sharing of intimate images without consent can be incredibly distressing to a person at any age but, for teenagers, the impact can be devastating. It is concerning that the 2020 act does not seek to amend the schedule of offences pursuant to the *Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012*. This act provides that, where a person knows or believes that a certain scheduled offence has been committed against a child, and he has information that he knows or believes might be of material assistance, he must disclose that information as soon as it is practicable to the gardaí. Failure to do so, without a reasonable excuse, is a criminal offence.

The schedule of offences to the act have not been expanded upon to capture an offence under the 2020 act. Thus, an offence under the 2020 act does not fall under the category of offences that shall be disclosed.

> A THIRD OF CHILDREN USING SOCIAL MEDIA ARE POSTING VIDEOS OF THEMSELVES ONLINE, AND A THIRD ARE INTERACTING WITH STRANGERS ONLINE. A QUARTER OF CHILDREN SAID THAT THEY HAD COME ACROSS CONTENT ONLINE THAT UPSET OR SCARED THEM

Uncharted waters

There has been much reform in this area, with more changes now proposed. The *Online Safety and Media Regulation Bill* proposes to create a regulatory framework for online safety, providing oversight on how online services deliver and moderate user-generated content. This will be overseen by an Online Safety Commissioner, who will set out binding safety codes for how online services will address the spread and amplification of certain defined categories of harmful online content. Such categories include content that is a criminal offence to share, serious cyberbullying material, material promoting eating disorders, and material promoting self-harm and suicide.

There have been calls for the bill to go further and provide for an individual complaints mechanism within the scheme. For now, criminal legal sanctions seek to address online harms brought about by individuals, but the reasonability of online service providers must also be brought to bear.

The proposed scheme represents a sea change in terms of the current online safety regime in Ireland – being one of the first economies to attempt to regulate these powerful companies. g

Clare Daly is a solicitor in Comyn Kelleher Tobin Solicitors, practising in the areas of child law, litigation and data protection.

LOOK IT UP

CASES:

- *DPP v Doherty Supreme Court* [2020] IESC 45

LEGISLATION:

- *Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012*
- *Harassment, Harmful Communications and Related Offences Act 2020*
- *Non-Fatal Offences Against the Person Act 1997*
- *Online Safety Bill* (UK, 12 May 2021)
- *Online Safety and Media Regulation Bill 2021*
- *Post Office (Amendment) Act 1951* (as amended by the *Communications Regulation (Amendment) Act 2007*)
- *Criminal Law (Sexual Offences) Act 2017*

THE BIG BLUE

Any decision to challenge future military exercises within Ireland's Exclusive Economic Zone will hinge on several factors. Our adjacency to an area of 'key world importance' suggests that this issue will certainly raise its head again, warns Lieutenant Commander Shane Mulcahy

On 20 January this year, the Russian news agency TASS confirmed plans to conduct a month of major naval exercises spanning multiple continents and comprising hundreds of military ships and aircraft. According to a ministry spokesperson, the exercises would "encompass seas washing Russia, and also world ocean areas of key importance".

In the succeeding days, and amidst a frenzy of media attention, it became clear that one such area considered by the Russian Defence Ministry to be of "key world importance" was the North Atlantic approaches to Europe – a mere 240 kilometres south-west of the Cork coastline. This revelation prompted calls for Irish Government intervention, a spirited mobilisation of the fishing community, and an eventual de-escalation by the Russian ambassador by announcing that the exercises would be moved "further offshore".

These military manoeuvres proceeded without further incident and have since been overshadowed by the appalling actions of Russian military forces

PIC: ALAMY


PIC: ROLLINGNEWS.IE

in Ukraine. Nonetheless, significant questions remain about Ireland's ability to control activities occurring off our own coastline. Could the legitimacy of these exercises be challenged successfully? What legal basis, if any, can be relied on in future to ensure that Irish waters remain the preserve of peaceful pursuits? The answer is far from settled.

'Irish waters' v the EEZ

For centuries, states have claimed sovereign rights over their adjacent waters. The extent of this jurisdiction was originally defined by the reach of coastal cannons – if you could fire and strike your target at a certain distance, you could effectively control the water space that it occupied. With passing time and technology, states continued to expand their claims, at varying rates and ranges.

The 1982 *United Nations Convention on the Law of the Sea* (UNCLOS) sought to standardise and codify these extant aspects of maritime law. In doing so, it created a single point of truth, often dubbed 'the constitution of the oceans'. UNCLOS enshrined the right of every coastal state to a 12-nautical-mile territorial sea, within which the full range of national jurisdiction could be exercised, albeit subject to a few caveats (section 2, article 3). Essentially, within 12 miles of the coast, the full breadth of the law of the land applies, and normal civil and criminal jurisdictions abound. Beyond this limit, however, coastal-state jurisdiction quickly dissipates.

Under part IV of UNCLOS, coastal states enjoy an 'Exclusive Economic Zone' (EEZ) out to 200 nautical miles from their coast, with enforcement jurisdiction over economic activities therein. This includes regulatory control of fishing activities, hydrocarbon exploration, and any other natural resources in the water or below the seabed (article 56). As such, the coastal state can, insofar as UNCLOS provides, prevent activities that impinge on its ability to enjoy economic access exclusively within these waters. This right of exclusivity is balanced, however, by the fact that the oceans beyond territorial waters, including the EEZ itself, are considered a part of the high seas – one of the least regulated regions left on the planet.

The high seas are, by definition, a space over which no state can exercise sovereignty, where 'the freedom of the high seas' reigns supreme (article 89). This concept of high-seas freedom has prevailed for centuries – more recently being committed to text so as to include express freedoms within UNCLOS. These include freedom of navigation and overflight, and the freedom to lay submarine cables

IF FISHING VESSELS WERE TO DEPLOY SPECIFICALLY TO AN AREA FOR THE SOLE PURPOSE OF DISRUPTING A PLANNED EXERCISE, A SIMILAR STANDARD MIGHT BE APPLIED IN FAVOUR OF THE STATE CONDUCTING THE EXERCISE

or pipelines, and are enjoyed by all states regardless of their location, even within the EEZ of another state. Further freedoms are either unenumerated or implied through specific exclusion.

None are absolute – every high-seas freedom is balanced and bordered by the freedoms and rights of others. It is in this context that one must consider the legal implications of recent (and, indeed, future) military manoeuvres off the Irish coast.

The legal basis

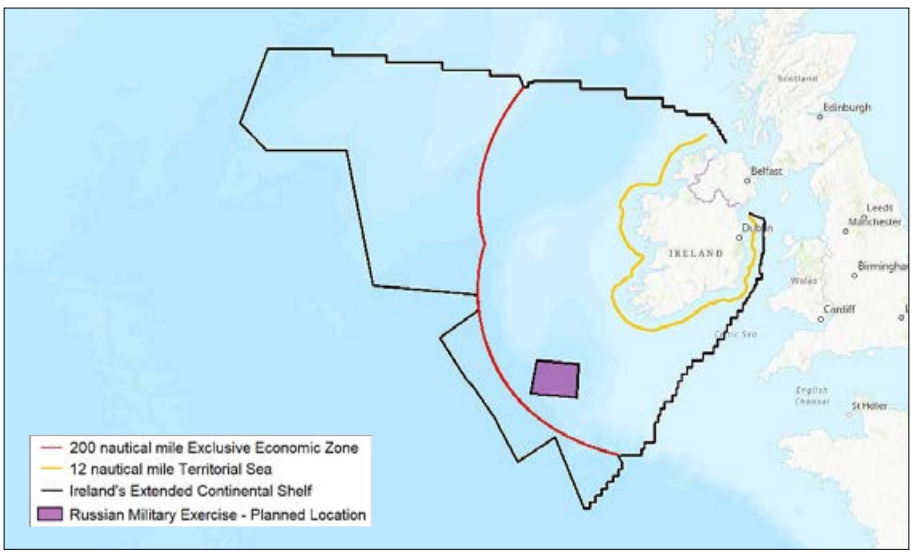
Freedom to conduct military exercises on the high seas is traditionally recognised as being a component part of customary international law, adjacent to those high-seas freedoms captured in UNCLOS article 87. These high-seas rights are transcribed to exist equally in the EEZs of coastal states, in accordance with UNCLOS article 58(1).

It is noteworthy, however, that no UNCLOS provision or article specifically addresses the conduct of military exercises. In fact, article 88 requires the high seas to be reserved for peaceful pursuits. This issue was addressed specifically during law of the sea negotiations prior to 1982, with most participants supporting the right of foreign exercise in a state's EEZ. Several coastal states have attempted to challenge this presumptive right, however, by submitting declarations against foreign military exercises in their EEZs without their consent. These states include Bangladesh, Brazil, Cape Verde, India, Malaysia, Pakistan and Uruguay. China, North Korea, and Peru have gone further than mere declarations, having been willing to use force to assert their declared rights on a number of occasions.

These attempts to prohibit foreign exercises in EEZs have garnered very little international support and are generally considered void of any legal status. The general consensus, and that supported by NATO and most western nations, is that "military activities, such as … launching and landing of aircraft … exercises, operations … [in the EEZ] are recognised historic high-seas uses that are preserved by article 58" (1994 message from the President of the United States transmitting the *UN Convention on the Law of the Sea*).

That said, the rights of foreign militaries to operate or exercise in a state's EEZ are far from absolute. Article 58 of UNCLOS continues at subsection 3 to require states operating in the EEZ of another nation to have due regard to the rights and responsibilities of the coastal state – specifically: "In exercising their rights and performing their duties under this convention in the exclusive economic zone, states shall have due regard to the rights and duties of the coastal state *and shall comply with the laws and regulations adopted by the coastal state in accordance with the provisions of this convention and other rules of international law*, insofar as they are not incompatible with this part" (emphasis added.)

> ANNOUNCING A 5,000-SQUARE-KILOMETRE EXCLUSION ZONE THAT UNDULY AFFECTS VESSELS FISHING WITHIN THEIR OWN STATE'S EEZ MIGHT WELL BE CONSIDERED AN UNREASONABLE IMPOSITION, RENDERING THE EXCLUSION ZONE AND (MILITARY) EXERCISE IN GENERAL TO BE CONSIDERED UNLAWFUL

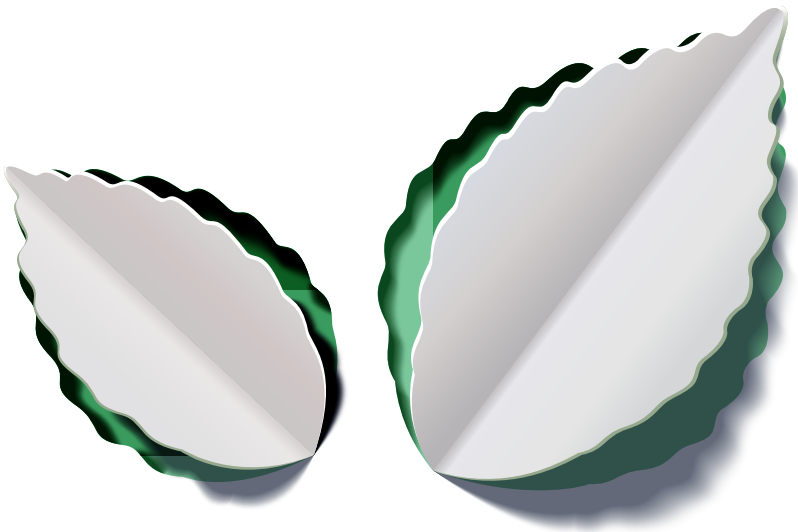


Ireland's maritime limits

The legal consequence of this requirement for 'due regard' may become pertinent if, for example, the exercise poses a specific risk to a marine protected area. States that adopt specific conservation measures, or designate marine protected areas, may enforce such provisions (as compatible with international law) on vessels operating in or around those areas (UNCLOS (n5) article 56(1)(b)(iii)). The right of the coastal state to enforce these protections is measured against the high-seas rights of the state conducting the military exercise, with the balance appearing in favour of the state whose actions show the requisite amount of 'due regard'.

Exclusion zones

Another issue that can affect the legality of an exercise is the designation and enforcement of an exclusion zone, such as that announced by Russian military officials prior to its planned February manoeuvres. These zones are not specifically mentioned or given legal status within UNCLOS, though some states may equate them to zones within which a military vessel might be seen to reasonably exercise its inherent right of self-defence (see Van Dyke, 1991). In line with the principle of 'due regard', the enforcement of an exclusion zone that unduly impedes on the right of the coastal state to its EEZ will likely be considered unlawful – this will again be determined on



PAPER LOVES TREES

European forests, which provide wood for making paper,
paper-based packaging and many other products,
have been growing by 1,500 football pitches every day!

Discover the story of paper
www.lovepaper.org

Source: Food and Agriculture Organization of the United Nations (FAO), 2005 - 2020
European Forests: EU27 + Norway, Switzerland and the UK.

LOVE PAPER®

PIC: ALAMY

The nuclear-powered Russian guided missile cruiser 'Pyotr Veliky' carrying out missile-launch tests at sea

a case-by-case basis, requiring evidence that the rights of the coastal state were unduly impinged upon.

This issue becomes particularly pertinent to our Irish example. On the one hand, announcing a 5,000-square-kilometre exclusion zone that unduly affects vessels fishing within their own state's EEZ might well be considered an unreasonable imposition, rendering the exclusion zone and (military) exercise in general to be considered unlawful, contrary to article 58(3).

Conversely, if fishing vessels were to deploy specifically to an area for the sole purpose of disrupting a planned exercise, a similar standard might be applied in favour of the state conducting the exercise, contrary to article 56(2). In this respect, the well-publicised plans by Irish fishing vessels to disrupt the pending Russian exercises might well have raised significant legal complications.

Conflicting views

When applied to the recent exercises planned off the Irish coast, the views of various commentators remain conflicted. Speaking to the *Irish Examiner*, Prof Andrew Cottey (University College Cork) highlighted the importance of the location in international waters, as well as the clear issuing of warnings regarding the proposed exercises, as placing the manoeuvres clearly within the confines of international law.

Conversely, retired Trinity College professor Clive Symmons pointed out to *The Times* that, as no specific reference exists under UNCLOS regarding military exercises in foreign EEZs, they are at best a legal 'grey area' and, as such, are "not an implied high-seas freedom in this context". On this basis, Prof Symmons reasons that the Irish Government would have been well placed to object, and possibly even seek to prevent, the exercises from proceeding as planned.

On this occasion, diplomacy appears to have won out, with legal complications being circumvented by Russian defence minister Sergey Shoigu deciding to relocate the military exercises as "a gesture of goodwill" When viewed in light of the subsequent military atrocities underway in Ukraine, however, *The Irish Times* reported former Chief of Staff Vice-Admiral Mark Mellett opinion that Minister Shoigu's decision was based less on goodwill or fear of legal repercussion, and was more of a hybrid tool, designed to undermine Irish and EU defence cooperation.

In any event, significant uncertainty remains as to whether or not a legal challenge to the Cork coastal exercise as planned by Russian military forces could have been made successfully. The right of states to conduct military exercises within foreign EEZs appears well founded, albeit subject to a balancing of rights and a reasonable requirement for due regard. Notwithstanding political will, any decision to challenge future military exercises within Ireland's EEZ will likely hinge on the exercise context, any foreseeable impact on declared areas of conservation, and the imposition of an exclusion zone without due regard for the coastal state.

These factors may all affect the legality of planned military exercises. However, their relevance to a successful legal challenge remains to be seen. Fortunately or otherwise, Ireland's geographic adjacency to an area of "key world importance" suggests that this issue will certainly raise its head again. g

Lieutenant Commander Shane Mulcahy BL is a staff officer at the Irish Naval Service's Headquarters at Haulbowline, Co Cork.

LOOK IT UP

LEGISLATION:

- *United Nations Convention on the Law of the Sea* (1982)

LITERATURE:

- Gallagher, Conor, 'Ireland "naive" about Russian influence – Defence Forces ex-chief', *The Irish Times*, 13 March 2022
- Lee, Maeve, 'Security expert says Ireland can do little to stop Russian naval exercises', *Irish Examiner*, 25 January 2022
- Message from the President of the United States transmitting the *United Nations Convention on the Law of the Sea* and the agreement relating to the implementation of Part XI of the *United Nations Convention on the Law of the Sea* (US Senate, 103rd Congress, second session; Treaty Doc 103-39, p24)
- Siggins, Lorna, 'Ireland has the right to block Russian naval drills, says expert,' *The Times*, 2 February 2022
- Van Dyke, Jon M (1991), 'Military exclusion and warning zones on the high seas', *Marine Policy*, vol 15, pp147-169

Jus in *bello*

International humanitarian law regulates the methods and means of warfare. Its aim is to limit human suffering, even in extreme situations such as armed conflict. Ray Murphy assesses the conflict in Ukraine using IHL principles

> THE INVASION OF UKRAINE BY RUSSIA IS A VIOLATION OF THE UN CHARTER, WHICH, UNDER ARTICLE 2(4), PROHIBITS THE 'THREAT OR USE OF FORCE AGAINST THE TERRITORIAL INTEGRITY OR POLITICAL INDEPENDENCE OF ANY STATE'

The conflict in Ukraine has highlighted the importance of the rule of law in international relations, and the ongoing hostilities there have focused attention on the laws of war – or 'international humanitarian law' as it is now more commonly known.

International humanitarian law regulates the methods and means of warfare. Its aim is to limit human suffering, even in extreme situations such as armed conflict. It provides the legal framework and definition of what constitutes a war crime.

The most recent attempt to codify war crimes can be found in article 8 of the *Rome Statute of the International Criminal Court*. It refers to a range of actions such as intentionally directing attacks against civilians or civilian objects; attacking or bombarding, by whatever means, towns, villages, dwellings or buildings that are undefended; or intentionally causing starvation.

Origins and key principles

At present, it is not possible to commit a war crime in Ireland. This is not because of any statutory gap in the laws governing such crimes; rather, it reflects the fact that there is no armed conflict taking place in Ireland. Therefore, the first fact that must be established when investigating war crimes is whether or not there is an armed conflict taking place, and then link the alleged crime to that conflict.

In this way, an 'armed conflict' triggers the application of international humanitarian law and is said to exist, among other things, once fighting breaks out between the armed forces of two states, or when the armed forces of one state invade the territory of another. It is beyond doubt that the situation in Ukraine constitutes an international armed conflict and triggers the application of international humanitarian law.

The *Geneva Conventions* and their additional protocols form the core of international humanitarian law. These embody a number of fundamental principles, chiefly that of military necessity, humanity, distinction, and proportionality. The principle of humanity forbids the infliction of suffering, injury, or destruction not actually necessary for legitimate military purposes. It is applicable to military purposes and choice of weapons.

The essence of the 'principle of distinction' is that a distinction must always be drawn between combatants and non-combatants. Two key concepts are that of 'protected objects' and 'military objectives'. These are defined in articles 52 to 56 of Additional Protocol I to the *Geneva Conventions* and reflect customary international law.

'Protected objects' are those generally used for civilian purposes that do not effectively contribute to the war effort and whose destruction does not offer a definite military advantage. This should be contrasted with 'military objectives', which, by their nature, location, purpose or use, make an effective contribution to military action. Their total or partial destruction, capture, or neutralisation must offer a definite military advantage.

Some of the weapons being used by the Russians in Ukraine raise serious concerns. The Bellingcat investigative website has been collecting evidence of the suspected use of cluster rockets and their submunitions. They are inherently indiscriminate and pose an immediate and long-term serious threat to civilians. The use of multiple-launch rocket systems and cruise missiles against civilian areas during the invasion has also been condemned by Amnesty International.

Illegal war of aggression

The invasion of Ukraine by Russia is a violation of the *UN Charter*, which, under article 2(4), prohibits the "threat or use of force against the territorial integrity or political independence of any state".


PIC: EVGENIY MALOLETKA/AP/SHUTTERSTOCK

An explosion in an apartment building that came under fire from a Russian army tank in Mariupol, Ukraine

There were no grounds to support the claim by Russia of self-defence under article 51 of the charter. Indeed, all of Putin's claims have been challenged as pretexts for the invasion, which constitutes an act of aggression and is contrary to international law. Putin, as president, may also be individually responsible for the crime of aggression – one of the core crimes set out in the *Rome Statute of the International Criminal Court*.

Putin's thinly veiled references to a resort to nuclear weapons should other states intervene militarily are also unlawful threats of force, contrary to the *UN Charter*. Today, it is widely recognised that the use of nuclear weapons is contrary to international humanitarian law or the law of armed conflict, primarily because of their indiscriminate and disproportionate nature, as well as their inability to distinguish between military targets and civilian persons or infrastructure.

In 1994, the International Court of Justice found such use – or threatened use – to be illegal. States do not have unlimited freedom of choice in the weapons they use.

The main circumstance in which the court could not reach a conclusion, when the survival of a state is at stake, is not at issue for Russia in the present crisis.

Individual responsibility

A fundamental principle of international humanitarian law is that of individual criminal responsibility. It is critical that all violations are investigated, and those responsible held accountable.

International courts and tribunals are chiefly concerned with the senior political and military leaders responsible for so-called 'atrocity crimes'. In this context, it is important to note that there is also evidence

IT IS BEYOND DOUBT THAT THE SITUATION IN UKRAINE CONSTITUTES AN INTERNATIONAL ARMED CONFLICT AND TRIGGERS THE APPLICATION OF INTERNATIONAL HUMANITARIAN LAW

FIGHTING HOMELESSNESS IN IRELAND AND KOLKATA

LAW SOCIETY OF IRELAND

CALCUTTA RUN 2022

THE LEGAL FUNDRAISER

SATURDAY 28 MAY

Law Society of Ireland, Blackhall Place

SIGN UP HERE: WWW.CALCUTTARUN.COM

5 or 10K RUN/WALK

FINISH LINE FESTIVAL
TAG RUGBY - 21 MAY
GOLF TOURNAMENT - 27 MAY

CORK CALCUTTA RUN – 29 MAY

Follow Us

THE HOPE FOUNDATION
HOPE
WORKING WITH STREET & SLUM CHILDREN

Peter McVerry Trust

of crimes against humanity being committed in Ukraine. These occur when the civilian population is deliberately attacked in a widespread or systematic manner.

There have also been allegations of genocide by all sides. The threshold for proof in the case of genocide is very high, and requires the establishment of an intention to destroy a group based on nationality, race, religion, or ethnicity. These latter crimes should not be confused with war crimes, and they do not require a link to an armed conflict; however, in practice, most often occur in situations of conflict. Needless to say, an attack on a civilian target may be evidence of one or all of these crimes, depending on the context.

'Grave breaches' cover the most serious violations of the *Geneva Conventions* that may be committed in the course of an international armed conflict. Examples include wilful killing and extensive destruction of property not justified by military necessity.

All states, including Ireland, have criminal jurisdiction to try those accused of 'grave breaches' – whatever their nationality or wherever the crimes were committed. This is referred to as 'universal criminal jurisdiction'.

In addition, the international community has, on occasion, acted to create machinery to repress breaches of humanitarian law. Two leading examples were the Nuremberg War Crimes Trials (under which the Nazi leadership was tried), and the International Criminal Tribunal for the Former Yugoslavia.

More recently, the establishment of the International Criminal Court heralded a major development in international mechanisms to ensure accountability. It is important to note that, while the *Rome Statute of the International Criminal Court* provides the most recent definition of war crimes, such crimes have existed for centuries, and the court is merely an additional mechanism for enforcement of the law.

Investigating war crimes is not like investigating serious domestic crimes – it takes many years and significant resources. Since the referral of the situation in Ukraine to the International Criminal Court, it now has jurisdiction. Although many international courts will apply a combination of common-law and civil-law procedures, the rules of evidence and burden of proof are well established. g

PIC: EVGENIY MALOLETKA/AP/SHUTTERSTOCK

A woman walks past a damaged apartment building in Mariupol

PUTIN, AS PRESIDENT, MAY ALSO BE INDIVIDUALLY RESPONSIBLE FOR THE CRIME OF AGGRESSION

Dr Ray Murphy is a professor at the Irish Centre for Human Rights, School of Law, National University of Ireland Galway. He is also on the faculty of the International Institute for Criminal Investigations (The Hague) and is a former captain in the Irish Defence Forces.

LOOK IT UP

CASES:

- *Legality of the Threat or Use of Nuclear Weapons* (International Court of Justice, advisory opinion, 8 July 1996)

LEGISLATION:

- *Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, 8 June 1977 (see 'Treaties, States Parties and Commentaries' at www.icrc.org)
- *Rome Statute of the International Criminal Court* (2011)
- *United Nations' Charter*

LITERATURE:

- Amnesty International, 'Further armed conflict in Ukraine would have devastating consequences for the human rights of millions'
- Beaumont, Peter (27 February 2022), *The Guardian*, 'Analysis: what weapons is Russia deploying in Ukraine invasion?'
- Bellingcat.com (27 February 2022), 'Invasion of Ukraine: tracking use of cluster munitions in civilian areas'
- International Committee of the Red Cross (www.icrc.org): *Customary International Humanitarian Law – Volume 1: Rules* (11 June 2020); *Fundamental Principles of International Humanitarian Law*; 'Grave breaches'; *How Does Law Protect in War?*; *The Geneva Conventions and their Additional Protocols*; 'Universal jurisdiction over war crimes – factsheet'; 'Use of weapons'
- UN Office on Genocide Prevention and the Responsibility to Protect (www.un.org/en/genocideprevention): 'Crimes against humanity'; 'Genocide'; 'War crimes'

Mirror, mirror

Eating disorders have one of the highest mortality and morbidity rates of all mental-health conditions and are often misunderstood. Ellen Jennings debunks the myths and points you to where you can find help

> WHEN SUPPORTING SOMEONE WITH AN EATING DISORDER, IT IS IMPORTANT TO DO SO FROM A NON-JUDGEMENTAL PLACE AND TO AVOID TRYING TO PROBLEM-SOLVE. THE FOCUS SHOULD BE ON FEELINGS RATHER THAN SPECIFIC BEHAVIOURS

Eating disorders are complex mental-health conditions that can be life-threatening. They have one of the highest mortality and morbidity rates of all mental-health conditions. According to the Health Service Executive's *Model of Care for Eating Disorders* (2017), it is estimated that 188,895 people in Ireland will experience an eating disorder at some point in their lives.

Historically, eating disorders have been seen as affecting mainly women. However, this is an illness that does not discriminate – it can occur in men, women, boys and girls. A person can develop an eating disorder for a number of reasons, and there is usually an accumulation of 'risk factors' that are identified as the person progresses through treatment. It is not always the case that something significantly traumatic has happened in a person's life that has caused the eating disorder, although sometimes this can be the case.

Risk factors

When we consider risk factors, we can think of these in two groups – the first applying to those factors that are 'internal' to the person, including factors that arise out of the personality type and genetic makeup of the person. Low self-esteem, perfectionism, a difficulty managing emotions, and a tendency towards all-or-nothing thinking can all play a role.

The second group includes factors that are 'external' to the person – including our experiences of the world we live in and the environment we work in. This is where certain sociocultural factors and stressful life events can play a role. The competitive and demanding nature of modern-day working life can make it difficult to find a work/life balance. Long working hours and hectic schedules can mean that eating and sleeping patterns can become disrupted. It's important that work commitments do not come at the expense of our mental health and family life.

Our relationship with food and our body is something that is deeply personal, and it can change throughout our lives. Although the average age of onset of an eating disorder is adolescence (coinciding with the physical changes of puberty and increased focus on body image), there are other periods throughout our lives where our self-esteem can be affected: for example, the breakup of a relationship, media influences, and traumatic events can all present challenges to our self-esteem.

Relieving distress

To cope with these perceived pressures and difficult emotions, a person may turn to control over food and their body as a way of relieving distress and achieving some degree of control over their life. Their world feels like an unsafe place, and, for many complex reasons, an eating disorder provides them with a sense of safety.

Control over food and our body can serve to distract, numb, or overpower other emotions. Paradoxically, eating-disorder thoughts and behaviours can further perpetuate emotional distress, leading to a cycle that can be difficult to break. Once trapped within the eating disorder, people often feel that they need to maintain it to survive. They don't know who they are, or how they might cope without it.

Eating disorders can occur quite gradually, at any stage in our lives, and can be difficult to recognise or acknowledge. They affect a person on an emotional, physical, cognitive, and behavioural level. All four aspects interact and influence each other in various ways, at any time. This is why it's not only difficult for those on the outside to understand this complex disorder, but it is also very difficult for the person themselves to be able to understand why they are feeling compelled to do what they are doing.

Behavioural and physical changes are a symptom of what might really be going on for the person. Skipping meals, excessive exercise, restricting food, avoiding socialising

PIC: SHUTTERSTOCK

around food, or visiting the bathroom at unusual times are behavioural clues. Physically, there might be a lack of energy, digestive problems, and menstrual issues in females. There can be a marked change in weight or a significant weight change in a short period of time, although this is not always the case.

Internal dialogue

The cognitive and emotional aspects can be more easily hidden – rigid rules around food and exercise and what we 'should' or 'should not' do become prominent thoughts. There is an internal dialogue that promotes eating-disorder behaviours, rules, and secrecy. The rules are often unrealistic, demanding, harsh, and critical. It can seem as though life is not possible unless these expectations are fulfilled. This creates a distorted logic that conflicts with a person's rational thoughts and, in turn, contributes to emotional distress.

LAW SOCIETY PROFESSIONAL TRAINING

Centre of Excellence for Professional Education and Lifelong Learning

LAW SOCIETY OF IRELAND

IN PERSON CPD CLUSTERS RETURN FOR 2022

We managed to hold some of our 2021 CPD Cluster events in person and are delighted to announce that the 2022 programme will be on site. Dates are listed below for the Spring/Summer events, so mark your diaries now

- **12 May - Essential Solicitor Update 2022 – The Landmark Hotel, Carrick-on-Shannon**
- **19 May - Midlands General Practice Update 2022 - Midland Park Hotel, Portlaoise**
- **23 June - North West Practice Update 2022 - Lough Eske Castle Hotel, Donegal**
- **30 June - Essential Solicitor Update Limerick 2022 - The Strand Hotel, Ennis Road, Limerick**

To book visit www.lawsociety.ie/cpdcourses

DATE	EVENT	CPD HOURS	DISCOUNTED FEE*	FULL FEE
6 April	**Digital Upskilling – Prioritising Using Outlook** Via Microsoft Teams	4 Management & Professional Development Skills (by eLearning)	€400	€500
13 April	**Ardchúrsa Cleachtadh Dlí as Gaeilge 2022** Hybrid (onsite at the Law Society of Ireland and via Zoom)		€625	
4 May	**IMRO and Law Society Annual Copyright Lecture 2022** Law Society of Ireland, Blackhall Place, Dublin	1.5 General (by Group Study)	Complimentary	
5 May	**The Trauma Informed Practitioner online Summit** Online Webinar with Live Q&A Sessions	3 General and 1 Management & Professional Development Skills (by eLearning)	€160	
11 May	**Negotiation Skills for Lawyers** Law Society of Ireland, Blackhall Place, Dublin	3.5 Management & Professional Development Skills (by Group Study)	€160	€185

For a complete listing of upcoming courses visit www.lawsociety.ie/CPDcourses or contact a member of the Law Society Professional Training or Law Society Skillnet team on: Tel: 01 881 5727 E:Lspt@lawsociety.ie or lawsocietyskillnet@lawsociety.ie

*Applicable to Law Society Skillnet members

From the outside, this might look like a sudden change in personality or mood, a difficulty coping with a change in routine, becoming stressed or upset easily, and not taking an interest in things they used to. This complex web of factors makes an eating disorder extremely individual and personal, with different aspects serving a different function for the person. In this way, the support and treatment that the person requires will also be individual and personal.

At one point or another in our lives, we might relate to some degree of disordered eating behaviours. Where a person crosses over from 'normal' disordered eating into an 'eating disorder' is where compulsion comes into play. When a person feels that they have no choice but to engage in disordered eating behaviours, or they will feel out of control, panicky or anxious, this is in the realm of an eating disorder.

Long-term effects

The long-term effects of experiencing an eating disorder can include heart problems, issues with bone health, muscle weakness, malnourishment, electrolyte imbalances, and problems with fertility. Early detection and intervention are important to prevent the behaviours becoming more entrenched and destructive over time.

Reaching out for help can be really challenging – it means acknowledging that something is not quite right about our relationship with food and our body. Letting go of this control over food can bring up difficult feelings, and it can often feel like things are getting worse before they get better. If you are concerned about yourself or someone you know, the first step might be voicing these feelings and opening up a conversation with someone you trust.

Bodywhys (the Eating Disorders Association of Ireland) provides a range of non-judgemental listening, information, and support services for those affected by eating disorders, and their families. A diagnosis is not required to avail of this support. If the person feels ready to do so, there are several support services available via email, phone, and online chat groups for both teenagers and adults.

Bodywhys also offers a free family-support programme called PiLaR (peer-led resilience) for those who may be supporting someone with an eating disorder. This is a free four-week structured programme, incorporating both psycho-education and support, as well as practical advice and skills to help support your loved one towards recovery. The programme covers topics like understanding eating disorders, communication, active listening, mealtime support, triggers, and dealing with relapse.

Offering support

When supporting someone with an eating disorder, it is important to do so from a non-judgemental place and to avoid trying to problem-solve. The focus should be on feelings rather than specific behaviours. In this way, it allows the person to think through what might really be going on for them, and what the next steps might be.

Just as the development of an eating disorder can be gradual, treatment and recovery can also be a gradual process of unlearning the eating disorder behaviours and finding alternative coping mechanisms. This process usually begins with a visit to the GP, who will look after the physical aspects and can then refer on to a dietician or therapist, if necessary.

Just as no two eating disorders are the same, treatment will be unique for everyone and can be a process of trial and error to find what works. Similarly, there is no one definition of what recovery means – it involves a sense of internal awareness and trust in oneself to live without the eating-disorder rules and behaviours. This might look like recognising black-and-white thinking, and being open to seeing the middle ground; it might be feeling less self-critical and more self-compassionate. It can involve routines around food and sleep, recognising triggers and eating-disorder thoughts.

Although the road to recovery can be challenging, with many steps forwards and backwards along the way, people can – and do – get better with appropriate treatment. Life without the eating disorder is possible, and you are not alone. If you are concerned about yourself or someone you know, links to support services are included below. g

Ellen Jennings is communications officer at Bodywhys, the Eating Disorders Association of Ireland.

> THERE IS AN INTERNAL DIALOGUE THAT PROMOTES EATING-DISORDER BEHAVIOURS, RULES, AND SECRECY. THE RULES ARE OFTEN UNREALISTIC, DEMANDING, HARSH, AND CRITICAL

FURTHER INFORMATION

- Bodywhys email support: alex@bodywhys.ie
- Bodywhys helpline: 01 210 7906
- Health Service Executive's *Model of Care for Eating Disorders* (2017)
- James Lock and Maria C La Via (2015), 'Practice parameter for the assessment and treatment of children and adolescents with eating disorders', *Journal of the American Academy of Child & Adolescent Psychiatry*, vol 54, no 5, pp412-425
- Lisa Lilenfeld, Stephen Wonderlich, Lawrence P Riso, Ross Crosby, and James Mitchell (2006), 'Eating disorders and personality: a methodological and empirical review', *Clinical Psychology Review*, vol 26, no 3, pp299-320
- PiLaR Family Support Programme (email pilar@bodywhys.ie for more information and to book a place)
- Research, statistics and more information can be found at www.bodywhys.ie

Down on the farm

The EU has adopted legislation that protects farmers against unfair trading practices in business-to-business relationships. Cormac Little assesses how the new rules benefit food producers when dealing with larger buyers

IN CONSIDERING WHETHER THE *UTP REGULATIONS* PROTECT A SUPPLIER, THE DIFFERENCE IN SIZE BETWEEN THE SUPPLIER AND THE BUYER TO A RELEVANT TRANSACTION – RATHER THAN THE ABSOLUTE SIZE OF THE LATTER – IS THE DETERMINING FACTOR

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

With the objective of protecting small suppliers like farmers against large buyers such as the major food processors, the EU has adopted legislation regarding unfair trading practices (UTPs) in business-to-business relationships in the agri-food sector.

These rules (contained in EU Directive 2019/633 of 17 April 2019) were implemented into Irish law on 1 July 2021 by the entry into force of SI 198/2021, the *EU (Unfair Trading Practices in the Agricultural and Food Supply Chain) Regulations 2021*, dated 28 April 2021 (the *UTP Regulations*).

The *UTP Regulations* contain a list of both 'black clauses' (practices that are prohibited in all circumstances) and 'grey clauses' (arrangements that are banned unless the parties unequivocally agree otherwise). The regulations have applied since 1 July 2021 to any new supply agreements in the agri-food sector reached since 28 April 2021. In addition, all relevant supply agreements, including those adopted prior to this latter date, must comply with the regulations by 28 April 2022.

Symmetric bargaining

In adopting the 2019 directive, the EU recognised that asymmetry in commercial relationships may lead to the imposition of UTPs on producers in the agri-food sector. The latter, due to their weaker bargaining power, may be forced to accept unfair or onerous terms to continue to sell their produce to larger buyers.

The EU found that UTPs are less likely to occur when the negotiating parties have symmetric bargaining power. Although the 2019 directive represents the first time the EU has tackled UTPs in the agri-food sector, the new rules echo the EU's regulation of unfair commercial practices that occur in business-to-consumer transactions.

Such unlawful conduct includes providing untruthful information to consumers (these rules are contained in Directive 2005/29 concerning unfair business-to-consumer commercial practices in the internal market).

Relevant products

The *UTP Regulations* apply to agricultural and food products listed in Annex I to the *Treaty on the Functioning of the European Union* (TFEU), as well as to unlisted foodstuffs manufactured containing products mentioned in Annex I. The array of relevant products is, therefore, extensive. It includes vegetables, fruit, meats, cereals, fish, dairy products and processed food (including prepared meals and sauces). The regulations also apply to non-food products, such as live animals, live trees, cut flowers, and animal feed.

The regulations address agreements for the sale or supply of relevant products by a supplier to a buyer where at least one party to the transaction is established in the EU. They do not apply to agreements between suppliers and private consumers.

A 'buyer' is defined in the regulations as any natural or legal person who purchases agricultural and food products. Examples of buyers include processors, distributors, wholesalers, and public authorities. This definition also encompasses groups of such natural and legal persons. The definition of a 'supplier' includes farmers, wholesalers/distributors, agricultural producers, plant nurseries, or any other groups thereof, such as organisations of producers and suppliers.

Turnover thresholds

In considering whether the *UTP Regulations* protect a supplier, the difference in size between the supplier and the buyer to a relevant transaction – rather than the absolute size of the latter – is the determining factor. The regulations apply where both the buyer and the supplier to a particular transaction satisfy the relevant financial thresholds in one of the following scenarios:

- Suppliers with an annual turnover below €2 million, and buyers with an annual turnover over €2 million,
- Suppliers with an annual turnover between €2 million and €10 million, and buyers with an annual turnover over €10 million,
- Suppliers with an annual turnover between €10 million and €50 million, and buyers with an annual turnover over €50 million,
- Suppliers with an annual turnover between €50 million and €150 million, and buyers with an annual turnover over €150 million,
- Suppliers with an annual turnover between €150 million and €350 million, and buyers with an annual turnover over €50 million, and
- Suppliers with an annual turnover below €350 million, and all buyers that are public authorities.

Interestingly, the regulations are silent on where the relevant turnover is generated. Moreover, they do not address whether turnover is to be assessed on a group basis. That said, given the purpose of the 2019 directive, a broad approach reflecting the entire financial resources available to the relevant buyer is likely to be appropriate.

Black clauses

There are ten practices that are prohibited in all circumstances by the *UTP Regulations*. These 'black clauses' comprise:

- Making payment later than 30 days for perishable agricultural and food products,
- Paying later than 60 days for other agricultural and food products,
- Cancelling orders for perishable agricultural and

BUYERS, IF THEY HAVE NOT ALREADY DONE SO, SHOULD ENSURE THAT THEIR RELEVANT CONTRACTUAL AND OTHER ARRANGEMENTS COMPLY WITH THE *UTP REGULATIONS*

PIC: ALAMY

THE 2019 DIRECTIVE REPRESENTS THE FIRST TIME THE EU HAS TACKLED UTPs IN THE AGRI-FOOD SECTOR

food products at short notice,
- The buyer making unilateral contract changes,
- Requiring payments from the supplier that are not related to the sale of the relevant products,
- Requiring the supplier to pay for the deterioration or loss of the products on the buyer's premises,
- Refusing to enter into a written agreement,
- Unlawfully acquiring or using the trade secrets of the supplier,
- Threatening to carry out acts of commercial retaliation, and
- Requiring compensation from the supplier for the cost of examining customer complaints relating to the sale of the supplier's products, in the absence of negligence or fault on the part of the supplier.

Grey clauses

There are also six practices that are prohibited by the *UTP Regulations* unless the parties have a clear agreement to the contrary regarding the practice in question. These 'grey clauses' are:

- Returning unsold products to the supplier without paying for those unsold products,
- Charging payment as a condition for stocking, displaying, or listing the supplier's products,
- Requiring the supplier to bear the costs of discounts on products sold by the buyer as part of a promotion,
- Obliging the supplier to pay for advertising by the buyer,
- Requiring the supplier to pay for marketing by the buyer, and
- Charging the supplier for staff to fit out premises used for the sale of the products.

Enforcement

The *UTP Regulations* state that the Minister for Agriculture, Food and the Marine is currently designated as the relevant enforcement authority in the State. As an interim measure, the minister has created a UTP Enforcement Authority (UTPEA) within the department, pending (as stipulated by the current Programme for Government) the adoption of primary legislation creating a National Food Ombudsman (NFO). Once this happens, the NFO will succeed the minister as the national enforcement authority for the regulations.

The minister/UTPEA (acting through its authorised officers) currently has the power to:

- Conduct investigations, either on its own initiative or upon receipt of a complaint,
- Require buyers and suppliers to provide all necessary information,
- Carry out unannounced on-site investigations,
- Take decisions if an infringement is found and require the buyer to bring the prohibited trading

practice to an end by issuing a compliance notice,
- Initiate court proceedings for the imposition of fines, and
- Publish decisions following the conclusion of the investigation.

Reflecting in many respects the powers granted to the Competition and Consumer Protection Commission, these enforcement powers are very extensive, if not draconian. For example, an authorised officer, if he/she has reasonable grounds for believing that an offence under the *UTP Regulations* has occurred (or is occurring), has the power to search premises/vehicles, seize documents, detain vehicles/other modes of transport, and/or remove equipment, including computers/servers.

Moreover, an authorised officer may use reasonable force to exercise his/her functions under the regulations. Finally, an authorised officer may enter a private dwelling if he/she believes evidence of an infringement is likely to be destroyed. Given the underlying activity that the regulations are trying to prevent, it is questionable as to whether such strong powers of enforcement are proportionate.

Complaints/investigations

Part 3 of the regulations sets out conditions under which suppliers may address complaints to the minister/UTPEA. In order for such a complaint (which can be anonymous) to be actioned, either the supplier or the buyer must be established in the State. On receipt of such a complaint, the minister/UTPEA must inform the complainant within a reasonable period of time regarding how it intends to proceed.

The *UTP Regulations* also set out a requirement for the publication of an annual report by the minister/UTPEA detailing the number of complaints received and the number of investigations initiated or concluded during the previous year. The minister/UTPEA also has discretion to publish details of its decisions relating to infringements, such as where the buyer was required to cease a prohibited UTP, or decisions concerning the imposition or initiation of proceedings for the imposition of fines, penalties, or interim measures.

If, following an investigation, the minister/UTPEA concludes that a breach of the *UTP Regulations* and/or the 2019 directive has occurred or is occurring, it may issue a compliance notice requiring the buyer to take appropriate action. Failure to comply with such a notice is a criminal offence, leading, on indictment, to a prison sentence of up to three years and/or a fine of a maximum of €500,000. Again, these potential penalties are hefty and should act as a strong deterrent.

Dominance/other rules

Buyers in the agri-food sector with high shares (for example, above 40%) in one or more relevant markets should also be aware of the potential application of EU and Irish rules prohibiting the abuse of a dominant position.

Dominance, *per se*, is not illegal, but dominant entities are under a special responsibility not to hinder effective competition in the market. Both article 102 of the TFEU and section 5 of the *Competition Act 2002* (as amended) contain a non-exhaustive list of various types of abusive conduct. These include applying dissimilar conditions to equivalent transactions, thereby placing third parties at a competitive disadvantage (that is, discriminatory behaviour), or directly/indirectly imposing unfair purchase/selling prices, or other unfair trading conditions. While a dominant entity may seek to rely on an objective justification for any unilateral conduct, it should, nevertheless, be careful that its engagement with suppliers is not seen as abusive.

Next steps

Earlier this year, perhaps concerned about the lack of awareness among smaller producers of agri-food, the UTPEA launched an engagement with both suppliers and buyers regarding the application of the *UTP Regulations* in the market. Results of an online survey of small producers are likely to be published later this year.

Separately, buyers, if they have not already done so, should ensure that their relevant contractual and other arrangements comply with the regulations. Most importantly, any contract, arrangement, or conduct that gives rise to a potential infringement of any of the ten 'black clauses' must be carefully reviewed. g

Cormac Little SC, partner and head of the competition and regulation unit of William Fry LLP, is chair of the Law Society's EU and International Affairs Committee.

LOOK IT UP

LEGISLATION:
- *Competition Act 2002*
- EU Directive 2019/633
- EU Directive 2005/29
- *EU (Unfair Trading Practices in the Agricultural and Food Supply Chain) Regulations 2021* (SI 198/2021)
- *Treaty on the Functioning of the European Union*

THE *UTP REGULATIONS* HAVE APPLIED SINCE 1 JULY 2021 TO ANY NEW SUPPLY AGREEMENTS IN THE AGRI-FOOD SECTOR REACHED SINCE 28 APRIL 2021. ALL RELEVANT SUPPLY AGREEMENTS, INCLUDING THOSE ADOPTED PRIOR TO THIS LATTER DATE, MUST COMPLY WITH THE *UTP REGULATION* BY 28 APRIL 2022

REPORT OF LAW SOCIETY COUNCIL MEETING 11 MARCH 2022

Solidarity with Ukraine

CCBE President James MacGuill (a former president of the Law Society) joined the meeting to outline the CCBE's response to recent developments in Ukraine. In doing so, he confirmed that there was unity of purpose among EU lawyers on the issue, as well as a determination to ensure that recent actions did not go unpunished.

The Council appreciates the CCBE's efforts, and those of the Society itself, in expressing solidarity with the people of Ukraine.

SGM report

Law Society President Michelle Ní Longáin reported on the recent special general meeting and, as required by the Society's bye-laws, the Council considered and adopted the following motion, which was passed at the SGM:

1) *At the November 2021 AGM of the Society, two of the resolutions passed respectively provided for (i) consideration of the introduction of voting by electronic means in both the Society's annual election and the provincial elections, and (ii) expressly enabling that communications between the Society and members of the Society (and vice versa) include communications by electronic means,*
2) *The Council at its meeting on 28 January 2022, on the detailed recommendations of its Technology Committee, approved of a special general meeting of the Society for the making of appropriate amendments to the Society's bye-laws to provide for voting by electronic means,*
3) *A full review of the Society's bye-laws has taken place focused on expressly providing for electronic voting in annual elections and in provincial elections, and for communications between the Society and members of the Society (and vice versa) to include communications by electronic means.*

Admission policies

The chair of the Education Committee, Richard Hammond, presented the *Annual Report on Admission Policies of the Legal Professions 2021* to the meeting.

In doing so, he outlined the significant progress that had been made in making the profession more accessible to those with the requisite educational background.

Education

The chair of the Education Committee, Richard Hammond, reported on items that included PPC numbers (currently at the highest level since 2008); new advanced electives to be offered as part of the fused PPC; the committee's decision to allow the entire 2022 CPD requirement to be completed online; and a draft fees order, to be submitted for the consideration of the President of the High Court, which, if approved, would represent the first update to same in 15 years.

Finance

The chair of the Finance Committee, Paul Keane, reported to the meeting on issues that included practising certificate numbers, the 2021 management accounts, the SMDF, investments, the Society's eco/sustainability project, and a review of the terms of reference of the subcommittees of the Finance Committee.

PII

The chair of the Professional Indemnity Insurance Committee, Bill Holohan, reported to the Council on the current status of the market and premium pool, and on ongoing efforts to attract new insurers to the market as a means to competition.

He further reported on insurers' ongoing focus on matters related to cybersecurity, which remained at the forefront of such discussions.

Appointments

The Council made the following appointments: Ann McGarry – District Court Rules Committee; Eamon Harrington – new Mediation Council; Deirdre Kiely – Regulation of Practice Committee; Nicola White – Curriculum Development Unit; Tara Doyle – Ireland for Law Implementation Group; and Dan O'Connor – PR Committee. g

GUIDANCE NOTE

PROBATE, ADMINISTRATION AND TRUSTS COMMITTEE

TAX CLEARANCE IN DEATH CASES – NEW REVENUE TAX AND DUTY MANUAL

Revenue has published eBrief 044/22, which provides a link to the newly published *Tax and Duty Manual* (TDM) dealing with legal personal representatives (LPRs) obtaining clearance to distribute the estate after the death of a taxpayer, which replaces the requirement to obtain a letter of no audit from Revenue in each case.

In short, where the LPR has carried out due diligence on the deceased and makes a complete and accurate submission to Revenue prior to notifying Revenue of their intention to distribute the estate, Revenue has 35 working days in which to address whether income tax and CGT for the pre-death and estate administration period will be queried or audited.

It should be noted that Revenue will require a return to be submitted for the year of the death of the taxpayer in all cases.

'Due diligence' requires that the previous ten years of activity by the deceased taxpayer be reviewed prior to submission. While this may place a considerable burden on LPRs and their professional advisors, particularly where the LPR is not familiar with the deceased's tax and financial affairs pre-death, it is something that Revenue have insisted on to ensure complete disclosure is made.

If Revenue does not reply within 35 working days, the LPR may proceed to distribute the estate. If, on subsequent review, a liability arises, such liability will not be sought from the LPR. This is a similar procedure to that provided for when notifying Revenue prior to distributing to a foreign beneficiary in their TDM (see Part 2 – Statement of Affairs (Probate) Form SA2) and is welcomed as a mechanism to allow the estate to be finalised in a timely manner.

This TDM came about as a result of the diligent work over a long period of time by the solicitor members of the TALC Direct Committee on behalf of the profession and the clients we serve. While not every issue raised by solicitor members was taken on board to the extent desired, this is an improvement on the unsatisfactory regime that it replaces, where practitioners had concerns with the timing of the issuance of letters of no audit.

Practitioners are advised to read the TDM in detail before advising clients on the appropriateness of availing of same.

REGULATION

NOTICE: THE HIGH COURT

In the matter of Oisin Nolan, a solicitor formerly practising as Oisin Nolan, Richmond House, 15A Main Street, Blackrock, Co Dublin, and in the matter of the *Solicitors Acts 1954-2015* [2022 no 2 SA]
Law Society of Ireland (applicant)
Oisin Nolan (respondent solicitor)

Take notice that, by order of the President of the High Court made on 14 February 2022, it is ordered that Oisin Nolan, solicitor, formerly practising at Richmond House, 15A Main Street, Blackrock, Co Dublin, be suspended from practice from 8 March 2022 and be prohibited from holding himself out as a solicitor entitled to practise until further order of the court.

John Elliot, Registrar of Solicitors,
Law Society of Ireland, March 2022

SOLICITORS DISCIPLINARY TRIBUNAL

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

In the matter of Oisin Nolan, a solicitor formerly practising at Richmond House, 15A Main Street, Blackrock, Co Dublin, and in the matter of the *Solicitors Acts 1954-2015* [2019/DT17 and High Court record 2022 no 2 SA]
Law Society of Ireland (applicant)
Oisin Nolan (respondent solicitor)

On 26 October 2021, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct, in that he failed to ensure that there was furnished to the Society a closing accountant's report, as required by regulation 33(2) of the *Solicitors Accounts Regulations 2014* (SI 516/2014), in a timely manner or at all, having ceased practice on 23 January 2019.

The tribunal ordered that the Law Society bring its finding and report before the High Court.

On 14 February 2022, the High Court ordered that the solicitor be suspended from practice until such time as he furnished the Law Society of Ireland with his closing accountant's report, as required by regulation 33(2) of the *Solicitors Accounts Regulations*.

The High Court also ordered that the respondent solicitor pay the measured costs of the Society before the disciplinary tribunal and before the High Court.

WILLS

Connolly, Mary (deceased), late of 69 Shantalla Drive, Beaumont, Dublin 9, who died on 2 January 2022. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact David O'Brien, McMahon O'Brien Tynan, Solicitors, Mill House, Henry Street, Limerick; DX 3004; tel: 061 315 100, email: dobrien@modlaw.com

Cully, Margaret (otherwise Peg, otherwise Peggy) (deceased), late of 116 Manorfield, Kinnegad, Co Westmeath, and formerly of 4 New Park, Kinnegad, Co Westmeath, who died on 5 February 2022. 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

Doyle, Ethel (deceased), late of 127 Oldcourt Avenue, Boghall Road, Bray, Co Wicklow, who died on 10 December 2021. Would any person having knowledge of any will made by the above-named deceased please contact Amy Fitzpatrick, Brendan Maloney & Co, Solicitors, Kilbride Cottage, Killarney Road, Bray, Co Wicklow; tel: 01 286 5700, email: amy@brendanmaloney.ie

Healy, Jeremiah (deceased), late of Drombohilly, Tuosist, Killarney, Co Kerry, and Kenmare Nursing Home, Killarney, Co Kerry. Would any person having knowledge of any will made by the above-named deceased, who died on 8 July 2021, please contact Patrick Buckley & Co LLP, Solicitors, 5/6 Washington Street West, Cork; tel: 021 427 3198, email: info@pbuckley.ie

McCarthy O'Hea, Fergus Anthony (deceased), late of 252A East End Road, London, and Aghamilla, 1 Janeville Terrace, Sundays Well, Cork. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact O'Shea O'Neill Solicitors, Orchard House, Ballinlough Road, Cork; tel: 021 429 4564, email: clare@osheaoneillsolicitors.ie

Maguire, John (deceased), late of Meath Hill, Drumconrath, Navan, Co Meath, who died on 31 August 2021. Would any person having knowledge of a will made by the above-named deceased please contact Patrick J Carolan, Solicitors, Market Square, Kingscourt, Co Cavan; DX184001; tel: 042 966 7433, email: info@pjcarolan.com

Millerick, Michael (deceased), late of Apartment 410, Talbot Hall, Irish Life Centre, Dublin 1, who died on 16 March 2021. Would any person having knowledge of a will made by the above-named deceased or its whereabouts please contact Mason Hayes & Curran LLP, Solicitors, South Bank House, Barrow Street, Dublin 4; tel: 01 614 5000, email: dublin@mhc.ie

Moriarty, Philomena Agnes (deceased), late of 74 Kirwan Street Cottages, Manor Street, Dublin 7. Would any person having knowledge of any will made by the above-named deceased, who died on 15 May 2018, please contact McAlinden & Gallagher, Solicitors; tel: 01 821 7555, email: info@mcaglaw.com

Owens, Henry (deceased), late of 7 Shelbourne Apartments, South Lotts Road, Ringsend, Dublin 4, formerly of 41 Penrose Street, South Lotts Road, Dublin 4, who died on 10 December 2021. Would any person having knowledge of any will executed by above-named deceased please contact Colm O'Cochlain and Co, Solicitors, First Active House, Old Blessington Road, Tallaght, Dublin 24; tel: 01 459 0684, email: solicitor@ocochlain.ie

Quinlan, Emmet (deceased), late of 2 Fitzwilliam Way, Dublin 4, who died on 25 September 2020. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Gráinne Butler, Orpen Franks Solicitors LLP, 28/30 Burlington Road, Dublin 4; tel 01 637 6200; fax 01 637 62 62; email: grainne.butler@orpenfranks.ie

Rainey, John (otherwise Thomas John) (deceased), late of 53 Mellowes Park, Finglas West, Dublin 11, who died on 28 December 2021. Would any solicitor or person having knowledge and details of a will made by the above-named deceased please contact Emer Lyons, Lyons Skelly Solicitors, Suite 19 Lakeview Point, Claregalway Corporate Park, Claregalway, Galway; tel: 087 276 0889, email: info@lyons-skelly.com

Wilson, Robert I (deceased), late of Ballintruer, Stratford-on-

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 May *Gazette*: 20 April 2022.**

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*.

Slaney, in the county of Wicklow, who died on 26 December 2020. Would any solicitor holding or having knowledge of a will made by the above-named deceased please contact Sheelagh Doorley, Devitt Doorley Solicitors, The Valley, Roscrea, Co Tipperary; tel: 0505 21176, email: info@devittdoorley.ie

Zaffarese, Joseph (deceased), late of 1 Wellesley Place, Russell Street, Dublin 1, who died on 26 August 2020. Would any person having knowledge of the whereabouts of a will made by the above-named deceased on 29 March 2018, or any other will made by the above-named deceased, please contact Killeen Solicitors, 14 Mountjoy Square, Dublin 1, D01 T2H1; ref: DC/ZAF001; tel: 01 855 5587, fax: 01 855 4091, email: info@killeensolrs.ie

TITLE DEEDS

In the matter of the *Landlord and Tenant (Amendment) Act 1980* and in the matter of the Ulster Bank branch premises at Main Street, Blanchardstown, Dublin 15, and in the matter of an application by Ulster Bank Ireland DAC

Take notice any person having any interest in the freehold or any superior leasehold estate in the Ulster Bank branch premises at Main Street, Blanchardstown, Dublin 15 (the premises), being part of the premises lately held under an indenture of lease dated 1 May 1915 made between the Right Honourable Hans Wellesley Baron Holmpatrick of the one part and Mary O'Neill of the other part, and therein described as "all that plot of ground with the licensed and other premises standing thereon in the village of Blanchardstown, bounded on the north by a holding in the possession of Mr Thomas R McCullagh, on the south by the High Road leading from Clonee to Dublin, on the east by the holding of Thomas R McCullagh, and on the west by the Mill Lane, containing in front, next to the High Road, 218 feet; in the rear, 206 feet, six inches; and from front to rear at the widest part, 75 feet, six inches, as more particularly delineated on the map traced in the fold hereof, situate in the village of Blanchardstown, parish of Castleknock, and county of Dublin" and thereby demised for a term of 99 years from 25 March 1915, subject to a yearly rent of £14.

Take notice that Ulster Bank Ireland DAC intends to commence proceedings before the Circuit Court (Dublin) seeking the grant of a reversionary lease of the premises pursuant to part III of the *Landlord and Tenant (Amendment) Act 1980*, and any party or parties asserting that they hold a superior interest in the premises are called upon to furnish evidence of title to the premises to the below named within 21 days.

In default of any such notice being received, Ulster Bank Ireland DAC intends to proceed with the commencement of the said proceedings at the end of 21 days from the date of this notice and will apply to the Circuit Court for such orders or directions as may be appropriate on the basis that the persons entitled to the superior interest(s) including the freehold interest in the premises are unknown or unascertained (including an order pursuant to section 76(4) of the *Landlord and Tenant (Amendment) Act 1980* appointing a person to represent such unknown or unascertained persons).

Date: 1 April 2022

Signed: Mason Hayes & Curran (solicitors for Ulster Bank Ireland DAC), South Bank House, Barrow Street, Dublin 4 (ref: 25404.3240)

In the matter of the *Landlord and Tenant (Ground Rents) Acts 1967-2019* and in the matter of an application by Margaret Veronica Ryan in respect of the premises known as 4 Hackett's Terrace, St Luke's, in the city of Cork

Take notice that any person having a freehold interest or any intermediate interest in all that and those the property known

LAW SOCIETY OF IRELAND

BOOK NOW FOR AUTUMN 2022

DIPLOMA CENTRE

Leaders in legal education with professional focus and practical insight

Flexible CPD recognised courses to suit a busy schedule

COURSE NAME	START DATE	COURSE FEE
Certificate in Commercial Contracts	Late applications	€1,650
Certificate in Enforcement for Public Bodies	5 April 2022	€1,650
MOOC - coming soon	May 2022	Free
Diploma in Law	2 September 2022	€4,600
Professional Doctorate in Law	24 September 2022	€6,500
Diploma in Trust and Estate Planning	24 September 2022	€3,200
Certificate in Aviation Leasing and Finance	29 September 2022	€1,650
Diploma in Construction Law	8 October 2022	€2,600
Diploma in Finance Law	11 October 2022	€2,600
Diploma in Technology and IP Law	12 October 2022	€3,000
Diploma in Criminal Law and Practice	15 October 2022	€2,600
Certificate in Conveyancing	18 October 2022	€1,650
Diploma in Judicial Skills and Decision-Making	19 October 2022	€3,000
Diploma in Sports Law	19 October 2022	€2,600
Certificate in Agribusiness and Food Law	22 October 2022	€1,650
Certificate in Immigration Law and Practice	3 November 2022	€1,650
Diploma in Education Law	4 November 2022	€2,600

MORE COURSES TO BE ANNOUNCED SOON

All lectures and workshops are webcast and available to view on playback, allowing participants to catch up on coursework at a time suitable to their own needs. Diploma Centre reserves the right to change the courses that may be offered and course prices may be subject to change.

CONTACT DETAILS E: diplomateam@lawsociety.ie T: 01 672 4802 W: www.lawsociety.ie/diplomacentre

as 4 Hackett's Terrace, St Luke's, in the city of Cork (hereinafter known as 'the property'), being the land demised and held by a lease dated 21 July 1747 between Swithin White of the one part and Joseph Austin of the other part for the term of 997 years from 25 March 1747, and subject to the yearly rent of 20 pounds sterling (£20) and to the covenants on the part of the lessee and to the conditions therein respectively reserved, should give notice of their interest to the undersigned solicitors.

Take notice that Margaret Veronica Ryan, of the Bungalow, Glosha Road, Rathdowney, Co Laois, being the person now entitled to the lessee's interest in the property, intends to submit an application to the county registrar for the county of Cork for the acquisition of the freehold interest in the property, and any party asserting that they hold a superior interest in the property are called upon to furnish evidence of their title to the property to the undersigned solicitors within 21 days from the date of this notice.

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

Date: 1 April 2022
Signed: PP Ryan & Co (solicitors for the applicant), Rathdowney, Co Laois

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 the property known as Selkin House, Wexford town: an application by Laurence Kinsella

To any person having an interest in the freehold estate or any superior interest in the property demised by an indenture of lease dated 31 July 1795 and made between Nicholas Corish of the first part and Philip Walsh of the second part for a term of 292½ years, commencing on 25 March 1795, and therein described as "the three old houses in the Old Pound then or lately inhabited by James Farrell, John Sinnott, and Michael Scallan, together with the back ground or gardens at the rear thereof … bounded to the north by Sherlock Cheever's then garden, on the south by the street of the Old Pound, on the east by Joseph Pettitt's then Concerns, and on the west by Patrick Hore's then Concerns, situate in the Old Pound in the town of Wexford".

Take notice that Laurence Kinsella, being the person currently entitled to the lessee's interest in the aforementioned property, intends to apply to the county registrar for the county of Wexford for the acquisition of the freehold interest and all intermediate interests in the aforesaid premises, and any party asserting that they hold a superior interest in the aforementioned premises is called upon to furnish evidence of title to same to the below named within 21 days from the date of this notice.

In default of any such evidence being received, Laurence Kinsella intends to proceed with the aforementioned application, to include such directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest including the freehold reversion in the aforesaid property are unknown and unascertained.

Date: 1 April 2022
Signed: Liam Hipwell & Co Solicitors (solicitors for the applicants), 18 Monck Street, Wexford

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

Take notice that any person having any superior interest (whether by way of freehold estate or otherwise) in all that and those a portion of property at 10 Glenageary Woods, Glenageary, Co Dublin, registered in Folio DN163189L as held under a lease of 25 July 1947 between the Earl of Longford of the first part, the Viscount de Vesci of the second part, the Pakenham Estate Company of the third part, and Ilet Limited of the fourth part, for a term of 150 years from 1 May 1946, subject to the rent and covenants specified therein.

Take notice that Frederick J Bloomfield and Philip A Morgan, the registered owners of Folio DN163189L, intend to submit an application to the county registrar for the county of Dublin for acquisition of the freehold interest in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid property (or any of them) are called upon to furnish evidence of their title to the aforesaid property to the below named within 21 days from the date of this notice.

In default of any such notice being received, the said Frederick J Bloomfield and Philip A Morgan intend to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the county of Dublin for directions as may be appropriate on the basis that the persons beneficially entitled to the superior interest including the freehold reversion in the aforesaid property are unknown or unascertained.

Date: 1 April 2022
Signed: Helen Boland (solicitor for the applicants), 9 Palmerston Road, Rathmines, Dublin 6

PRO BONOBO

Talk about a load of hot air

● A British barrister who sued the England and Wales Crown Prosecution Service after a colleague asked him to stop farting in the room they worked in together has lost his case, *The Irish Times* reports.

Tarique Mohammed, who sued for harassment, told an employment tribunal that his repetitive flatulence was caused by medication for a heart condition. He said that the comment from his colleague had been embarrassing and had violated his dignity.

The tribunal found otherwise, however, saying that it was reasonable for his work colleague to have asked him to stop. While he had been aware that the claimant had had a heart attack, he was not aware about the medication or the side-effects associated with it. The tribunal commented that it was not unreasonable to ask Mohammed to stop farting "when there had been repeated incidents of flatulence in a small office".

Where eagles dare

● A 20-year-old Louisiana man has been sentenced to 30 days in prison and a year on supervised release for possessing a bald eagle feather.

Daniel Glenn Smith was sentenced for violating a law that says only federally recognised Native American peoples may possess any part of a bald or golden eagle, according to Newser.com.

Pleading guilty, Smith said he killed an eagle, took a feather, and kept it in his car. The judge could have sentenced him to a year in jail and fined him $5,000, according to the plea agreement.

Another brick in the wall

● A Chicago shop that specialises in custom Lego-style pieces is selling a Volodymyr Zelensky figurine to raise cash for Ukraine.

Vice.com reports that Citizen Brick (which makes unique minifigures that the Lego company won't) has produced a figure of the Ukrainian president, complete with five-o'clock shadow and tiny petrol bombs.

"I just felt that I had to act using what I had," owner Joe Trupia said, adding that 100% of the proceeds from sales of the Zelensky figure and accompanying Molotov cocktails would go to the non-profit humanitarian organisation Direct Relief, which transports medical supplies to Ukraine and neighbouring countries.

Smokey and the bandit

● The truck convoy that paralysed much of downtown Ottawa for nearly a month has cost the city $36.3 million, with the figure expected to rise even higher. Policing costs accounted for most of the bill, *The Guardian* reports.

The so-called 'Freedom Convoy' arrived in the Canadian capital at the end of January, initially in a protest over vaccine mandates, but turned into a broader demonstration against the government, with calls to overthrow the prime minister.

The city is expected to ask the federal government to reimburse the city for "all costs associated with the response".

Sign up for our free service & become a Canine Care Card Holder today and enjoy the peace of mind that your precious friend will be safe and loved should the worst happen to you, become seriously ill or need to move to a nursing home.

For more information call Katie on

01 879 1843 or log onto

www.DogsTrust.ie/InfoCCC

Dogs Trust, Ashbourne Rd, Finglas, Dublin 11, D11 K003

LEAP

Helping law firms to work **more efficiently** and **more accurately** with a **single source of truth.**

By consolidating your systems, LEAP provides access to the same single set of data across your practice whether working remotely or in the office, preserving consistency and compliance across your law firm.

With all your client and matter information and system centralised in the Cloud you can focus on serving your clients and practising law, not on time-consuming admin.

Work more efficiently and more accurately.