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I'M SPARTACUS

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HIGH-WIRE ACT

A detailed look at the superior courts' new bill of costs process

EASY DOES IT

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THROUGH MY EYES

Solicitor Vicky McCarthy Keane talks about life and poetry after her MND diagnosis

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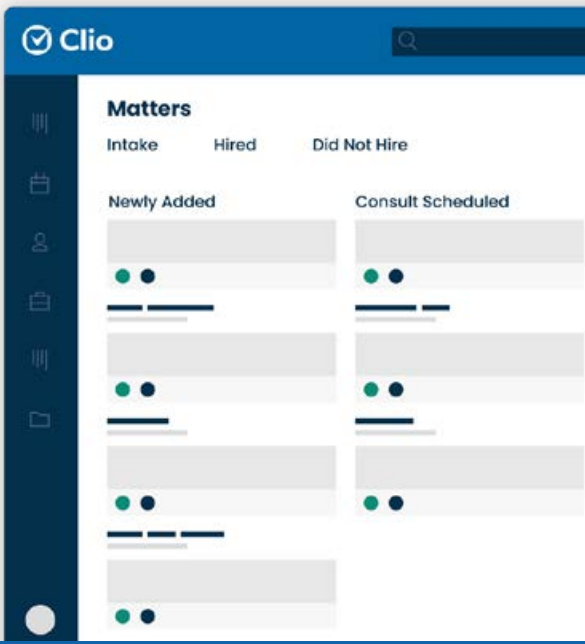

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FEATURES

REGULARS

A time of change

As this is my first message of 2022, it seems appropriate to wish you a happy new year. As we enter official springtime, it does seem like we can look forward to the year being less dominated by the pandemic. I realise that many people will have encountered COVID in their personal and working lives over Christmas, so it's unlikely to have been 'Christmas as usual'.

We now appear to be entering a new phase where we can begin to emerge from the burdens imposed by COVID and its related restrictions. I know that this will be embraced by many, and it presents opportunities for reflection and a new beginning. I am optimistic that 2022 will continue to improve, and we will be able to re-engage with each other in person, taking the good from what we have learned during the pandemic, and resuming what was positive from our lives before it.

Legal system challenges

Of course, we are all still dealing with COVID's challenges in the day-to-day running of the legal system, and so we continue to work with the Courts Service and all stakeholders with a view to minimising disruption and maximising its output in the face of those challenges. Thanks to each one of you for your enormous efforts and hard work, which have allowed us to continue providing essential legal services in such strange times.

It is a time of transformation, too, for the Law Society itself, which will present challenges – but also many opportunities. Our new director general, Mark Garrett, began with the Society on 4 January. Mark is very welcome to his new role, and we thank Mary Keane for steering the Society so ably since Ken Murphy's departure in March 2021.

More change is coming for the Society in the year ahead. Six staff, including three of our senior management team – Mary Keane, John Elliot and Cillian MacDomhnaill – will be leaving the organisation through a structured early-retirement programme in the middle of the year. They have individually – and together – made major contributions to the Society during their long careers with us. We will work together to ensure a smooth transition to the benefit of the Society, and we wish them well for their futures.

Key priorities

We will be very focused this year on my key priorities of gender equality, diversity and inclusion; health and wellbeing in the profession; climate justice; and business recovery in the pandemic. The Council, committees, and staff are working actively on these priorities, and on their many responsibilities, to ensure that the Law Society delivers for its members and for the public. I am determined to lead and support the Society in excelling in what we do – in an effective, calm, and measured manner – and consistent with our profession's values, skills, and place in wider society.

LAW SOCIETY OF IRELAND

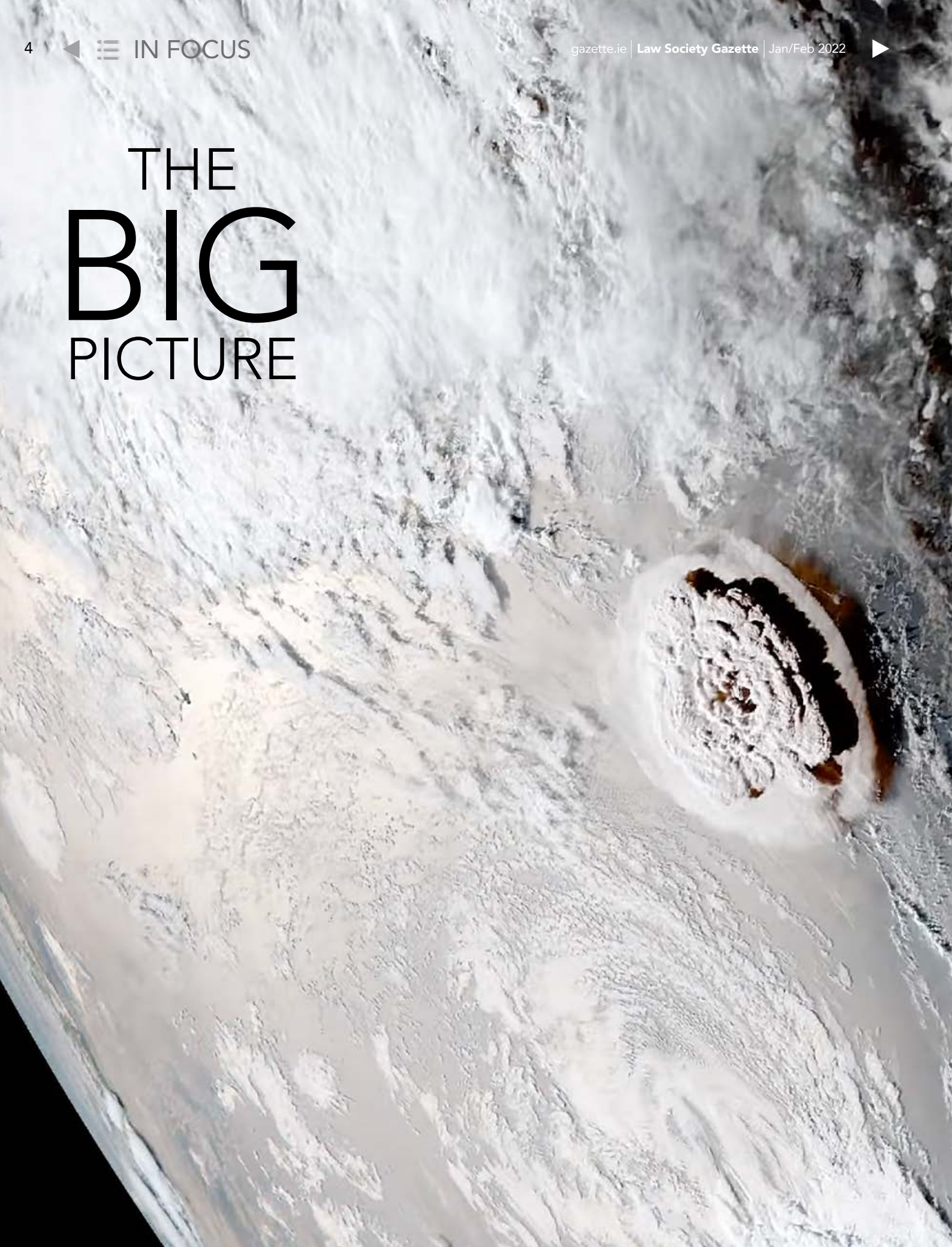
> IT IS A TIME OF TRANSFORMATION, WHICH WILL PRESENT CHALLENGES – BUT ALSO MANY OPPORTUNITIES

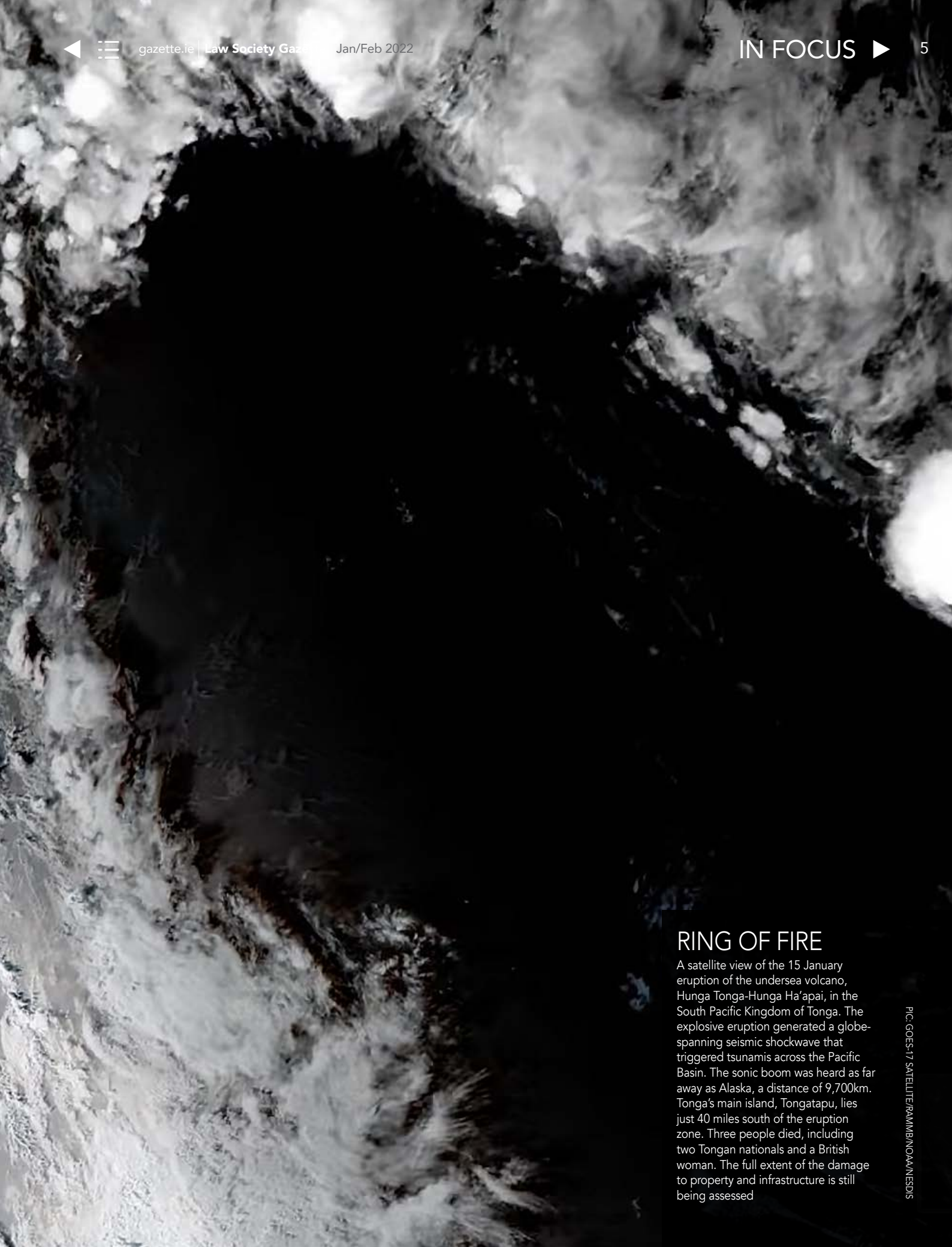
I hope to have the opportunity to meet many of you as the year opens up, and to work on your behalf representing the profession in Ireland and abroad as our long-delayed plans for meetings, conferences, and events appear to be achievable at last. We will work with both optimism and realism on your behalf, hopeful that we can move forward with our plans and put this pandemic firmly behind us. g

Michelle Ní Longáin

MICHELLE NÍ LONGÁIN,
PRESIDENT

THE BIG PICTURE





RING OF FIRE

A satellite view of the 15 January eruption of the undersea volcano, Hunga Tonga-Hunga Ha'apai, in the South Pacific Kingdom of Tonga. The explosive eruption generated a globe-spanning seismic shockwave that triggered tsunamis across the Pacific Basin. The sonic boom was heard as far away as Alaska, a distance of 9,700km. Tonga's main island, Tongatapu, lies just 40 miles south of the eruption zone. Three people died, including two Tongan nationals and a British woman. The full extent of the damage to property and infrastructure is still being assessed

PIC: GOES-17 SATELLITE/RAMMB/NOAA/NESDIS

Winners at the Irish Law Awards 2021

Richard Hammond SC (chair of the Irish Law Awards judging panel) introduces MC Ivan Yates at the Irish Law Awards 2021

Ivan Yates teases the audience by holding aloft the list of winners at the Irish Law Awards 2021 on 29 October 2021

ALL PICS: PAUL SHERWOOD PHOTOGRAPHY

'Law Book of the Year' went to Alice Harrison for *The Special Criminal Court: Practice and Procedure*

Ireland's largest firm Matheson won 'Diversity and Inclusion Law Firm of the Year'

Stuart Gilhooly SC (HJ Ward & Co) was the recipient of 'Sports Lawyer of the Year'

The 'Public Sector/Civil Service In-House Legal Team/Lawyer of the Year' award went to the Criminal Assets Section of the Chief State Solicitor's Office

Richard Grogan *(right)* was the overall winner in the 'Excellence and Innovation in Client Service' category

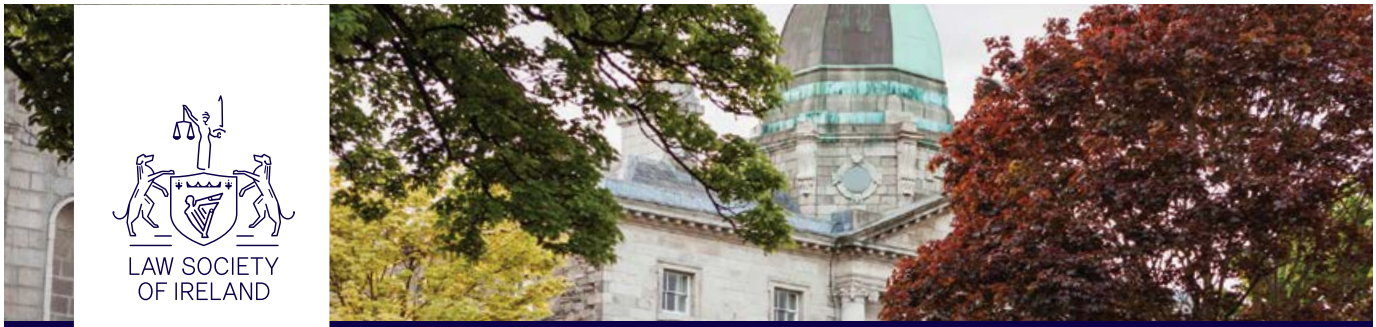
Overall winner of the 'Family Law Firm/Team/Lawyer of the Year' category was Keith Walsh (Keith Walsh Solicitors)

Overall winner in the 'Sole Practitioner of the Year' category was Lisa McKenna (McKenna and Co, Solicitors)

David Curran (Flynn O'Driscoll LLP) was the overall winner of the 'Litigation Law Firm/Lawyer of the Year' award

Aonghus Kelly, for Irish Rule of Law International, was presented with the '*Pro Bono*/Community Law Firm/Lawyer of the Year' award

'Sole Principal of the Year' went to Donnacha T Anhold (Carter Anhold & Co), who was represented by solicitors Marie Conway, Ciara McLoughlin, and Ornagh Burke



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LAW SOCIETY OF IRELAND IS SEEKING
A PRIVACY OFFICER

Applications are invited for the position of Privacy Officer in the Finance & Administration Department. As Privacy Officer, the successful candidate's primary role is to advise the Society in relation to all privacy and data protection matters, and to ensure adherence to GDPR in line with current policies and procedures.

Given the complexity of the Society's roles and the nature of personal data held by the Society, primarily generated in its regulatory function, but also its education function, the role of Privacy Officer is a senior position in the Society with significant interaction with the Senior Management Team and function heads. The role is supported by an administrator (2-3 days per week) and by legal advisers when required.

Role:
- Continued development of existing systems,
- Advisor in multifunctional organisation.

Experience:
- Detailed knowledge of GDPR
- Experience with DSARs, DPIAs, Privacy policies etc.

Contract duration: 2 years fixed term

Appointment to this role is subject to the candidate's eligibility to work in Ireland, without any restrictions.

To apply for the role and for further details:
lawsociety.ie/privacyofficer

Closing date: Friday, 11 February 2022

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Marble City's clowder cluster for clever cats

PIC: VICKY COMERFORD

At the Kilkenny Finuas Skillnet cluster event on 11 November were *(front)*: Anna Purcell (secretary, Waterford Law Society), Charlene Butler (secretary, Kilkenny Bar Association), Morette Kinsella (member, Law Society Council), Tony Shone (director, Invisio), Martin Crotty (member, Law Society Council), and Laurie Grace (Grace Solicitors, Kilkenny), *(back)*: Katherine Kane (Law Society Skillnet) and Bernadette Cahill (principal, BM Cahill & Co, Waterford)

Connaught comes together

PIC: MICHAEL MCLAUGHLIN

At the Law Society Skillnet Connaught Solicitors Symposium, held at Breaffy House Hotel, Co Mayo, on 4 November were Marc Loftus, Elaine Silke, Aoife O'Malley and David Scott

New partner at AC Forde & Co

AC Forde & Co, Solicitors, has announced the appointment of Brian O'Sullivan as a partner in the firm. Brian joined the law firm in 2018 and specialises in commercial litigation and dispute resolution

Howdy pardner! ByrneWallace welcomes Magnificent Seven

ByrneWallace LLP has appointed seven new partners: Triona Ryan (banking and finance), Gráinne Murphy, Eoin McGlinchey (both litigation and dispute resolution), Morag McCullagh, Fiona Wood (both health and social care), Daniel Holohan (corporate), and Zelda Deasy (corporate, privacy and data protection). Congratulating the new partners, managing partner Feargal Brennan said: "We have invested heavily in training our people and enhancing our IT infrastructure, and look forward to what will be an exciting and challenging time for our country, industry and firm as we emerge from the pandemic"

On yer bike!

The use of bicycles on Irish roads is set to triple over the next two years. While this is great news from an ecological perspective, an increase in bicycle-related accidents seems inevitable.

The Bicycle Engineering Academy of Ireland is a centre of excellence that can help with forensic engineering reports and expert-witness services. The academy is producing Europe's first professionally accredited bicycle engineering graduates.

One of the main drivers of the strong growth in bicycle sales is the electric bicycle. A variety of EU legislation applies to cycles with pedal assistance equipped with auxiliary electric motors. The former Directive 2002/24/EC was repealed by the new Regulation 168/2013 (January 2016). All 'pedelecs' sold in the EU must now comply with this latest standard.

All electric cycles with two, three or four wheels come under the type-approval as set out in Regulation 168/2013, the three supplementing technical regulations, and the implementing, administrative regulation.

However, article 2 of the regulation excludes certain categories of electric cycles from type-approval, all of which can have a bearing when cases go before the courts.

Buoyancy sees salaries spike

Legal-sector buoyancy is expected to continue throughout 2022 after a particularly strong year in 2021. That's according to Morgan McKinley's *Salary Guide Ireland 2022*.

The recruitment consultancy says that corporate lawyers are in demand for mergers and acquisitions, with an emerging upward trend in financial services, data privacy and regulatory work, and a corresponding shortage of talent.

The guide anticipates salary increases of 5-10% in certain sectors, rising to 15-20% for certain niche skills.

Lawyers working in the commercial, regulatory, financial and investment sectors are also in demand.

Upward pressure

Upward pressure on salaries has been driven by the reduction in mobility of international talent – and the corresponding demand for individuals already in location.

"We're currently seeing the most demanding employment markets of our time," said global FDI director Trayc Keevans. "The 'Great Resignation' of the past year appears to be still in full swing.

"The experience of the sustained public-health emergency has prompted countless workers to re-evaluate their work options, fine-tuning a better work/life balance and making deliberate choices as to where their careers are heading next."

She pointed to "constant misalignment" between the supply and demand for employees, with the consequent return of counter-offers.

"For some organisations, the Great Resignation is an unparalleled threat, creating organisational challenges around skillsets and resources, and affecting everything from quality of work and time to completion, to bottom-line revenue," she added

But firms can also perceive this as a golden opportunity to secure accomplished talent that will add value for years to come.

"Consequently, organisations are under incredible pressure to adapt their leadership, management, and work practices. As a means of attracting talent, many employers are either adjusting their working models to hybrid or fully remote, or offering higher wages in response," Keevans said.

On the table

Incentives such as paid relocation assistance, transparent career paths, strong learning and development plans, and location flexibility are all on the table.

An exodus of Irish-qualified solicitors and barristers to cities such as London and Sydney has led to difficulties in filling legal roles in Ireland.

However, normal inflationary figures of 2-5% are expected to come back into play in a post-pandemic world, as the flow of external candidates into Ireland takes pressure out of an overheated employment market.

The pandemic has also opened the opportunities for firms to source workers from a wider geographical net.

Remote working has meant that some lawyers can be hired from other cities, benefitting Dublin firms, which can now access cheaper talent.

Remote-working requests

The coming year will see the introduction of the statutory right of employees to request remote working, and the *Salary Guide* shows that 75% of workers would consider leaving their current organisation if their preferred flexible-work options weren't on offer.

Hiring processes that go on for longer that two to four weeks will also drive 53% of job-seekers to take up another offer, the survey shows, with 47% admitting they had declined a job offer because the hiring process was too long.

A total of 68% of respondents said that their organisations offered flexible working, with 27% having two or three mandatory office days, and 23% of employers insisting on one or two mandatory office days.

Full-time work from home is the preferred option of 29%, with 22% opting for two-to-three office days, and 33% for one-to-two office days, while 16% would prefer another arrangement.

COVID's impact on the European courts

● Like other courts, the capability of the EU courts – comprising the Court of Justice of the European Union (CJEU) and the General Court – was initially severely impacted by the onset of COVID-19, *writes Tony Joyce (head of the EU law section in the Chief State Solicitor's Office)*.

Unlike the European Free Trade Association Court, which introduced fully remote hearings via Zoom, the CJEU has had to take a different approach. The statutes governing the CJEU require that the court sits in Luxembourg, which means that its hearings have continued to be held in person.

In some cases, the initial response of the CJEU was to decide not to hold an oral hearing but, instead, to invite further written observations from the parties, EU institutions and member states. That trend has reduced, thanks to the court's success in rolling out remote participation in hearings.

PIC: SHUTTERSTOCK

CJEU, Luxembourg

How it works

So, how does this work? It is now possible to apply for permission to connect to the court remotely. Applications like Zoom or Microsoft Teams are not used, but rather a direct connection via videolink through a videoconferencing system. Consequently, the CJEU requires that parties have a very high standard of connection and conferencing equipment. Technical and quality tests are carried out by the court before hearings.

Due to the technicalities around the interpretation service provided to the CJEU, there is a limit on the number of connections that can be made. Only three languages can be facilitated remotely, although a greater number of remote connections can operate if the parties agree to use common languages.

The Chief State Solicitor is the agent for Ireland before the EU courts and, as only one connection is permitted per member state, the Chief State Solicitor's Office often hosts the other Irish-based parties in a case in which Ireland is participating.

The CJEU has linked the availability to connect remotely with restrictions on travel arising from the pandemic. Whether remote participation will continue post COVID remains to be seen.

Trainees' dispute-resolution contest

● Three Blackhall Place trainee solicitors have received Law Society awards after representing the law school in the International Academy of Dispute Resolution's 2020 annual tournament.

James Leahy, Hannah Gallagher and Katie Lee, coached by Law Society course manager John Lunney, were placed second as mediator team in the contest. Katie Lee was honoured with a special recognition for her role as mediator.

Law Society President Michelle Ní Longáin presented the team with their awards at an event that recognised trainees who excelled at virtual and in-person events during 2020 and 2021.

Continuing uncertainty for in-person CPD

● The current Continuing Professional Development (CPD) provisions require that solicitors undertake 20 hours of CPD each year – no more than 50% of which may be undertaken online.

However, in response to the pandemic, the Education Committee issued a derogation from this requirement for the 2020 and 2021 CPD cycles, enabling the entire 20 hours to be completed online.

Given the continuing uncertainty surrounding the pandemic, it is difficult to assess the shape of things to come in 2022 from a public-health perspective. Several months ago, large in-person CPD events had recommenced, but the situation changed due to the impact of the Omicron variant and new Government guidance.

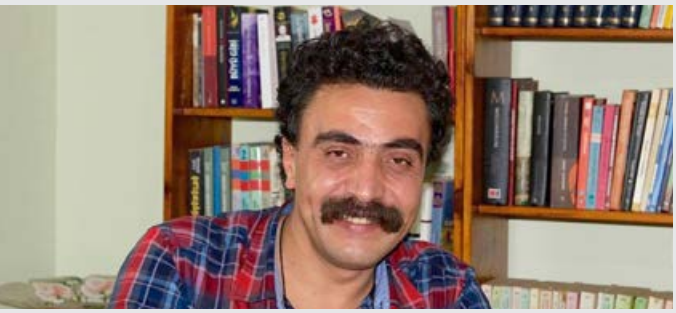
The hope is that in-person CPD events will recommence in the near future. The question of a derogation for 2022 will be considered in the spring, when hopefully the picture becomes clearer in relation to pandemic guidelines. In the interim, it is important that all solicitors should comply with the public-health guidance before considering offering or undertaking CPD courses or events.

At the Law Society's annual general meeting last November, a motion was passed asking the Education Committee to consider permitting all CPD to be undertaken online. This motion does not alter the current provisions, and the Education Committee will, in the course of its work for 2022, consider that matter, as requested.

Any alterations to the CPD requirements, whether arising from the public-health circumstances, or the Education Committee's review of the CPD provisions, will be communicated to the profession at the earliest opportunity.

ENDANGERED LAWYERS

SELÇUK KOZAĞAÇLI, TURKEY



Selçuk Kozağaçlı featured in this column in October 2018. He is a well-known and respected human-rights defender, known among other things for working on the 'Soma Mine' disaster – the worst mining accident in Turkey's history, in which 301 miners were killed.

He was a member of the People's Law Office and chairman of the Association of Progressive Lawyers, established in 1974. The association was a member of the European Association of Lawyers for Democracy and Human Rights. It was closed in November 2016 by government decree.

Between 2013 and 2014, Kozağaçlı and 15 other lawyers were prosecuted for membership of an armed terrorist organisation, but were acquitted.

He was arrested for a second time in November 2017 for membership of a terrorist organisation, a charge that is widely believed to be without foundation. He was held in Metris and then Silivri Prison, in a special unit for so-called 'terrorists', and was kept in solitary confinement for over ten months.

On 14 September 2018, his case came to trial and, at the first hearing, he and 16 other lawyers were ordered to be released from pre-trial detention, though they were banned from international travel. The prosecution objected, and 12 of those released were immediately rearrested, including Kozağaçlı. The trials were adjourned to February 2019. In January 2019 he attended his father's funeral in handcuffs. Later that month he and four others went on hunger strike to protest irregularities in their trials.

In March 2019, notwithstanding strenuous objections to the procedures and decisions of the court, he and 17 other lawyers were convicted and sentenced. His sentence was for ten years and 15 months, and other sentences ranged from three to nearly 19 years. Having drawn attention to the unlawfulness of the trial, the hunger strikers ceased their strike.

On 5 January 2022, a three-day hearing began in the Silivri Prison complex in Istanbul into the cases of 22 lawyers, including Selçuk Kozağaçlı. He is charged with managing an illegal organisation; the others for being members of an illegal organisation. Several lawyers' groups, including France's National Bar Council and the bar associations of Berlin, Amsterdam, Brussels and Bologna, have announced support for the Progressive Lawyers' Association.

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

New managing partner for Maples

Maples and Calder LLP (Ireland) has named Peter Stapleton *(right)* as the law firm's new managing partner of its Irish office. He also becomes a member of the firm's global management committee. Peter succeeds Nicholas Butcher *(left)*, who has retired from the firm after almost 18 years of service – the final six of which he served in the role of managing partner. Based in Dublin, Peter has led the Irish funds and investment management practice over the past six years.

Memorial to honour solicitor Conor Connelly

Many of the *Gazette*'s readers will be aware of the sudden passing of their former colleague Conor Connelly, on 28 March 2020 (aged 44), near his home in Moorock, Ballycumber, Co Offaly.

Conor's death at the start of the COVID pandemic meant that his funeral service was subject to Government restrictions on public gatherings.

Originally from Creggs in Co Roscommon, Conor played intercounty football as a wing-forward with Roscommon's senior football team in the late 1990s and early 2000s. He helped the 'Rossies' to victories over Galway and Mayo, winning the Connacht championship in 2001.

He is survived by his wife Claire Quinn (also a solicitor) and their three children, Caragh, Rossa, and Owen, his parents Jimmy and Nora, brothers Robert, James and Darragh, and sister Sharon, and extended family.

Claire wishes to inform Conor's former colleagues, Law Society members, and friends that the family will be holding a memorial to celebrate Conor's life on 26 March – the second anniversary of his passing – to which all are welcome. The ceremony will take place at St Manchan's Church, Boher, Ballycumber, Co Offaly, at 3pm, followed by a reception at Ballycumber GAA Club.

Ar dheis Dé to raibh a anam dílis.

MacGuill is new CCBE president

● Irish solicitor James MacGuill is the new president of the Council of Bars and Law Societies of Europe (CCBE).

A past-president of the Law Society, MacGuill took office on 1 January, after his election during a plenary session of the CCBE last month.

James is the managing partner of MacGuill and Company, a five-solicitor practice based in Dublin and Dundalk. He was admitted to the Roll of Solicitors in 1986 and was appointed a notary public in 1996.

MacGuill has been in private practice ever since, particularly as a litigator with an emphasis on public law – especially criminal law and human rights. In 2020, he was one of the first Irish solicitors to be granted the title 'senior counsel'.

He joined the CCBE in 2008 and was head of the Irish delegation twice between 2012 and 2018. He also chaired the CCBE Criminal Law Committee from 2013.

PIC: SIOBHAN BYRNE

His presidency will be supported by Panagiotis Perakis (Greece) as first vice-president, Pierre-Dominique Schupp (Switzerland) as second vice-president, and Thierry Wickers (France) as third vice-president.

The CCBE represents the bars and law societies of 45 countries, and, through them, more than one million European lawyers.

HLJ's 20th volume out now!

● The *Hibernian Law Journal* (HLJ) has published its 20th volume. It is available online through HeinOnline and Westlaw.

Articles focus on topics such as the impact of the pandemic on the courts, the examinership process and insurance claims, Constitutional concepts of sovereignty, and the history of the Revenue Commissioners as preferential creditors.

In his foreword, Mr Justice Michael Twomey comments: "Each contribution in this year's volume of the *Hibernian Law Journal* brings a unique and fascinating insight into a diverse area of law. Immense credit is due to the authors and the editorial board for bringing this journal to publication, and their hard work and dedication in this regard is to be commended."

Hard copies may be purchased by emailing editor@hibernianlawjournal.com.

IRLI IN MALAWI

IRLI RETURNS TO ZAMBIA

PIC: UP ZAMBIA

Sara Larios (Undikumbukire Project Zambia), Aonghus Kelly (IRLI executive director) and Kabota Chipopola (UP Zambia)

● The deep relationships between people from the island of Ireland and the people of Zambia are manyfold. IRLI has previously worked in Zambia with judicial assistants between 2009 and 2016.

We are now moving forward with a new project funded by the Rule of Law Expertise United Kingdom (ROLE UK) fund from Britain's Foreign, Commonwealth and Development Office (FCDO), which is managed by Advocates for International Development (A4ID) in London. As a cross-border organisation, IRLI liaises closely with our good friends at A4ID.

Following discussions between ourselves, the law firm DLA Piper, and Undikumbukire Project Zambia (UP Zambia), we collectively drew up a project proposal. The plan was accepted by A4ID to utilise expertise from both jurisdictions on the island of Ireland on the benefits and practical application of discretionary alternatives, the expanded use of bail, and the development of policies and structures to support them.

This programme will also draw on the experience of IRLI in Malawi, with our *Mwai Wosinthika* (Chance for a Change) child diversion programme there.

Zambian law provides scope for the exercise of discretion by police and prosecutors in determining whether to charge and prosecute children. However, the day-to-day application of discretionary alternatives is a complex issue that, by its nature, requires clear policies and practices that are consistent with the law, and practicable by rank-and-file officers. The project will endeavour to work with local stakeholders and partners to move matters forward in this very important area of criminal justice.

IRLI is also looking to engage further in Zambia in conjunction with the Irish Embassy in Lusaka. We look forward to updating readers on that process in due course.

Aonghus Kelly is executive director of Irish Rule of Law International

Law School wins 2021 Bréagchúirt Uí Dhálaigh

● The Blackhall Place Law School team has scooped the honours at this year's Gael Linn Bréagchúirt Uí Dhálaigh. The winning team, comprising Eimear Gallagher, Nadia Hourihan and Cormac Bergin, took the top honours at the moot court competition on 5 November.

Bréagchúirt Uí Dhálaigh is run annually by Gael Linn, in honour of former chief justice and President of Ireland Cearbhall Ó Dálaigh.

The competition is aimed at third-level students studying law and takes the form of an appeal against a court decision. Each team must resolve and plead both sides of the case, after being told just one day before the preliminary rounds which side they will be pleading.

The preliminary rounds took place at the King's Inns in Dublin, while the final was held at the Four Courts before a panel of esteemed judges on 5 November.

Buaiteoirí *(l to r)*: Eimear Gallagher, Nadia Hourihan and Cormac Bergin

The winners were presented with a permanent Gael Linn trophy and a cheque for €600.

Gael Linn expressed its thanks to Cormac Ó Dúlacháin SC, Daithí Mac Cárthaigh BL, Kate Ní Chonfhaola BL, the King's Inns, and the Courts Service for their continued support of Bréagchúirt Uí Dhálaigh.

CCBE award for four Belarussian lawyers

Lilya Vlasova

Maksim Znak

Dmitry Laevski

Leanid Sudalenko

● The Council of Bars and Law Societies of Europe (CCBE) presented its Human Rights Award 2021 to four Belarussian lawyers on 10 December, during the CCBE plenary session.

The CCBE describes the four Belarussian lawyers – Lilya Vlasova, Maksim Znak, Dmitry Laevski and Leanid Sudalenko – as "victims of judicial harassment" due to their work as lawyers. Three are currently in detention, while a fourth has been disbarred.

Vlasova was arrested on 31 August 2020, and remains in detention, despite protests from several international lawyers' organisations.

Znak represented many clients in politically sensitive cases, and was sentenced to ten years in prison after one year of pre-trial detention.

Sudalenko represented human-rights defenders and activists, and was arrested on 18 January 2021 on charges of "organising, financing, training and preparation of actions grossly violating public order and financing such activities".

Laevski, who has represented several political prisoners in court, was officially disbarred on 9 July 2021, after two disciplinary proceedings against him.

CPD clusters returning to some kind of 'normal'

At the Law Society Skillnet Connaught Solicitors Symposium, held in Mayo on 4 November, were *(l to r)*: Anne Tuite (Law Society Skillnet) Richard Grogan (Law Society Council member), Anne Stephenson, Marc Loftus (president, Mayo Solicitors' Bar Association), and Attracta O'Regan (head, Law Society Skillnet)

● The Law Society Skillnet CPD cluster programme towards the end of 2021 had to adapt to COVID restrictions, with online webinar clusters being held in association with the bar associations of Leitrim, Laois, Donegal, Clare, Limerick, and Kerry.

From November, regional in-person clusters were able to resume in Mayo, Kilkenny, Cork, and Monaghan. The Omicron variant, however, led to a return to online webinars in December, including the Practice and Regulation Symposium, held in collaboration with the Dublin Solicitors' Bar Association.

Law Society Skillnet is grateful to all those bar associations that continue to collaborate with it in bringing education and training to the members of the profession. The programme is currently visiting bar associations around the country to assist them with designing their 2022 programmes.

For a complete listing of online and upcoming CPD events, see www.lawsociety.ie/CPD or contact a member of the Law Society Skillnet team at tel: 01 881 5727, email: lawsocietyskillnet@lawsociety.ie.

Society welcomes new director general

● Mark Garrett has begun his role as director general of the Law Society, from 4 January. The Council approved his appointment in September.

Addressing staff on his first day, Mark said: "The Law Society has a long and proud history of serving, representing, and supporting the legal profession, as well as the Irish public. I take office with a mandate to build on that work, helping the Society and the profession to navigate the changing times we are all going through. I am confident that we can do this together, and I'm truly excited to lead this team."

Cecil W Donovan (1936-2022)

Cecil W Donovan, former president of Chartered Accountants Ireland for 1986/87, passed away on 4 January. His death notice noted that he made "an enormous contribution to the accountancy profession and the institute". It can be equally said of him that he made an enormous contribution to the legal profession and the Law Society of Ireland.

Cecil joined the Society's Finance Committee in 1996 as its first 'lay' member. He went on to serve on the committee for 17 years, right up to 2013. He applied himself to his role with great commitment and diligence, and brought professional expertise, huge insight, and wise judgement to the committee, which led to many improvements in the financial structure and stability of the Society's finances.

Cecil also made a hugely significant contribution to the regulation side of the Society's operations. He served as a lay member on the Regulation of Practice Committee for seven years, from 2004 to 2011. During this time, he was involved in a number of key reviews that ultimately helped to shape the future of the profession's regulatory processes.

He was a member of the Regulatory Review Task Force 2002-2004, which examined the procedures and systems for the regulation of the profession, and led the Donovan-Bowen Working Group in 2008-2009, which reviewed the operation of the committee.

Always thoroughly prepared, he was a clear thinker and communicator and, above all, was a true gentleman with huge integrity. He thought deeply about the nature of the professions and professional bodies, and their role as protectors of the public interest.

Cecil was very proud of his association with the Law Society and, despite devoting a huge part of his life to Chartered Accountants Ireland and acceding to the highest position of president, he gave unstintingly of his energy and wisdom to the solicitors' profession. Cecil will be remembered by all who worked with him as, first and foremost, a gentleman who gave wise counsel.

Certainly, within Law Society circles, he has left a legacy of which his four children – Siobhán, Andrew, Iain and Sinéad (currently vice-president of Chartered Accountants Ireland) – and his extended family, can be very proud.

CMD

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

How do I cope with my eating disorder?

Q I am at mid-career level and work in a busy law firm. I can be quite hard on myself and know that I have perfectionist tendencies. I suffered from an eating disorder when I was younger but have noticed this re-emerging in the last few months, and more intensely over the Christmas period. Is there anything I can do now to prevent a relapse?

A There are a couple of things about what you have said that stand out, and the most important is the connection you make between how you are feeling, what's going on in your life, and disordered eating behaviours. Isn't that the crux of the whole thing? That an eating disorder, controlling your food and your body in whatever way, is a response to something that a person finds challenging – it is a coping mechanism. For some reason, when some people feel a certain way, or face certain challenges in their lives, they find comfort or strength in controlling their food and their body. And it helps them feel a bit better in the moment.

What is important to remember is that this way of coping doesn't actually work to make things better. You know that because you write that you have had an eating disorder and have managed to get out of it. So, when a person lapses, or feels themselves falling back into old patterns of behaviours to cope, it's worth remembering that, while the feeling of coping may come momentarily, in the long run it doesn't last, is destructive, and ends up making everything worse. This might seem easy to remember, but when we add a person's fear of feeling out of control, fear of 'what will happen', and fear of not being okay/'good enough', it can make this very hard to remember.

But you have done a crucial thing – you have been able to acknowledge to yourself that destructive behaviours are re-emerging, and you have articulated that, as well as your desire to stop this in its tracks. This is not easy, and maybe your perfectionism, as you put it, is paying off by helping you to acknowledge that you are not okay. Perfectionism can be a double-edged sword. It can mean that a person works hard, strives for excellence and usually achieves great things, but there can also sometimes be a price to pay. When perfectionism does not allow room for compassion, then often the person can get lost in the effort.

So, what can you do? Well, you have made the first step – you have acknowledged to yourself that this is happening. It can be important for a number of reasons to reframe a lapse/relapse in a positive way – this is an opportunity for you to learn more about yourself, about why you respond to certain challenges through food and your body, and how can you change that when it is destructive.

Taking that stance then, it is important to think through what you are finding difficult right now that is causing old patterns of behaviours to re-emerge. If you are able to identify the triggers, then you will be better placed to think through both what is going on, and also how might you respond and cope with these without using food and your body to cope?

What other ways can you try coping? If things have become tangled up, and you feel yourself being tied up in old patterns of behaviour, it can always help to be able to talk things out with another person – that person could be a family member, a friend, a support service, or a professional. See Bodywhys.ie for support services and information on professional help.

I would encourage you to be kind to yourself. This may sound like a token ending, or it may feel clichéd, but when a person is trying to counteract eating-disorder thoughts, being kind is incredibly difficult. However, being able to look after yourself, being gentle and kind with yourself, is exactly what the eating disorder tries to rage against, so it is exactly what a person needs to try and do. 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 Harriet Parsons, training and development manager at Bodywhys. 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.

Tomorrow's lawyer

The legal profession is at a critical point where disruptive technologies like machine learning and AI are poised to transform how work gets done. Larry Fenelon urges solicitors to embrace the future

I BELIEVE WE ARE ON THE CUSP OF A 'ONCE-IN-A-GENERATION' OPPORTUNITY TO IMPROVE WORKING LIFE, WORKING QUALITY, AND WORK/LIFE BALANCE THROUGH A BLEND OF BUSINESS STRATEGY, INNOVATION, AND TECHNOLOGY

Most legal futurists peddle doom, predicting imminent Armageddon for the profession. I'm in the opposite camp, however. We are in a relationship business. People need people – not automatons or robots. You will not be replaced by machines.

If you doubt me, simply remember the last time you couldn't find the phone number for the bank, utility company, or IT provider on their website. When you finally did unearth it, you were subjected to never-ending pre-recorded menus and then put on hold for what seemed like hours, when all you wanted was to speak to another human being about resolving your problem!

Truth be told, I believe we are on the cusp of a 'once-in-a-generation' opportunity to improve working life, working quality, and work/life balance through a blend of business strategy, innovation, and technology.

Outside forces

Those who will reap the benefits of this change are the ones who adapt. I think we all agree that we can't stick our head in the sand and pretend change is not happening. We need to try to understand what outside forces are reshaping how law is practised in Ireland.

The pandemic has undoubtedly accelerated the era of 'digital law', with paperless firms becoming mainstream, remote court hearings the norm, digital court filings being piloted, online mediation occurring regularly, and e-signatures becoming *de rigeur* – not to mention the inevitability of e-conveyancing. Most of us have some exposure to some of the above, so Irish solicitors are certainly adapting.

The 'pandemic effect' coincides with a time of significant change in the legal industry globally due to a variety of external factors, such as digitisation, deregulation, democratisation of knowledge, legal-process outsourcing, alternative legal-service providers, the continuing shift of the profession in-house, legal tech, globalisation, and increased competition.

Then there is the Legal Services Regulatory Authority, whose terms of reference include reports with recommendations to Government on sweeping changes to the profession, including:

- Liberalising solicitor training beyond the Law Society, which will inevitably increase numbers from the current 11,849 solicitors in Ireland today (incidentally, Ireland has one solicitor for every 416 citizens, whereas the US has a ratio of 1 to 240),
- Establishing a new profession of 'licenced conveyancer', who will do basic conveyancing at a lower cost,
- Establishing alternative business structures that will allow non-lawyers to own legal practices, leading to private-equity investment and public listings (for example, Gateley and DWF),
- Establishing multidisciplinary practices, where different professions can operate under the one brand (for example, EY Law, established in October), and
- The potential merging of the barrister and solicitor professions (which has been put on hold for now).

Whether all translate into action is another matter, however. Make no mistake: the effect will be to deregulate the profession, opening it up to different ownership structures and increased competition, to the benefit of the consumer.

Legal tech

Then we have the issue of ever-evolving legal tech. It's not an exaggeration to say that the legal profession is at a critical inflection point where disruptive technologies, such as machine learning and AI technologies, are poised to transform how legal work gets done.

The legal-tech industry is growing exponentially, as investors recognise the opportunity to disrupt a

PIC: ALAMY

centuries-old profession through technology and data exploitation. In 2018, Bloomberg confirmed that investment in legal tech surpassed US $1 billion that year. This figure was topped by Q3 2021, according to Crunchbase.

Earlier this year, Canadian company Clio (which operates in practice management) became the first legal-tech 'unicorn', valued at $1.6 billion. In Britain, 200 law-tech start-ups and scale-ups attracted £674 million investment (as of December 2020). The legal-tech industry there is valued at £22 billion and has been outpacing fin-tech, climate-tech and health-tech, according to a report released by the British government-backed Tech Nation in 2021.

It's worth reviewing which areas of law are attracting the most investment. The top ten global legal-tech companies are:

1) Ironclad – digital contract management,
2) Clio – cloud-based practice management,
3) ROSS Intelligence – artificial intelligence (AI) digital research tool,
4) Sumsub – identity verification software platform,
5) Notarize – remote notarisation,
6) LegalZoom – automated drafting platform,
7) LawGeex – contract review platform,
8) Brightflag – AI legal-costs platform,
9) ThoughtRiver – automated contract review and negotiation, and
10) DueDil – predictive company-intelligence platform.

Key trends

It's also important to understand what the current key trends in legal technology are:

THE EFFECT WILL BE TO DEREGULATE THE PROFESSION, OPENING IT UP TO DIFFERENT OWNERSHIP STRUCTURES AND INCREASED COMPETITION, TO THE BENEFIT OF THE CONSUMER

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Your multi-award-winning magazine of record, the *Law Society Gazette*, delivers the legal news to 14,000 subscribers a month – that's a total of 42,000 readers.

Don't forget, the interactive *Gazette* is available online, with lots of cool features like links to music, videos, legislation and case law.

You can also access the *Gazette* archive and indices right back to 1997.

The latest online legal news

Ireland's Digital Product of the Year* – brings daily legal news to your desktop and smart device. It is the portal for our narrated journalism service, provided by NewsOverAudio.com.

*(IRISH MAGAZINE AWARDS 2018)

Condensed into a digest

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

- Cloud migration,
- AI contract analysis,
- Online dispute resolution (ODR),
- Online data rooms,
- Legal project management,
- Digital subject access requests,
- Technology-assisted review,
- Platform ecosystems,
- Blockchain,
- Cyber-security,
- Data privacy,
- Workflow/task automation,
- Legal research bots, and
- Data visualisation.

New law roles

Notably 'new' or 'alt' law roles are emerging in the industry, such as legal-knowledge engineers, legal technologists, legal-process analysts, legal-data scientists, ODR practitioners, legal-management consultants, legal-project managers, legal-risk officers, and legal operations. Do not be surprised to see such titles being advertised by recruiters in the not-too-distant future.

Incidentally, Leman is the first law firm in Ireland to provide trainees with a mandatory legal-tech 'seat' as part of their training programme. We want to cultivate tech-savvy solicitors who can provide not just legal, but also law-tech solutions.

New law trends

Alternative industry trends are emerging, such as 'fast law', where lawyers can be accessed via platforms 24/7/365.

Alternative service providers in Britain and Ireland provide on-demand legal teams for project work in markets driven by in-house counsel, such as Johnson Hana and Axiom.

Digitised title and blockchain herald an infinitely quicker, less complex consumer-property legal market. Consumer conveyancing will change radically soon, and it will become even more competitive.

Contract management software (for instance, Avokaado) has heralded an age of automated drafting (for example, Rocket Lawyer and LegalZoom, which touts itself as 'US legal help for businesses and families in Ireland') and AI-diligence-driven review of corporate M&A documents.

The future of law

LexTech hosts an annual free CPD event for solicitors entitled 'The Future of Law and Legal Technology'. Now in its seventh year, it attracts the best legal futurists and thought leaders, globally, to explain what changes we can anticipate for the legal industry and how to adapt.

One such thought leader, Dr Ron Dolin (Harvard Law School) confirmed this year that Harvard now teaches 'Law 2.0' as part of its curriculum, covering technology's impact on the practice of law.

Another speaker, Margaret Hagan (a Stanford Law School lecturer and executive director of its Legal Design Lab) explained how legal advice is being designed and formatted to make justice, legislation, and regulation more accessible.

Chris James is head of digital legal at HSBC – a new role. He spoke about how his unit is delivering early legal evaluation of regulatory compliance for the bank's incubation-stage, digital-banking products.

Legal project management was discussed by Casey Flaherty, founder of LexFusion. We will hear a lot more about legal project management as property, finance, and corporate transactions become more complex and high value.

There is a real opportunity for solicitors to drive value for clients to complete legal projects on time and on budget.

How to adapt

The external forces reshaping the legal industry in Ireland are not going away. They will affect every aspect of our practices, from labour to profitability. Left unchecked, practices that do not strategically position themselves and innovate will inevitably suffer year-on-year decline in revenue, profitability, and energy.

While all solicitors receive probate training in Blackhall Place, none receive training in business strategy, innovation, or technology.

The plethora of new legal trends and law tech, and the strong external forces reshaping the industry, are overwhelming. That's why we established LexTech, which provides consultancy services to law firms and legal departments on developing business strategy, how to innovate, and what technology to adopt.

Next steps – five questions

Instead of advising you to buy some expensive software, I would recommend you start with answering the following fundamental questions:

1) Mission – what exactly does your firm do?
2) Vision – what is the aspiration for your firm?
3) Strategy – how are you going to deliver on that aspiration?
4) Goals – what needs to be achieved for the aspiration to become a reality?
5) Culture and values – how does your firm go about these?

Once those are answered, you will have achieved strategic positioning. This will provide the clarity that enables your business to future-proof. g

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Larry Fenelon SC co-founded Leman Solicitors LLP, LexTech Ltd, and The Future of Law and Legal Technology Symposium.

> THE EXTERNAL FORCES RESHAPING THE LEGAL INDUSTRY IN IRELAND ARE NOT GOING AWAY. LEFT UNCHECKED, PRACTICES THAT DO NOT STRATEGICALLY POSITION THEMSELVES AND INNOVATE WILL INEVITABLY SUFFER YEAR-ON-YEAR DECLINE IN REVENUE, PROFITABILITY, AND ENERGY

The next chapter

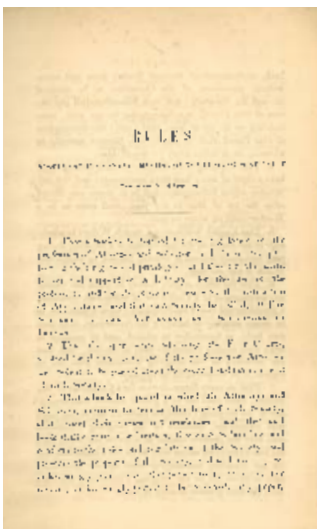
Hybrid work arrangements are now playing a central role in a new and evolving work culture. Mairead O'Sullivan opens the book on how the Law Society Library is tailoring its services to members' needs

OUR KEY OBJECTIVE IS TO MAKE EVERY MEMBER AND USER OF THE LIBRARY AWARE OF THE SUPPORTS AND SERVICES AVAILABLE TO THEM, REGARDLESS OF THEIR GEOGRAPHIC LOCATION

Last July, following the retirement of my esteemed colleague Mary Gaynor, I took over as head of Library and Information Services at the Law Society's library. We were fortunate to be joined last November by Paula Murphy as the new deputy librarian. It is an exciting time for the library – as 2022 stretches ahead, it brings with it a sense of newness, possibility, and an opportunity to embrace change and look to the future. A new team engenders fresh ideas and enthusiasm for the challenges that lie ahead.

One of my first tasks has been to examine the library's response to the changing work environments of our members and students. Hybrid work arrangements embraced during the pandemic (and assumed temporary) now play a central role in a new and evolving work culture for many of our members. Like all periods of adjustment, there are advantages and disadvantages, and pre-pandemic work habits and practices may no longer be practical or feasible in the home office. This is where the library can help. Our initial response to remote working was swift and effective, but I want to build on that impetus and ensure that our members' transition to working from home is as seamless as possible.

We were in the fortunate position in the library of having already put in place the technological infrastructure required to deliver a modern and dynamic service, but if COVID has taught us anything, it is the importance of planning ahead. We never take anything for granted, and our key objective is to make every member and user of the library aware of the supports and services available to them, regardless of their geographic location.



Established in 1841, the library is referenced in the very first rule adopted by the Society of the Attorneys and Solicitors of Ireland

Tech trends

Our document delivery service is a fast, efficient, and reliable service that members can access simply by emailing libraryenquire@lawsociety.ie. Members can request precedents, case law, journal articles, legislation, legal research, and book loans – and they are guaranteed a response that same day. Last year, we responded to 4,904 queries and emailed 3,060 documents.

The weekly *LawWatch* newsletter is delivered to members' inboxes every Thursday and includes recent case law from the courts, featured articles, new legislation, and a new feature called 'precedent of the week', included in our first issue of 2022.

The library catalogue is modern and interactive, with over 51,000 records, allowing members to search for unreported judgments and download signed PDF copies as we receive them from the courts. We digitised our entire unreported judgment collection a number of years ago, so users can search for and download cases as far back as 1952. There are currently over 20,000 judgments freely available on the library catalogue. Members can also request book loans via the catalogue, without having to contact the library desk directly.

Our library app ties in with the catalogue and provides members with the option to search the catalogue while they are on the move. It has proven particularly popular when members are in court and need access to a judgment quickly. Judgments can be downloaded to members' phones instantly.

Members and students now have access to a wide range of e-books, on topics including

'The archives are comprehensive and totally secure, my young Jedi'

conveyancing, company secretarial, information technology, internet law, and mediation from the library's e-book platform. Users are invited to contact the library for further information and to request a login password. In addition, library staff have access to over 300 e-books via databases such as Bloomsbury Professional, WestlawIE and LexisNexis. Extracts and chapters can be emailed to members, within copyright guidelines.

'Library Chat' is a relatively new feature that was introduced last year. The chat feature sits on the front page of the main Law Society website. It provides members and students – and, indeed, members of the public – with the option to chat with a member of the library team. It complements our enquiry desk service and is a fast and easy way of asking a quick question.

Last year, over 3,000 books were borrowed by members. We are constantly expanding our comprehensive and diverse book collection, and I am proud that our collection of wellbeing books has proven so popular.

Members can borrow five books over a ten-day period. In order to ensure secure delivery of loans to members, books are sent out by DX courier service or by An Post. There is a delivery charge of €5 per packet for DX delivery, or €5 per item for An Post delivery. Students can borrow three books over a seven-day period.

Positive experience

I am supported in the library by six professionally qualified librarians and, while there is no denying the pivotal role that technology plays in enhancing the quality of the library service, it is the skill, work ethic, and experience of the staff that I hope sets it apart and provides our members and students with a positive user-experience.

I am equally conscious as I write this of the hard work and dedication that went before us. Seasoned users of the library – and, indeed, more recent members – will be aware of the impeccable standards set by my predecessors, Margaret Byrne and Mary Gaynor. Indeed, if we look even further back at the history of the Law Society Library, we can see truth in the old adage that 'the more things change, the more they stay the same'. Established in 1841, the library is referenced in the very first rule adopted by the profession, when the Society was reconstituted as the Society of the Attorneys and Solicitors of Ireland, which called for the "institution and support of a library, for the use of the profession, and for providing means for the instruction of apprentices".

Over 180 years later, in these challenging and uncertain times, the library's primary focus and objective remains its members and students and how best to support them. The library is an anchor, a cornerstone in the Society. It has a role in the professional life-cycle of every member of the profession, from their first day as a PPC student, throughout their career, and right up to retirement.

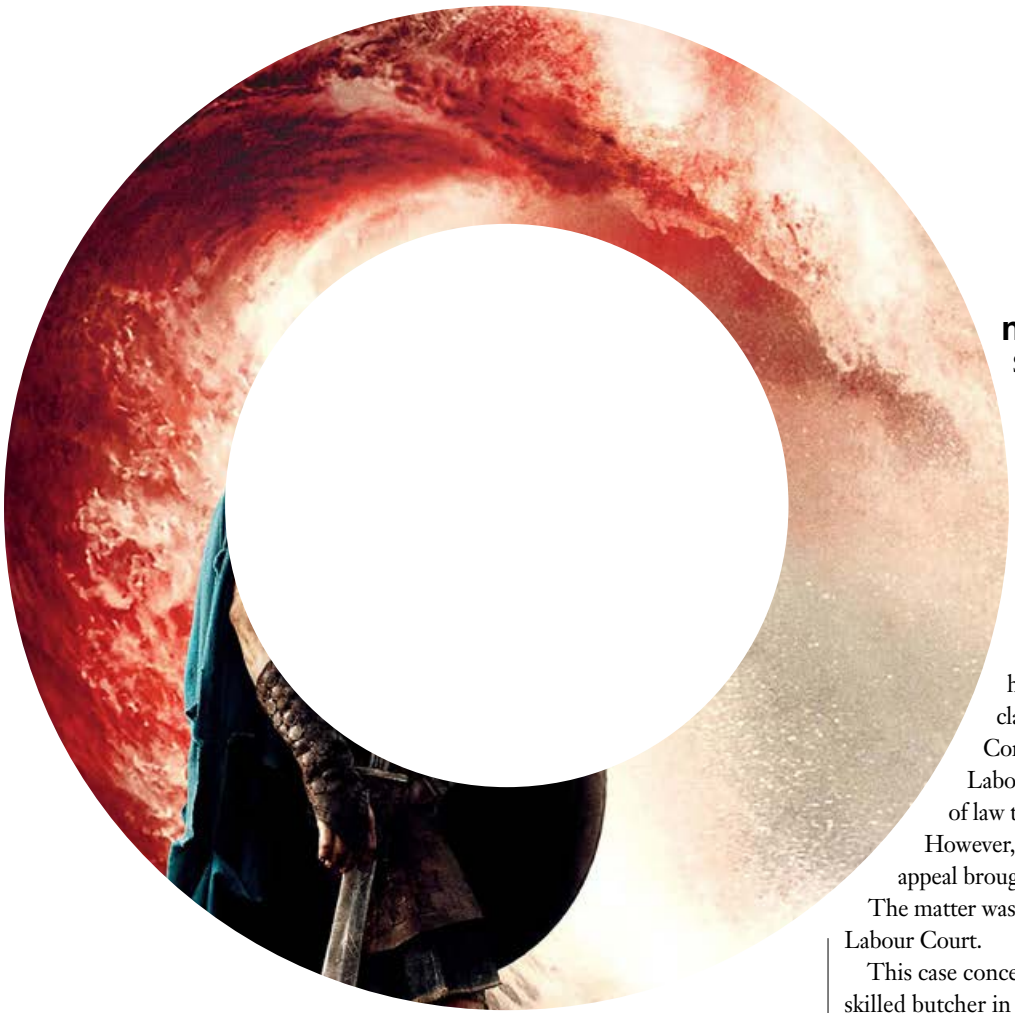
We are here to serve our members. It is your library, and we never lose sight of that. g

Mairead O'Sullivan is head of Library and Information Services at the Law Society.

PROTECT AND DEFEND

The Supreme Court has taken its first opportunity to interpret the *Protected Disclosures Act 2014* and to provide helpful guidance on its application. David Byrnes probes its findings

PIC: ALAMY



On 1 December 2021, the Supreme Court handed down its first decision concerning the *Protected Disclosures Act 2014*. Mr Justice Hogan gave the decision for the court in *Baranya v Rosderra Irish Meats*. This was a 'leapfrog' appeal from the High Court, pursuant to article 34.5.4 of the Constitution.

The claim was made by an employee against his alleged unfair dismissal for having made a protected disclosure. His claim failed in the Workplace Relation Commission, and again on appeal to the Labour Court. A further appeal on a point of law to the High Court in 2020 also failed. However, the Supreme Court allowed the final appeal brought by the employee on two grounds. The matter was ultimately remitted back to the Labour Court.

This case concerned an employee who had been a skilled butcher in the employer's meat plant since 2000. In a disclosure made verbally to the employer, the employee alleged that he complained that he no longer wished to carry out the task of 'scoring' a large number of carcases on a daily basis, as this type of work caused him a good deal of pain. The employee requested his supervisor to reassign him to a different role. The employer denied that the employee's complaint included an allegation that any personal pain was caused by the carrying out of his butchering duties.

Three days after making the verbal disclosure, the employee was dismissed. He contended that the dismissal occurred as a result of the making of a protected disclosure. The employer contended that the dismissal was due to the employee walking off the production line, having not waited for management to address his request to change jobs.

The exact words that were uttered in the oral complaint remain an unresolved matter of dispute, since the Labour

> THIS DECISION ALSO CLARIFIES THAT THE CONTEXT IN WHICH A DISCLOSURE IS MADE IS AN ESSENTIAL PART OF THE FACT-FINDING PROCESS. THESE ARE A WELCOME RESTATEMENT OF FUNDAMENTAL PRINCIPLES, IN THE CONTEXT OF WHISTLEBLOWER PROTECTION

THIS IS A CASE THAT SENDS OUT A STRONG REMINDER TO EMPLOYERS THAT A VERBAL COMPLAINT – NOT ONLY A WRITTEN ONE – CAN TRIGGER THE PROTECTIONS UNDER THE *PROTECTED DISCLOSURES ACT 2014*

Court omitted to make any findings of fact on this issue. The Labour Court found that the disclosure was not a protected disclosure.

Front lines

A common basis for the rejection of the claim in the lower tribunals or court centred on the distinction between a complaint being a 'grievance' or a 'protected disclosure', or whether it was on a spectrum comprising an element of both.

The Supreme Court disagreed, and held that this was an error of law as a consequence of the misapplication of paragraphs 30 and 31 of SI 464 of 2015.

Paragraph 30 states: "A grievance is a matter specific to the worker, that is, that worker's employment position around his/her duties, terms and conditions of employment, working procedures or working conditions. A grievance should be processed under the organisation's grievance procedure. A protected disclosure is where a worker has information about a relevant wrongdoing."

Paragraph 31 states: "It is important that a worker understands the distinction between a protected disclosure and a grievance. The organisation's whistleblowing policy should make this distinction clear."

Hogan J could not resist observing that the 2015 code "erroneously misstated the law", as it "does not accurately reflect the terms of what the 2014 act actually says".

In this context, the court restated that, since the decision in *Cooke v Walsh* (1984) and a series of subsequent decisions, it was well settled that the provisions of an administrative code or statutory instrument could not vary or amend an act of the Oireachtas – yet this is what the 2015 code purported to do to the act.

According to Hogan J, the Labour Court "erroneously stated that purely personal complaints" in relation to workplace health and safety fell outside of the scope of protected disclosures. The judge clarified that the introduction, by the 2015 code, of a distinction between a grievance and a protected disclosure was fatal, since no such distinction is drawn by the act. He stated that the act makes "no reference at all to the concept of a personal grievance".

Hogan J considered that the apparent "width" of the statutory exclusion, by section 5(3)(b) of the act, of a complaint that is entirely personal to the worker (that is, contractual default by the employer) as to fall outside the scope of the act is "deceptive and, at one level, ineffective". Therefore, that particular provision may be said to have failed to achieve its objective, since an apparent contractual breach could also trigger a statutory entitlement – the example posited by Hogan J was a claim under the *Payment of Wages Act 1991*.

Sound the advance

In the High Court, Ms Justice O'Regan had concluded that the Labour Court correctly made a finding of fact that the verbal disclosure by the employee "related to the fact" that he wanted to change roles *simpliciter* – and not due to pain being caused to him from performing his butchering duties – and that this communication, therefore, did not disclose any "relevant wrongdoing" on the part of the employer, as defined by section 5(3) of the 2014 act.

The Supreme Court disagreed. Hogan J emphasised that this is where "the role of the fact-finder assumes critical importance". The Labour Court, as the tribunal of fact, was obliged to find primary facts, and then to draw such conclusions or inferences as deemed appropriate from the evidence. He stated that the Labour Court had erred in law by failing to properly deal with this "critical issue", and did not make "sufficiently clear and precise" findings of fact as to what words "exactly" were uttered by the employee in the verbal disclosure, and also of the "precise context" in which such words were uttered.

Hogan J stated that it is only after having established such facts that the Labour Court ought then to have determined the question of "did those words expressly or by necessary implication amount to an allegation tending to show that workplace health and safety was or would be endangered" – even if that complaint was "personal" to the discloser only.

Rather than making findings of these facts, the Supreme Court stated that the Labour Court had merely set out a "description of the complaint", which itself was "ambiguous on this critical issue". The effect of this rendered it "unclear" as to whether or not the employee alleged that he was in pain, which was, in fact, caused by the workplace health-and-safety issue – a central question to the issue of causation.

Uphill battle

Hogan J clarified that the act did not attach any public-interest requirement for a disclosure to be protected. The court stated that it seemed implicit, in both the long title of the act and "aspects of its general structure", that the Oireachtas "envisaged that most complaints" for which protection was sought would relate to matters of general public interest.

> THE 'ACTUAL DEFINITION' OF A PROTECTED DISCLOSURE UNDER THE ACT EXTENDS TO COMPLAINTS MADE IN THE CONTEXT OF EMPLOYMENT MATTERS THAT ARE PERSONAL TO THE WHISTLEBLOWER

PIC: ALAMY

However, Hogan J clarified that the "actual definition" of a protected disclosure under the act was "not so confined", and it therefore extended to complaints made in the context of employment matters that were personal to the whistleblower. As such, the court took the view that the Oireachtas must have intended, in general terms, that such private complaints were also a matter of public interest.

Shield wall

Hogan J confirmed that a disclosure of 'relevant information', as defined by section 5(2) of the act could be contained within an 'allegation', so long as it contained information, "however basic, pithy or concise" that tended to show relevant wrongdoing.

He further explained that this required "sufficient factual content and specificity for this purpose … even if it does merely by necessary implication" – thereby endorsing the 2018 English Court of Appeal decision in *Kilraine v London Borough of Wandsworth*.

In his concurring judgment, Mr Justice Charleton agreed that section 5(7) of the act made it clear that the motivation for the making of a disclosure was irrelevant to the question of whether a disclosure was protected under the act. He emphasised that, although whistleblowers were seen in the "public mind as being motivated by the noblest sentiments", what mattered was the reasonably held belief of the discloser that relevant wrongdoing had (or may have) occurred, "whether what impels their revelation is bitterness or genuine selflessness".

Charleton J offered two discrete and useful examples of disclosures that may be made in the context of a meat factory. The first is where an employee discloses that animals were not being properly stunned, and where the complaint of this to management went ignored, which he considered would be a matter of safety to other workers and also an inhumane treatment of animals.

The second would be an employee telling a line manager that the employee's foot had become cut and possibly infected, and that sick leave was required.

He rationalised that, although it may "reasonably be anticipated" that the act protects the former disclosure only, it would actually provide protection for both disclosures. It seems, from these examples, that a broader principal may be gleaned from it.

Spoils of war

This is the first opportunity that the Supreme Court has had to interpret the *Protected Disclosures Act 2014* and to provide guidance on its application. It offers a welcome clarification to the act, which has been the subject of only a handful of High Court decisions.

The distinction between what the Oireachtas may have 'envisaged', as opposed to the 'actual definition' of a protected disclosure, means that personal grievances raised by employees are not necessarily excluded by the act – personal complaints may themselves be matters of public interest. It is beyond doubt that the statutory instrument comprising the 2015 code will now have to be revised in the light of this authoritative decision of the Supreme Court, in order to address the anomaly contained therein concerning a 'grievance' and a 'protected disclosure'. Until that is carried out, it seems that tribunals or courts ought to disapply that anomaly – the 2015 code has an inbuilt statutory exception to allow it be admissible in evidence.

This is a case that sends out a strong reminder to employers that a verbal complaint – not only a written one – can trigger the protections under the act. It also sends out a strong warning to whistleblowers that, although the form that a complaint of relevant wrongdoing may take is not limited or constricted by the act, cases of verbal complaints will inherently have to be resolved by a court or tribunal deciding whether it accepts the evidence of an employer over that of an employee concerning the exact words uttered. Whistleblowers should, therefore, consider committing a complaint to writing to the employer (if made verbally in the first instance), and as soon thereafter as may be reasonably practicable, but before penalisation or detriment may occur.

It is clear that a disclosure that is made by the making of an allegation is sufficient to meet the requirement of disclosing "relevant information". The allegation must contain "basic, pithy or concise" information that "tends" to show relevant wrongdoing, suggesting that this is confined to disclosures made internally to the employer.

It clarifies that a complaint that may contain wide-ranging allegations will still be deemed to be a protected disclosure, even if vigorously expressed, basic in nature, or not fully or properly substantiated.

The clarification that a disclosure can be made verbally is consistent with the decision of Mr Justice Humphreys in *Clarke v CGI Food Services Ltd* (2020). That leading decision upheld an interim injunction pending the outcome of a claim for unfair dismissal in the WRC – granted by the Circuit Court pursuant to section 11 and schedule 1 of the act. This judgment is authority for the proposition that, at the time when making a disclosure, a whistleblower need not specifically identify, label, or have even treated it as being a protected disclosure. The High Court clarified that a whistleblower might not even realise that a complaint is, in fact, a disclosure that is protected by the act until sometime afterwards – perhaps only after the discloser receives the benefit of legal advice. Indeed, Humphreys J stated that it is often not until well after the dust has settled, and the detriment caused by the employer has been suffered, that a whistleblower will come to realise that penalisation had occurred as a result of the making of a disclosure that was protected.

In the trenches

It is important to recall that, to attract the protections of the act, a crucial ingredient of a disclosure that is made internally to an employer is for the whistleblower to possess the reasonable belief that the relevant information "tends" to show relevant wrongdoing. A whistleblower is not required by the act to first make a disclosure internally, or at all. However, to attract the protections for a disclosure made externally under section 10 of the act, a whistleblower will need to show that the allegation is "substantially true".

While it may be the case that most whistleblowers will be viewed as being sincerely motivated to disclose wrongdoings of differing natures and degrees, the Supreme Court has clarified that even an ill-motivated whistleblower who discloses relevant wrongdoing is entitled to be protected. Such is the significance of the protections afforded to whistleblowers under the act, that these were characterised by Charleton J as being "extreme" and "special".

Tribunals have been given a clear reminder of their obligation to make clear findings of fact, as distinct from making what is nothing more than ambiguous or descriptive commentary. This decision also clarifies that the context in which a disclosure is made is an essential part of the fact-finding process. These are a welcome restatement of fundamental principles, in the context of whistleblower protection.

This decision represents a benevolent interpretation of the act by the Supreme Court. It also provides helpful guidance for tribunals, courts, and legal advisors on how to apply the provisions of the act. g

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David Byrnes is a Dublin-based barrister.

LOOK IT UP

CASES:

- *Baranya v Rosderra Irish Meats Group Ltd* [2020] IEHC 56
- *Baranya v Rosderra Irish Meats* [2021] IESC 77
- *Clarke v CGI Food Services Ltd* [2020] IEHC 368
- *Cooke v Walsh* [1984] IR 710
- *Kilraine v London Borough of Wandsworth* [2018] EWCA Civ 1436

LEGISLATION:

- *Protected Disclosures Act 2014*
- SI 464 of 2015 *(Industrial Relations Act 1990 (Code of Practice on Protected Disclosures Act 2014) (Declaration) Order 2015*

PIC: ALAMY

Vicky's favourite painting – Monet's *Snow at Argenteuil* (1874)

Because I COULD NOT STOP FOR DEATH

Vicky McCarthy Keane was diagnosed with motor neurone disease in November 2017. She tells Mary Hallissey about how poetry has become her therapy and how her new book, *Through My Eyes*, is her legacy to her husband and children

Solicitor Vicky McCarthy Keane is the second youngest of four children and grew up in Blackwater, a few miles outside Limerick city. Just five years ago, she received a life-changing diagnosis of motor neurone disease (MND).

Vicky has turned to poetry to help her deal with and express her feelings about the impact of the illness.

"Rightly or wrongly, I never attended therapy," she says. "Writing poetry for me is a place where I channel my emotions so, for me, it is

my therapy. It takes me one to two evenings to write each poem."

As a child, Vicky enjoyed living in the countryside and relished the outdoor life. While her father is from a long line of entrepreneurs, her mother's family were in the legal profession, mainly as solicitors, apart from one aunt who was a very successful and now-retired barrister.

"As the profession was in the family, it was always discussed among us from an early age," she recalls. "In my final year at school, my art teacher tried to convince me to prepare an art portfolio. I never did."

I dwell in Possibility

"I had decided that I would study law, and I went on to do a law and German degree at the University of Limerick, which included a six-month work placement in Germany and a second six-month placement in the legal profession," she says.

Both proved to be eye-openers, in many ways: "I enjoyed the hustle and bustle of the courtroom, which was the shape of things to come," she says.

Vicky was apprenticed at David Brophy Solicitors in Limerick city, and was enrolled as a solicitor in Easter 1999. "I was very proud to become a solicitor."

"I worked in general practice for the next 15 years, three of which were in Dublin and 12 in Mullingar," she says.

She also went on to study for an LLM at UCD, focusing on environmental law. At UCD, she also derived immense satisfaction from tutoring law undergraduates, part-time.

Reminiscing on her life as a solicitor, she says: "Working in general practice is a real challenge sometimes, but it can also be very satisfying. I worked mainly in litigation. No two cases are ever the same. I enjoyed attending court, where you really got to meet some great characters – and some very difficult ones too!"

> PHYSICALLY, I TOLD MYSELF FROM THE VERY BEGINNING THAT I WOULD JUST DEAL WITH EACH SYMPTOM AS IT AROSE, AND THAT IS WHAT I CONTINUE TO DO

My Life had stood – a Loaded Gun

"In November 2017, I was referred to St James's hospital in Dublin by my neurologist. After several days of tests and scans, I was diagnosed with motor neurone disease," she says.

It was arranged that Vicky would attend a specialist, Prof Orla Hardiman, who, after a full examination, diagnosed the most common form of the disease, ALS.

Vicky doesn't carry the gene, and so her children are not at any higher risk of getting it, to her great relief. "Also, 70% of people have the quicker-progressing version of the disease, and I fell into the remaining 30%."

Success is counted sweetest

Life for Vicky, her husband Michael, and their four children (Stephen, Lauren, Lucas and Rachel) would never be the same again.

"Even though plenty of people with MND do carry on working, I just wanted to be at home with my family," Vicky says.

"Prof Hardiman also informed me that what I have is sporadic, and that approximately 400 people have the disease in Ireland at any given time." The broadcaster Charlie Bird has recently been diagnosed with MND, after attending medics for persistent speech problems.

How has Vicky coped with the disease over the past five years?

"My husband Michael is a very strong person, mentally. He kept us all going at a time when we were just trying to get our heads around the shock of the diagnosis," she says. "I was always the one to plan ahead with everything, whereas he always lived from day to day. Frustrating as

Vicky with her husband Michael

SLICE OF LIFE

- *Biggest influence?*
  My university experience.
- *Best page-turner?*
  John Banville's *The Book of Evidence*.
- *Streaming on the small screen?*
  The Staircase on Netflix.
- *Preferred tipple?*
  Glass of white wine.
- *Favourite film?*
  Doctor Zhivago.
- *What you'd like on your wall?*
  Monet's *Snow at Argenteuil* (1874) – a lot of dark colours used, but the clever use of the green results in just a very beautiful image.
- *Currently reading?*
  Pearl Jam and Eddie Vedder: None Too Fragile, by Martin Clarke.
- *Must-have gadget?*
  Eye-gaze computer.
- *Holiday bolthole?*
  Bavaria, Germany – it's a beautiful place.

it was for me, I had to change the way I lived to just keep going.

"Physically, I told myself from the very beginning that I would just deal with each symptom as it arose, and that is what I continue to do."

This is my letter to the World

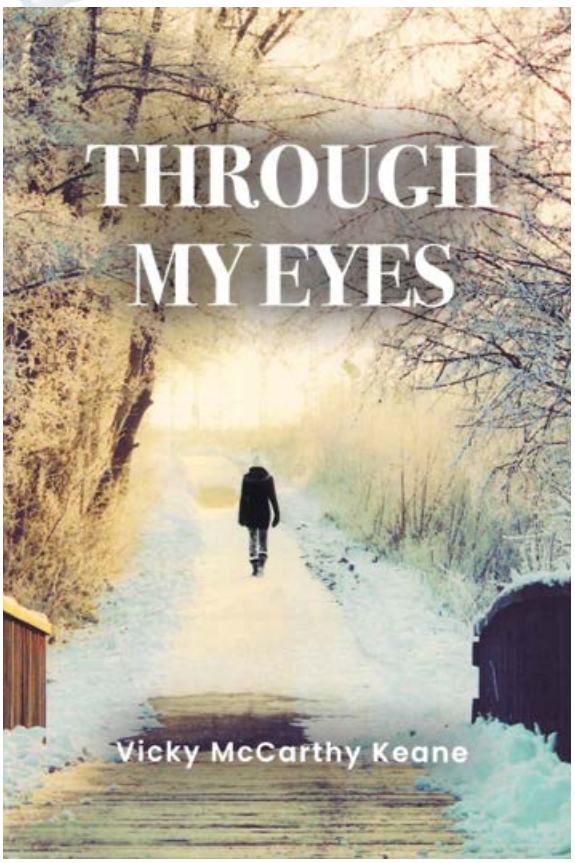
How did writing poetry arise?

"As a child growing up, I loved art. I would spend hours sketching. I took art as an extra subject for the Junior Certificate and went on to study it for the Leaving Certificate, too.

"Apart from art, my other favourite subject was English. I particularly loved poetry, and it is only now, years later, that I am rediscovering its beauty and enjoyment.

"While watching a television programme in which Billy Keane was describing the recent discovery of a copybook of his late father, playwright John B Keane, I just thought to myself I might try writing one or two poems.

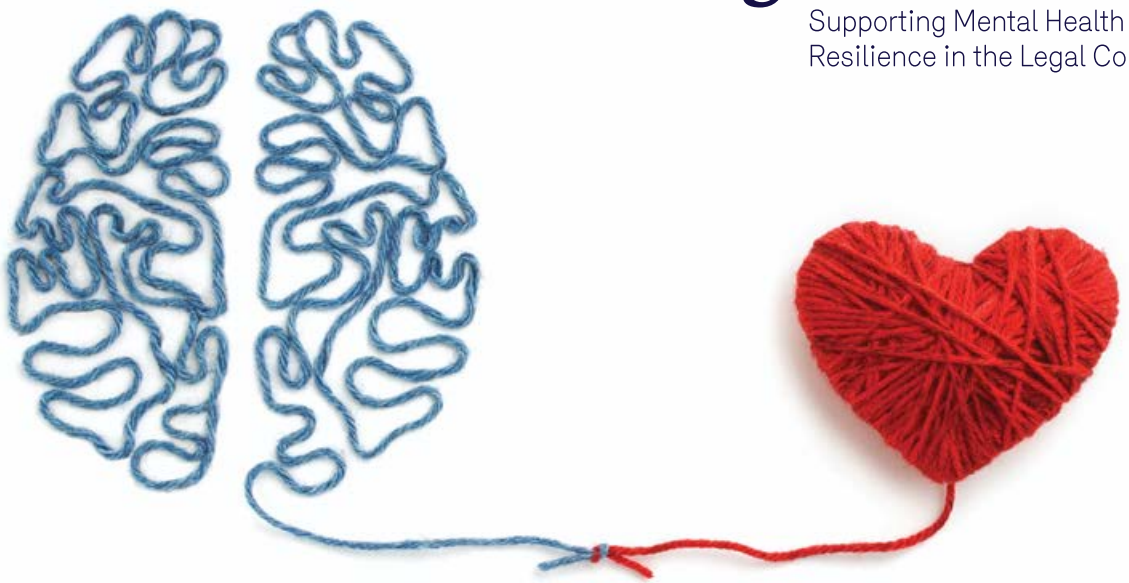
"So, that day, I just sat down and started typing my first poem. I then decided to send it to Billy and, as it turned out, he loved it. He rang Michael and he came to see us, and then featured us in the *Irish Independent*. This encouraged me to keep writing, which I now love."



> I DECIDED TO WRITE A COMPLETE BOOK OF POETRY, MAINLY BECAUSE IT WAS A WAY IN WHICH I COULD LEAVE A TANGIBLE LEGACY FOR MICHAEL AND THE CHILDREN. THE POEMS START OFF QUITE DARK, BUT AS THE BOOK ADVANCES, THERE IS LIGHT, LOVE AND HOPE. SO, THE BOOK IS A JOURNEY

LegalMind

Supporting Mental Health &
Resilience in the Legal Community



LegalMind
Supporting Mental Health and Resilience in the Legal Community

LegalMind is a confidential, independent, low-cost mental health support for solicitors and their dependants.

The support is a permanent support, based in Ireland, and will be there for solicitors through any personal or professional challenges.

Solicitors can call LegalMind at any time of the day or night, from all over Ireland, and talk to a mental health professional about any issues they or their family may be facing.

After this initial conversation, solicitors may then avail of further low-cost supports – counselling, psychotherapy or psychological supports within a 30 kilometre radius of their home.

For more information visit: www.lawsociety.ie/legalmind

Access the service directly and talk to a counsellor now on freephone:

1800 81 41 77

There's a certain Slant of light

Why a book? "I decided to write a complete book of poetry, mainly because it was a way in which I could leave a tangible legacy for Michael and the children.

"The poems start off quite dark, but as the book advances, there is light, love and hope.

"So, the book is a journey, and a good deal of the inspiration for the poems comes from favourite places I have visited and people I have met.

"Several of the poems feature me being chased by an ethereal figure, which is, of course, death."

Vicky describes the inspiration she gets from the unspoilt beauty of the West of Ireland and, in particular, the Burren. Watching a beautiful sunset over Fanore in Clare prompted a new poem the following morning:

As a gull fights against a gallant gale,
you chime the bells of hope from your tower of love.
Where the beacon of old once guided many a mast,
they now take their place as many did before them.

She writes using eye-gaze technology, and her work is edited by literary editor and agent Jeremy Murphy, of JM Agency.

Tell all the truth but tell it slant

What advice would she give to others faced with similar challenges?

"I suppose to search hard for something positive – no matter how small – and try and focus all your energy into developing it as a form of self-help or therapy," she says.

"I am also a great believer in fate, and so, for whatever reason, I was meant to get the disease. Our youngest Rachel was only four years old when I was diagnosed. She is already very independent, which will benefit her as she gets older. But unfortunately, she will not remember me how I was, prior to my diagnosis.

"Routine is a great thing for kids, so having them back at school gets them back to normality and to their friends.

"I was always a very active person. I would walk four to five nights a week. The only other time I was hospitalised before was for a broken arm when I was ten years old.

"People always say how they think it will never happen to them, and how they never saw it coming. That is so true," she reflects.

Vicky's book, *Through My Eyes*, was published in November and is available from all major online retailers and from selected bookstores as a paperback or limited luxury edition from JM Agency. Visit vickymkeane.com for details. All proceeds will go to the Irish Motor Neurone Disease Association (IMNDA).

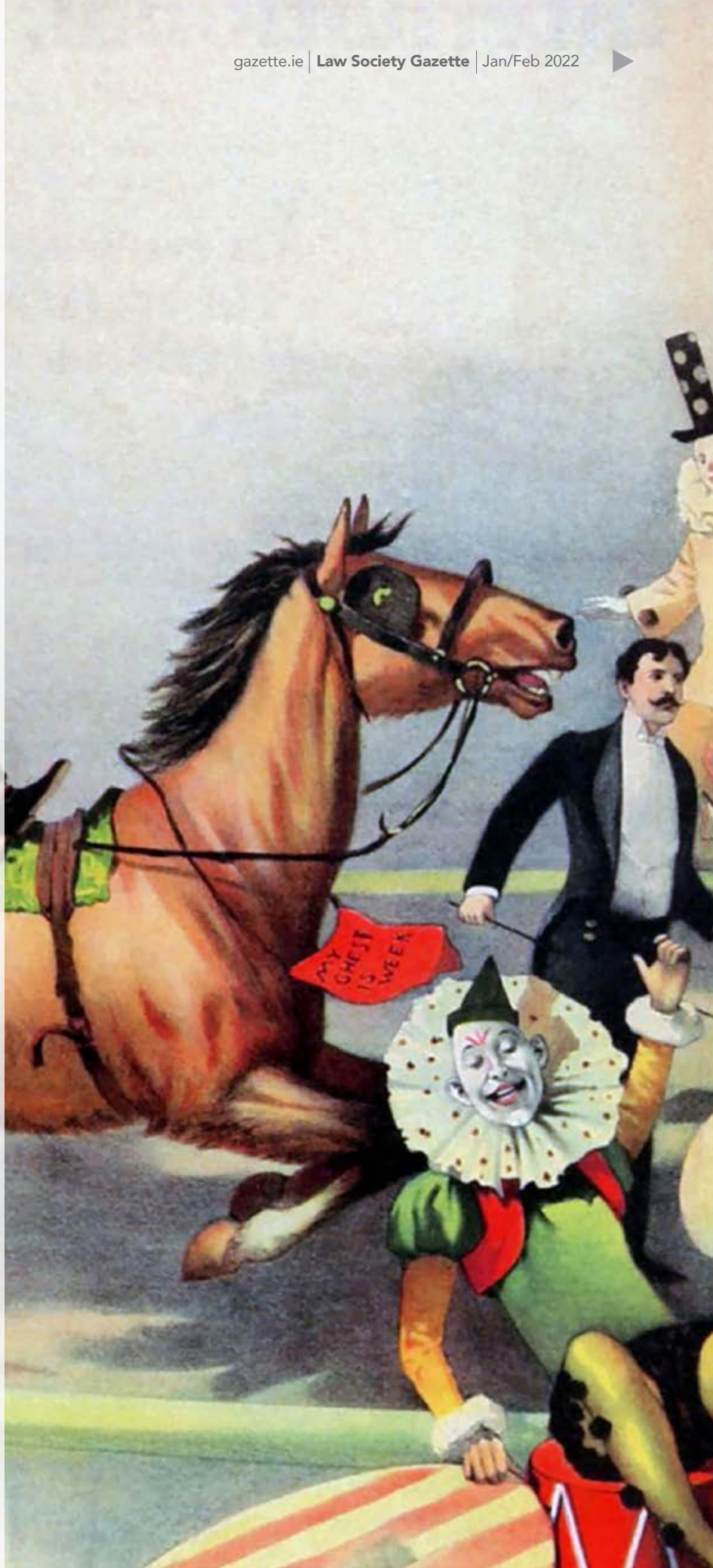
Vicky with her daughter Rachel

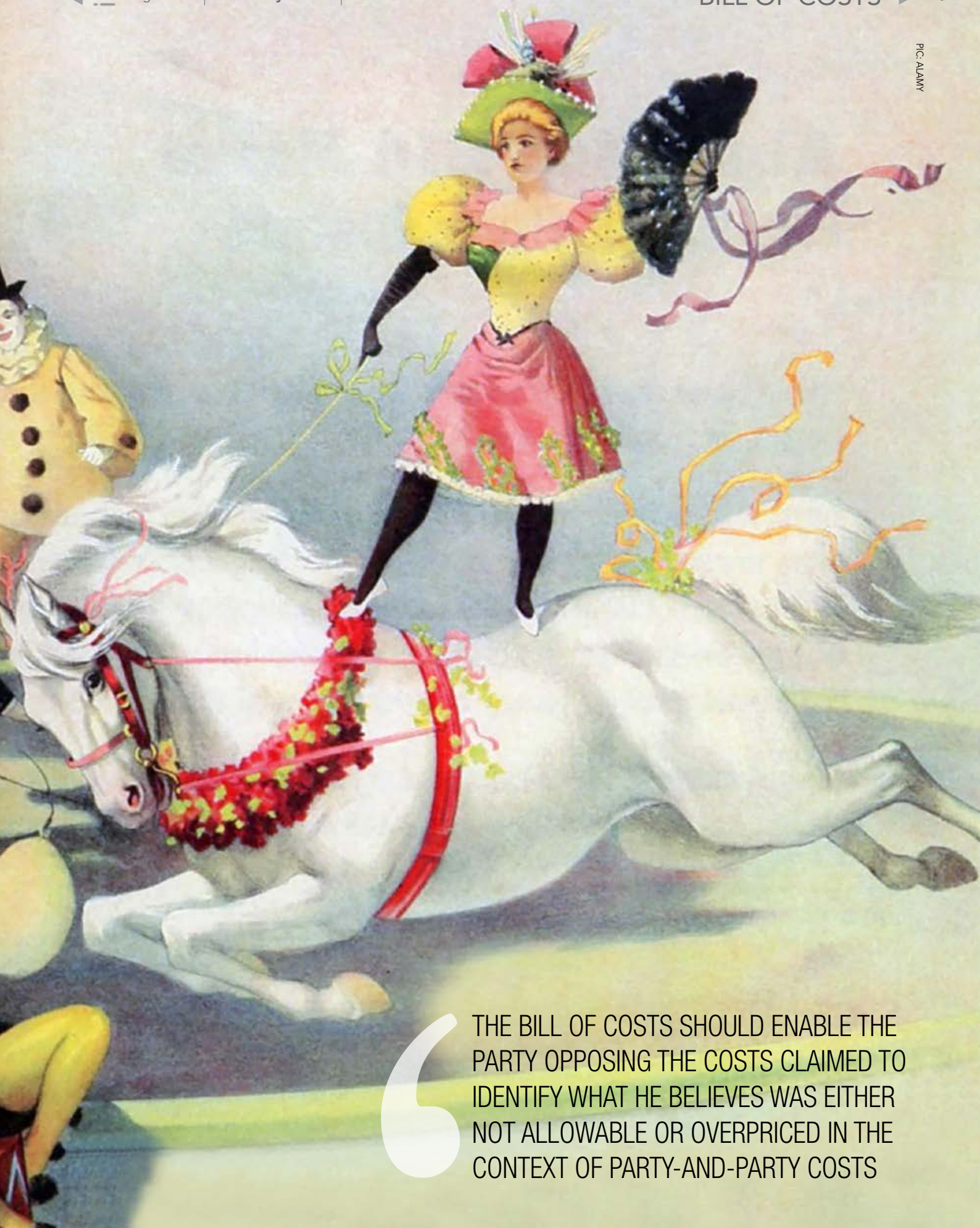
> SEARCH HARD FOR SOMETHING POSITIVE – NO MATTER HOW SMALL – AND TRY AND FOCUS ALL YOUR ENERGY INTO DEVELOPING IT AS A FORM OF SELF-HELP OR THERAPY

Mary Hallissey is a journalist with the Law Society Gazette.

TOP OF THE BILL

At the centre of any system of adjudication of costs is the bill of costs. Denis O'Sullivan takes a close look at the new form of the bill that must now be used for the adjudication of costs in the superior courts





PIC: ALAMY

THE BILL OF COSTS SHOULD ENABLE THE PARTY OPPOSING THE COSTS CLAIMED TO IDENTIFY WHAT HE BELIEVES WAS EITHER NOT ALLOWABLE OR OVERPRICED IN THE CONTEXT OF PARTY-AND-PARTY COSTS

The bill of costs allows a solicitor to demonstrate the history of the litigation and the nature and extent of the work done – and required to be done – to bring the case to a successful conclusion for the client.

Likewise, the bill of costs should enable the party opposing the costs claimed to identify what they believe was either not allowable, or overpriced, in the context of party-and-party costs. Unfortunately, neither of these objectives were met satisfactorily in the customary bill of costs under the old regime of taxation of costs, where form tended to predominate over substance.

New form of bill

Now, a 'new' bill of costs (introduced by SI 584 of 2019) must now be employed for the purpose of adjudication of costs in the superior courts. For convenience, the issues that arise will be viewed in the context of a successful plaintiff in a personal-injuries action who has successfully settled or obtained judgment in a High Court action, and obtained an order for payment of his costs of the action – to be adjudicated upon in default of agreement between the parties as to the amount payable in respect of costs.

> THE BILL OF COSTS IS NOW REQUIRED TO BE DIVIDED INTO SECTIONS. A BILL MAY HAVE UP TO FIVE SECTIONS. IN A HIGH COURT ACTION THAT GOES TO TRIAL OR IS SETTLED SHORTLY BEFORE TRIAL, AT LEAST FOUR OF THESE FIVE SECTIONS WILL HAVE TO BE COMPLETED

The form of the bill of costs is now required to be that in 'Form no 3' in Part V of Appendix W of the *Rules of the Superior Courts* (RSC, order 99), as amended. The bill is now required to be divided into sections. A bill may have up to five sections:

- Section A – 'Costs incurred before commencement of proceedings',
- Section B – 'Costs from commencement of action to trial/settlement date',
- Section C – 'Costs incurred during course of trial/settlement and up to determination of proceedings',
- Section D – 'Costs incurred subsequent to trial',
- Section E – 'For what cannot be more conveniently dealt with in preceding sections'.

In a High Court action that goes to trial or is settled shortly before trial, at least four of these five sections (A to D) will have to be completed. There is an explanatory note provided at the commencement of each of these sections.

Section A

Section A of the bill must tell the story of the case, from the initial approach by an intending client until the summons is issued. This section must contain a 'summary of services' provided during this period. Although not specifically required, it would be sensible that this section should commence with an identification of the period of time that this section covers, and also the terms of the order of the High Court with respect to costs. Setting out the terms of the settlement or judgment obtained in this section – although on one view anticipatory – will also put the subsequent course of the litigation into perspective.

Thereafter, a summary of services must be enumerated, comprising all services provided *from the client's initial instructions to the solicitor until the issuing of the proceedings*.

PIC: ALAMY

It is suggested that this might identify difficulties and complexities in relation to the commencement of the litigation, facts required to be ascertained, investigations required to be made, expert reports required to be obtained, instructions provided to counsel, consideration of the advices of counsel, the formulation of the theory of the case that was settled on, and the formulation of the claim as stated in the indorsement of claim on the personal injuries summons, which will at least require setting out the substance of the indorsement of claim on the personal-injuries summons.

This section must provide an itemised list (in 'date' order) of the steps taken by the solicitor, from the initial taking of instructions that ultimately culminated in the issue of the personal-injuries summons. The adjudication-of-costs process has become a considerably more perilous process for the solicitor for the costs as a result of the introduction of the lodgement in satisfaction of costs provisions of order 99. Solicitors must be careful to demonstrate the work done *with specificity* if they wish to obtain a successful outcome to the adjudication, and avoid falling foul of any lodgement in satisfaction of costs made by the defendants.

Evidence of work done

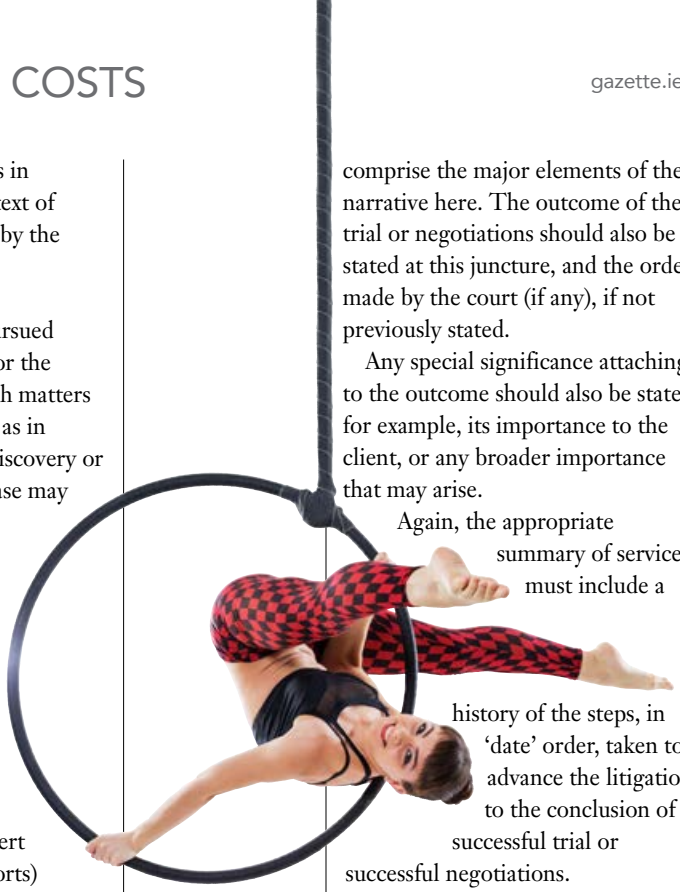
Although the prescribed form says that the summary of services "should avoid lengthy recital of the content of the correspondence, reports or other documentation", it should be remembered that such content is the only evidence of work done by the solicitor in the matter and that, to the extent that it is not included in the bill, it is unlikely to be taken into account.

The format of the bill itself requires items of work to be individually numbered, the dates of these to be stated, and a "detailed description of work done for which costs are claimed to be provided". Hence, to demonstrate the work done, one should identify the substance of a letter written on a given date; state the substance of a letter received and considered on a given date, and the action taken in response to it; and state the substance of interviews by telephone or in office with client, experts or counsel, and so on, in addition to more formal steps, such as taking a statement, instructing experts, instructing counsel, considering counsel's advices, and preparing and issuing the personal-injuries summons.

Section B

Section B of the bill continues the story of the case from the date of issue of the summons until immediately before trial or settlement negotiations. Again, this should include a 'summary of services' provided for the period to which this section relates. It is suggested that the following should be included as a minimum:

- A statement of the issues in the litigation in the context of the defence(s) delivered by the defendants,
- An identification of the interlocutory matters pursued in correspondence and/or the court applications in such matters made or defended (such as in relation to particulars, discovery or interrogatories, as the case may be),
- Advices on proofs required to be followed,
- Identification of the counsel briefed for trial or settlement negotiations and the extent of the brief required to be prepared for counsel,
- Identification of the expert witnesses (and their reports) instructed by both sides, as well as a demonstration of the complexity of the litigation and any difficulties that arose in obtaining expert reports, and arranging the attendances of witnesses for the trial,
- The matter of the complexity of the case should also be dealt with at this juncture, as this will have become fully apparent with the identification of the issues in the action on the filing of the defence(s) and amplified as the interlocutory matters are pursued in correspondence and before the court.



Again, the appropriate summary of services must provide an itemised list in 'date' order of the steps taken by the solicitor that culminated in the commencement of the trial, or negotiations on the same basis as that provided for in Section A.

Section C

This requires a description of the proceedings in the trial itself or in relation to negotiations, as the case may be. In the context of a trial, the management of witnesses, attendance at consultations, and attending on counsel in court will typically comprise the major elements of the narrative here. The outcome of the trial or negotiations should also be stated at this juncture, and the order made by the court (if any), if not previously stated.

Any special significance attaching to the outcome should also be stated, for example, its importance to the client, or any broader importance that may arise.

Again, the appropriate summary of services must include a history of the steps, in 'date' order, taken to advance the litigation to the conclusion of a successful trial or successful negotiations.

The explanatory note to this section is unhelpful. It proceeds on the basis that preparation for the trial is "costs incurred during the course of the trial", which is clearly incorrect. If one is to adhere to the stated scheme of the bill, matters such as briefing counsel, interviewing witnesses, and arranging pre-trial consultations should appear in Section B.

Section D

This section is intended to allow a claim to be made for work done in the post-trial or post-negotiation phase of the litigation. This aspect of a plaintiff's costs was seriously overlooked under the old regime, to the detriment of solicitors.

Every litigation solicitor is aware of the amount of work that is required to be done in the aftermath of settlement or judgment, but few of these items were the subject of remuneration in the past. The form of the new bill affords the plaintiff's solicitor the opportunity of claiming and recovering for this work in implementing the judgment of the court or the terms of the settlement, as the case may be.

Thus, the summary of services should, where appropriate, refer to applying for an order that is required to be made by the settlement (for example, the order for costs and their adjudication), taking up the order of the High Court, contacting witnesses to advise that their attendance for court is no longer required, requesting expert witnesses to forward a note of their professional fees outstanding, negotiating outstanding matters in relation to amount and other incidentals, and arranging for the discharge of the same.

Other matters to be considered include:

- Receiving funds in settlement and arranging for funds to be transferred to the client,
- Discharging fees of expert witnesses (to be recouped at adjudication and then refunded to the client),
- Discharging other expenses of the litigation (to be recouped at adjudication and then refunded to the client),
- Requesting notes of the fees of senior counsel and junior counsel,
- Negotiating payment on account in respect of costs, pursuant to order 99 RSC, as amended, and
- Applying to the court for an order for payment on account (in the absence of agreement).

All of this work is essential to implement the judgment or settlement, as the case may be, and should be recoverable on party-and-party taxation.

Importantly, the summary of services should include a detailed history of the steps (set out in 'date' order) from judgment or settlement that were necessary to implement the judgment or settlement.

Drawing of the bill of costs

An important issue relates to whether 'costs incurred subsequent to trial' includes the drawing of the bill of costs itself. In modern times, this function, in High Court actions, is typically delegated to a legal costs accountant by the solicitor for the costs. It is a function that is no longer usually performed by the solicitor for the costs, and it typically marks the initiation of the adjudication-of-costs process.

There is, moreover, no reference to 'bill of costs' in the explanatory note to Section D and, if drawing the bill of costs were intended to be included in Section D, one would have expected that term to have been employed. There is a reference to 'negotiation and accounting for party-and-party costs', but this seems to refer to negotiation with individuals who have provided services in the litigation and to whom moneys are outstanding. It is submitted that the better view, therefore, is that the drawing of the bill of costs is part of the 'costs of the adjudication process', rather than of the trial.

Fees

One of the remarkable features of the new bill of costs is that it makes no provision for the specification of an instruction fee. This does not mean that the instruction fee has been abolished, to be replaced by item-by-item charging – although the format of the new bill would, at first sight, seem to suggest this. For a start, the instruction fee exists as a matter of positive law and could not be abolished by the side wind of a new form that omits to mention its existence. Second, the new form provides for charging on the basis of time as an option – the only anomaly being that it does not mention the standard option for charging, namely, the instruction fee.

In *Best v Wellcome Foundation Ltd* (High Court, 19 May 1995), the instruction fee was described as an amount that is intended "to cover taking instructions for the trial or hearing and not merely for the preparation of a brief … It was a fee to cover the overall care and attention which the case required, the difficulties in taking proofs of evidence and intended witnesses and generally organising the case. Ensuring the availability of witnesses and indeed the availability of counsel. It had to cover living with the case. It covered a variety of consultations as well as the cost of assembling and preparing the brief itself."

It is likewise in the case of counsel, who is entitled to mark a 'rolled-up' brief fee – that is to say, an inclusive brief fee that is intended to cover all work done by counsel in relation to the litigation.

Although the format of the new bill indicates, on first impression, that a total charge in respect of lawyers' professional fees should be specified for each section, this is only to cover those circumstances where the lawyers have charged on the basis of an hourly rate.

> ONE OF THE FEATURES OF THE NEW BILL OF COSTS IS THAT IT MAKES NO PROVISION FOR THE SPECIFICATION OF AN INSTRUCTION FEE. THIS DOES NOT MEAN THAT THE INSTRUCTION FEE HAS BEEN ABOLISHED, TO BE REPLACED BY ITEM-BY-ITEM CHARGING

Living with the case

Where the charge has been made on the basis of an instruction fee or rolled-up brief fee, as the case may be, then, by definition, the charge is not intended to be split over several sections. Any attempt to do so would be artificial in the extreme, since the instruction fee is intended to be one single whole "to cover living with the case", perhaps for several years. Demands by defendants that the plaintiff's solicitor should split the instruction fee across the several sections of the bill have been successfully resisted, and bills based on composite instruction fees have been accepted in the Office of the Legal Costs Adjudicators.

It is considered that the logical place to claim for the solicitor's instruction fee and counsel's rolled-up brief fee – where it is desired to claim on this basis – is at the conclusion of Section D, which is typically the conclusion of the bill itself.

Section E is an omnibus section intended to provide for the opportunity to claim in respect of matters that cannot conveniently be dealt with elsewhere in the bill. For example, if there was an appeal to the Court of Appeal in relation to an interlocutory order that awarded costs to the plaintiff, it may be convenient to deal with the statement of those costs in this section.

Separate detailed claims

Each and all of these sections – A, B, C, D and E – are divided into subcategories, so that separate detailed claims are required to be made in respect of solicitor, counsel, experts, and expenses.

While counsel may mark a 'rolled-up' brief fee (as previously described), they must nevertheless identify the work to which that brief fee relates. Obviously, counsel should be invited to offer a statement of the work done by them for inclusion in each of the bill's sections.

Duty to attempt to agree

Either party to party-and-party costs may refer a bill of costs (once served) for adjudication, provided that party has first attempted to agree the bill with his, or her, opponent (see section 154(2) and (3) of the *Legal Services Regulation Act 2015*).

The duty to attempt to agree the bill with one's opponent before proceeding to adjudication requires that the parties discuss the bill with a view to reaching agreement. But if agreement is not forthcoming, then either party may proceed to adjudication.

Given that the party resisting the bill is now entitled to make a lodgement, or tender, in satisfaction of costs, the party presenting the bill should be aware that such discussions may well be subsequently employed for the purpose of deciding upon the amount of the lodgement or tender. g

Denis O'Sullivan is principal of Denis O'Sullivan & Company Solicitors, Grand Parade, Cork.

LOOK IT UP

CASES:

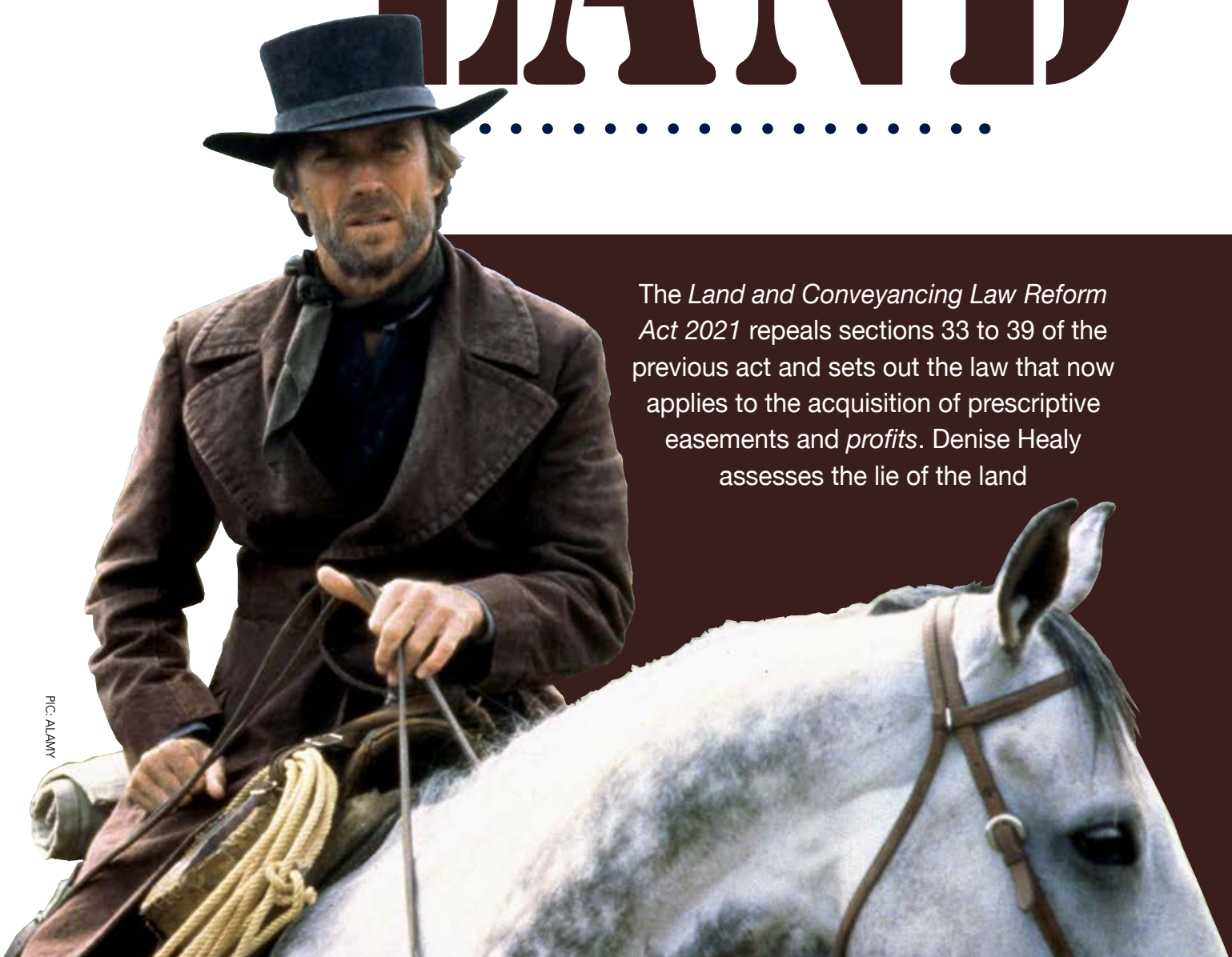
- *Best v Wellcome Foundation Ltd* [1995] WJSC-HC 1810; [1996] 3 IR 378, 382

LEGISLATION:

- *Legal Services Regulation Act 2015*, section 154
- *Rules of the Superior Courts*, order 99
- *Rules of the Superior Courts* (Form no 3, Appendix W, Part V)

LAW OF THE LAND

The *Land and Conveyancing Law Reform Act 2021* repeals sections 33 to 39 of the previous act and sets out the law that now applies to the acquisition of prescriptive easements and *profits*. Denise Healy assesses the lie of the land



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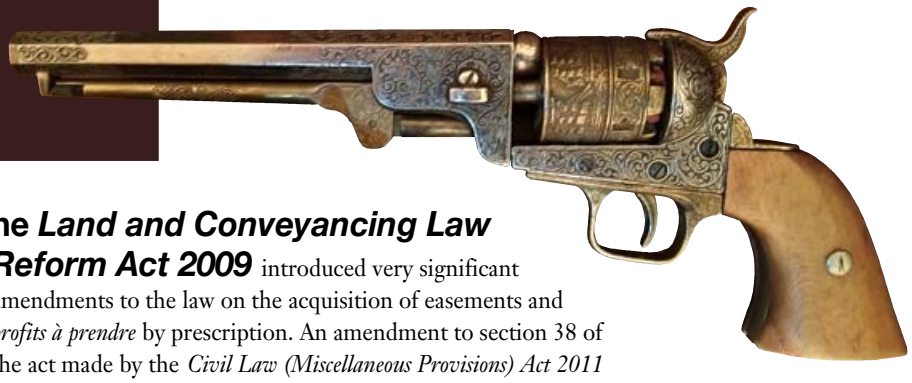


The *Land and Conveyancing Law Reform Act 2009* introduced very significant amendments to the law on the acquisition of easements and *profits à prendre* by prescription. An amendment to section 38 of the act made by the *Civil Law (Miscellaneous Provisions) Act 2011* provided that landowners claiming entitlement to easements or *profits* acquired by prescription could continue to rely on the law in existence prior to 1 December 2009 (the old law) until 30 November 2021.

The *Land and Conveyancing Law Reform Act 2021* repeals sections 33 to 39 of the 2009 act, and sets out the law that now applies to the acquisition of prescriptive easements and *profits*. In doing so, the 2021 act distinguishes between four different types of claims by reference to when the qualifying user-period was completed:

- Claims relying on a qualifying user-period completed prior to 1 December 2009 will be governed by the old law (see below),
- Claims relying on a qualifying user-period completed after 1 December 2009 will be governed solely by the *Doctrine of Lost Modern Grant* ('future claims'),
- Pending claims (that is, claims to register prescriptive easements or *profits* already lodged with the Property Registration Authority (PRA) pursuant to section 49A of the *Registration of Title Act 1964* or instituted by way of court proceedings prior to the coming into effect of the 2021 act) will be governed by the old law,
- Claims in respect of land that is owned by a State authority or which is, or was, foreshore land ('State authority' and 'foreshore' are both defined by section 1 of the 2021 act), relying on a qualifying user-period completed after 30 November 2021, will be governed solely by the *Doctrine of Lost Modern Grant*.

Old law claims

The old law applies to prescriptive easements and *profits* crystallised before 1 December 2009, regardless of whether or not any action has been taken to register the prescriptive right prior to the enactment of the 2021 act.

> THE *PRESCRIPTION ACTS* PROVIDE THAT, ONCE THE QUALIFYING USER PERIODS HAVE BEEN ESTABLISHED, A CLAIM CANNOT BE DEFEATED SIMPLY BY PROOF THAT THE ENJOYMENT DID NOT GO BACK TO 1189

Under the old law, there are three separate forms of valid prescription:

- Common law prescription,
- Prescription under the *Doctrine of Lost Modern Grant*, and
- Statutory prescription under the *Prescription Act 1832*, extended to Ireland by the *Prescription (Ireland) Act 1858*.

Common law prescription is, in practical terms, obsolete. If the claimant can show user as-of-right from time immemorial (which means since 1189), then the courts will assume that this enjoyment has been on the basis of an ancient grant. Over time, the difficulties of the rule were mitigated by the courts' practice to accept a rebuttable presumption of immemorial user from 20 years' user as-of-right. However, this presumption could be defeated if the court could be shown that user was not possible since 1189, or if there was unity of possession at some period since 1189.

The *Doctrine of Lost Modern Grant* allows the court to presume that a grant was made in modern times, but that this grant has been lost and so cannot be produced in court. The doctrine is based on a legal fiction, and the presumption of a grant cannot be rebutted by proof that no grant was ever made.

The following are the principal features of the *Doctrine of Lost Modern Grant*:

- In seeking to prove the existence of an easement, the four essential characteristics of an easement identified in *Re Ellenborough Park* must be present: (i) there must be a dominant and servient tenement; (ii) an easement must 'accommodate' the dominant tenement; (iii) dominant and servient owners must be different persons; and (iv) the right claimed must be capable of forming the subject matter of a grant. These four characteristics must be present for all of the three separate forms of valid prescription available under the old law, including the *Doctrine of Lost Modern Grant*. As *profits* can exist 'in gross', neither (i) nor (ii) are essential in proving the acquisition of a *profit* by prescription.
- The easement or *profit* must be enjoyed for a minimum period of 20 years before any prescriptive right arises.
- The 20-year user period must be exercised 'as of right', meaning that the use or enjoyment of the right must be "without force, without secrecy and without the oral or written consent of the servient owner". Essentially, an easement must be exercised as though it was an entitlement under a grant.
- Once the claimant can establish 20 years user as-of-right, his position is secure – it does not matter that there has later been a period of non-user (unless it is determined that the prescriptive right has been extinguished by abandonment or otherwise – see below).
- There is no 'next before suit' requirement in the *Doctrine of Lost Modern Grant*. It is not necessary that the claimant's enjoyment should continue up to the time of the dispute: any 20-year period of user as of right will suffice.
- The user must be continuous (not to be equated with incessant), although the frequency of use necessary depends, generally, on the nature of the easement at issue.
- There is authority to the effect that the presumption will not be made if, during the user-period, there was no person capable of making a grant. The courts may refuse to presume a lost grant where the servient owner was under a disability (such as mental incapacity) or was a corporation prohibited by its memorandum of association from dealing in land.

Statutory prescription

The *Prescription Act 1832*, extended to Ireland by the *Prescription (Ireland) Act 1858*, created a new type of prescription, but did not abolish the two existing forms of prescription, namely common law prescription and the *Doctrine of Lost Modern Grant*.

The *Prescription Acts* provide that, once the qualifying user-periods (specified therein) have been established, a claim cannot be defeated simply by proof that the enjoyment did not go back to 1189.

The *Prescription Acts* distinguish between short and long periods of qualified user-period. Short periods of user (20 years for easements; 30 years for *profits*) raise a presumption that a prescriptive right has been acquired that can be defeated by evidence to the contrary. Long periods of user (40 years for easement; 60 years for *profits*) raise a presumption that a prescriptive right has been acquired that is "absolute and indefeasible" unless it has been enjoyed by written consent.

The *Prescription Acts* require that the prescriptive right must have been enjoyed without interruption up until the initiation of court proceedings. The definition of 'interruption' in section 4 of the 1832 act is understood to require hostile obstruction of the enjoyment of the right causing discontinuance for at least one year. The dominant owner shall have notice of the interruption, and shall thereafter have submitted to, or acquiesced to, such interruption for one year.

In the words of section 4 of the 1832 act, the period of user as-of-right must come "next before some suit or action in which the claim or matter to which the period relates is brought into question". Thus, rights under the *Prescription Acts* do not crystallise until adjudicated upon by the court, and may therefore be lost if there is a subsequent interruption. As a result, claimants continue to rely on the *Doctrine of Lost Modern Grant*, to which no such limitation applies.

The *Prescription Acts* make special provision for rights of light. Where the access to light is enjoyed without interruption for 20 years next before suit or action, the right becomes absolute and indefeasible.

Abandonment and extinguishment

It is clear from the common law that mere evidence of non-user is not sufficient to bring about the extinguishment of a crystallised prescriptive right acquired pursuant to any of the three forms of valid prescription available under the old law. A presumption of abandonment will not lightly be inferred, and must be supported by evidence of conduct or intention adverse to the exercise of the right (O'Hanlon J, *Carroll v Sheridan and Sheehan*). The extinguishment of prescriptive rights, not by their nature used incessantly (such as rights of way) will not be inferred by abandonment of the use of the prescriptive right, unless the person entitled has also demonstrated a fixed intention never at any time thereafter to assert the right again or to transmit it to anyone else (*Tehidy Minerals Limited v Norman*).

Section 4 of the 2021 act specifically confirms that the common-law rules regarding extinguishment apply to all prescriptive rights, and that neither the enactment of section 39 of the 2009 act, nor its subsequent repeal under section 6 of the 2021 act, affect their continued applicability.

Future claims

All future claims will be considered solely by reference to the rules applicable to the *Doctrine of Lost Modern Grant*. Common law prescription and the *Prescription Acts* will not apply to future claims.

The adoption of the *Doctrine of Lost Modern Grant* reinstates the 20-year prescriptive period for all property other than land that is owned by a State authority or which is, or was, foreshore land. It will still be possible to confirm a prescriptive right, either by applying to court or by registering it directly with the PRA, but this will be optional (as it was before the 2009 act), rather than a mandatory requirement to avoid losing any rights acquired through long use.

The 2021 act is premised on the proposition that a right vests under the *Doctrine of Lost Modern Grant* when the qualifying prescriptive period is complete. The right may later be recognised in proceedings or pursuant to section 49A, leading to registration, but it has already been created. This proposition confirms the basis for reliance on statutory declarations as to prescriptive user in conveyancing.

Transitional claims will be governed by the three separate forms of valid prescription available under the old law.

State or foreshore claims

All State or foreshore claims will be considered solely by reference to the rules applicable to the *Doctrine of Lost Modern Grant*. Common law prescription and the *Prescription Acts* will not apply to State or foreshore claims. However, extended qualifying periods of user are required to acquire prescriptive easements or *profits* over land that is owned by a State authority or which is, or was, foreshore land. These extended periods of user are detailed in section 3(1)(a) and (b) of the 2021 act.

For claims to prescriptive easements or *profits* in respect of land that is owned by a State authority or which is, or was, foreshore land, relying on a qualifying period completed prior to 1 December 2009, the old law applies, and the extended user periods set out in section 3 of the 2021 act are not applicable. This means that the extended periods introduced in respect of State authority land in the 2021 act can be avoided by the *Doctrine of Lost Modern Grant* if a qualifying user period of 20 years prior to 1 December 2009 is established.

Denise Healy is a solicitor and a member of the Conveyancing Committee's Easements Task Force.

> THE *PRESCRIPTION ACTS* MAKE SPECIAL PROVISION FOR RIGHTS OF LIGHT. WHERE THE ACCESS TO LIGHT IS ENJOYED WITHOUT INTERRUPTION FOR 20 YEARS NEXT BEFORE SUIT OR ACTION, THE RIGHT BECOMES ABSOLUTE AND INDEFEASIBLE

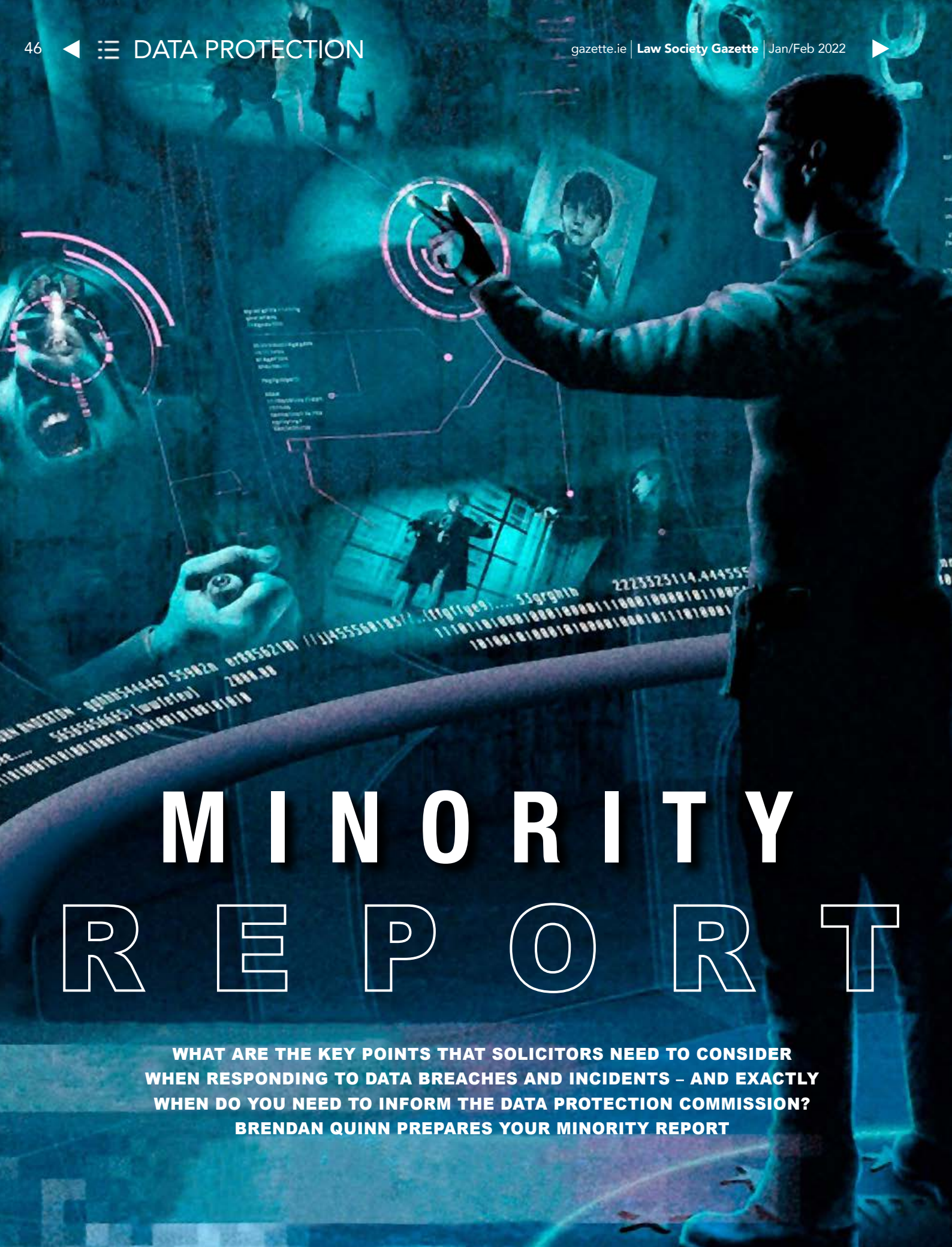
LOOK IT UP

CASES:

- *Carroll v Sheridan and Sheehan* [1984] ILRM 451
- *Re Ellenborough Park* [1956] Ch 131
- *Tehidy Minerals Limited v Norman* [1971] 2 QB 528

LEGISLATION:

- *Civil Law (Miscellaneous Provisions) Act 2011*
- *Land and Conveyancing Law Reform Act 2009*
- *Land and Conveyancing Law Reform Act 2021*
- *Prescription Act 1832*
- *Registration of Title Act 1964*



MINORITY REPORT

WHAT ARE THE KEY POINTS THAT SOLICITORS NEED TO CONSIDER WHEN RESPONDING TO DATA BREACHES AND INCIDENTS – AND EXACTLY WHEN DO YOU NEED TO INFORM THE DATA PROTECTION COMMISSION? BRENDAN QUINN PREPARES YOUR MINORITY REPORT

Solicitors' work can involve high-risk processing, in particular where it involves the handling of client funds and payment details for transactions. Personal data processed in litigation can, when contentious, involve lots of special category or criminal-offence data, or the processing of data on individuals that the GDPR considers vulnerable, including employees, and family court matters.

The Data Protection Commission (DPC), in particular, considers controllers' processing of children's data to be a high priority for enforcement. Also, case law of the European Court of Human Rights has emphasised the need to actively protect children from data breaches involving the risk of identity theft. Data breaches cover a wide range of scenarios, including ransomware, malware, phishing attacks, the loss of an unencrypted laptop, or even the loss or destruction of paper files.

This article summaries the key points and matters solicitors need to consider when responding to an incident. Solicitors working in-house, for example, in financial services and the telecommunications sectors, can also have reporting obligations under other legislation.

DPC enforcement

The GDPR introduced mandatory reporting requirements for breaches. The focus of the DPC until recently was on giving guidance to controllers, rather than on enforcement. In November 2021, DPC spokesman Graham Doyle indicated that the DPC would be changing its approach on data breaches in the future and would not engage in all notifications but, instead, would assess cases focusing more specifically on areas where enforcement was warranted.

This would include both international technology and local breaches. Therefore, solicitors should expect that some breaches will result in fines and other sanctions that could have an impact on their clients and the legal profession as a whole.

Many factors are driving the growth in breaches. These include the discovery of new vulnerabilities as targets grow and as all industries become digital, and more processes are moved online.

PIC: ALAMY

> DATA BREACHES COVER A WIDE RANGE OF SCENARIOS, INCLUDING RANSOMWARE, MALWARE, PHISHING ATTACKS, THE LOSS OF AN UNENCRYPTED LAPTOP, OR THE LOSS OR DESTRUCTION OF PAPER FILES

While other laws required the reporting of breaches, the GDPR created a more general regulatory requirement to report breaches that posed risks to individuals.

Incidents must be documented, even where an assessment determines that reporting is not required. As communications need to be made to individuals when there is a high risk to their rights and freedoms, this has generally raised public awareness, in particular of the risks of financial loss and identity theft. The risk of fines and reputational damage has led to a 'trickle-up' awareness among senior management in controllers of all sizes that data protection is not just 'an IT issue'.

GDPR requires certain breaches to be notified to the DPC within 72 hours – and where there is high risk to the affected individuals, without delay. An incident can be as simple as sending someone's details to an incorrect person, but can become complex where there are many individuals affected.

If there is an international dimension or client data leaked by a breach, this could fall under another data-protection authority's jurisdiction or, indeed, a different industry regulator. Additionally, a non-breached controller might still have liability to affected individuals through being part of the supply chain where the parties are joint controllers.

Breaches can have serious consequences beyond data protection – legal, financial, and reputational – for solicitors, their clients, and other stakeholders. The requirement to report breaches to both the DPC and the affected individuals creates greater visibility, awareness, and risks. There can be various impacts, ranging from costs through to the loss of contracts and future revenue, insurance claims and resulting extra costs, the potential for litigation and resulting bad publicity, lost clients, trust, and confidence. In a worst-case scenario for some businesses, a breach can put them out of business.

Therefore, solicitors should actively implement safeguards to minimise the risk of breaches occurring, through staff training, appropriate security, and technical and organisational controls to protect their data. This is particularly important in the case of solicitors, due to the special importance and value attaching to legal professional privilege.

Every incident should trigger a decision as to whether change is required to processes, or whether to report the incident as a breach. Security, on the other hand, involves an ongoing assessment of technical and organisational controls and how best to assess and respond to the evolving threats and risks to individuals in processing data.

Enforcement action breaches

Article 4(12) describes a personal-data breach as a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored, or otherwise processed.

Specifically mentioning the transmission and storage of data emphasises that these situations can lead to greater risks of harm to individuals. Solicitors require a process to show that they have considered the risks to individuals, and have mitigated any risks that arise in the event of a security incident.

Failure to implement appropriate security measures has featured prominently in fines. The following are the most common breaches, and the technical and organisational measures cited, in data protection authority (DPA) decisions.

Control failures: Normally, a controller will be assessing the risks to personal and sensitive data of 'Type 1'. Confidentiality breaches generally involve unauthorised disclosure of, or access to, data. Examples of control failures from DPA decisions resulting in fines are:

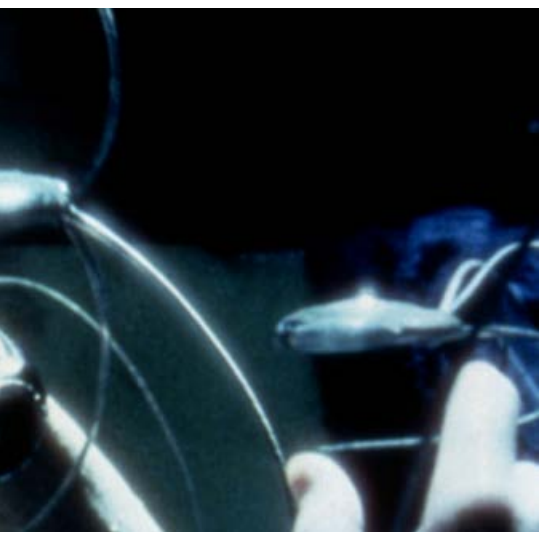
- Controls for monitoring access rights to user accounts,
- Controls for monitoring access rights to, and the use of, databases storing personal data,

- Use of server-hardening techniques to prevent unauthorised or illegitimate access to administrator accounts,
- Encrypting personal data, particularly special category data contained in email attachments,
- Use of two-factor authentication to prevent unauthorised access to web-based applications,
- Controls on the storing of particularly sensitive data in cloud applications,
- Strict access controls for applications on a 'least-privilege' basis, and safeguards to ensure that individual access is removed when no longer necessary,
- Carrying out reviews of logs to prevent unauthorised access to files,
- Individuals storing personal data on personal devices without enterprise-level security,
- Sending personal data to an incorrect recipient.

Integrity breaches: 'Type 2' integrity breaches include unlawful destruction or alteration of data. Examples from DPA decisions where fines have been imposed include:

- There should be regular penetration testing to test the resilience of systems,
- Passwords should be encrypted and not stored in plain-text unencrypted files on servers,
- Controllers should log and monitor failed access attempts in particular to online processing systems.

Personal-data availability: 'Type 3' – the availability of personal data that includes accidental destruction or unauthorised loss – has not featured prominently in the regulator's decisions.



PIC: ALAMY

When to notify a breach

Not all personal data breaches need to be notified to the DPC. The notification obligations under the GDPR are only triggered when there is a breach that is likely to result in a risk to the rights and freedoms of individuals. In reporting to individuals, note that the means used should maximise the chance of communicating appropriate information to those individuals.

Step 1: solicitors should describe and consider the cause of the incident and the people, devices, or systems affected.

Steps 2 and 3 need to be considered together to assess potential high risks. Remember, where there is a risk to individuals, then it needs to be reported to the DPC. Where it is high risk, it needs to be reported to both the individuals and the DPC.

Step 2 considers the high risks. The GDPR Recital 85 explains that a high risk exists when the breach may lead to physical, material, or non-material damage for individuals such as:

- Loss of control of their personal data,
- Limitation of their rights,
- Discrimination,
- Identity theft,
- Fraud,
- Financial loss,
- Unauthorised reversal of pseudonymisation,
- Damage to reputation, and
- Loss of confidentiality of personal data protected by professional secrecy.

The above list is not exhaustive, and can include other significant economic or social disadvantage.

Step 3 considers the factors affecting the risks and makes an assessment. The factors relevant as part of this assessment are:

- The type of breach: whether 'confidentiality', 'availability', or 'integrity',
- The nature, sensitivity, and volume of personal data: if a significant volume of special-category data is compromised, this would constitute a significant risk to individuals,
- Ease of identification of individuals: how easy, or difficult it would be to identify specific individuals based on the compromised data,
- Severity of consequences for individuals: consideration must be given to the potential damage to individuals, whether there might be malicious intentions behind the breach, and the permanence of the consequences for the individuals,
- Special characteristics of the individual: consideration must be given to children and other vulnerable individuals who may be placed at a greater risk of danger due to a breach,
- Number of affected individuals, and
- Special characteristics of the data controller: consider that there is a greater threat if special-category medical data, identity, or financial details are stolen. Controllers must consider the severity of the risk on the individual, and the likelihood of occurrence.

Notification and documenting

Notification is not required where the breach is unlikely to result in a risk to the rights of individuals – for example, if the data is encrypted or can be remotely deleted. In effect, the controller makes an assessment and keeps records.

The controller must document any personal-data breach, including the facts, its effects, and remedial action taken – even where the breach is not notifiable to the DPC.

In documenting the breach, the controller should record at least the following details:

- The cause of the breach,
- Description of the breach,
- Effects and consequences,
- Mitigating actions taken,
- Reasons behind the mitigating actions undertaken, and
- Reasons for not notifying a breach, including reasons why the breach was not considered likely to result in a risk to the individuals.

How to prepare

- Develop and implement a data-breach response plan,
- Implement training programmes for employees,
- Develop templates for breach notifications,
- Consider test procedures on high-risk applications,
- Apply appropriate security measures to protect high-risk data, and finally
- Use privacy-enhancing technologies.

Brendan Quinn, solicitor, is CEO of Mighty Trust Ltd, which provides compliance software and data-protection consultancy. He is the author of Data Protection Implementation Guide: a Legal, Risk, and Technology Framework for the GDPR, *published by Wolters Kluwer (September 2021).*

COVID buffets PC numbers in 2021

For the second year running, Matheson retains pole position as Ireland's largest law firm – but only six of the top 20 firms saw an increase in PC numbers in 2021. Mark McDermott reports

For the second year in a row, Matheson retains the title of Ireland's largest law firm – just pipping its closest rivals Arthur Cox LLP and A&L Goodbody.

The *Law Society Gazette*'s table *(below)* reveals the number of practising certificates (PCs) held by the 20 largest firms in Ireland as of 31 December 2021 – the last date of the previous practice year. Matheson has 308 PC holders compared with Arthur Cox LLP (304) and A&L Goodbody (299).

Despite maintaining pole position, Matheson suffered the second-largest decline in the number of PC holders during the growth-stunting year of 2021 – losing 19 solicitors in total during the year, which was matched by a similar drop at William Fry LLP. (Compare that with 2020, when Matheson took the premier position with a surprising

THE FIGURES REVEAL A SHARP DECLINE OF 102 PC HOLDERS AMONG 11 OF THE TOP 20 FIRMS IN JUST ONE YEAR – AN INDICATION, IF ANY WERE NEEDED, OF THE IMPACT OF THE PANDEMIC ON THE PROFESSION

LAW FIRM PRACTISING SOLICITOR NUMBERS (AS OF 31/12/2021)

2021 ranking	2020 ranking	Firm name	31/12/2021	Diff +/- over 2020	31/12/2020
1	1	Matheson	308	-19	327
2	3	Arthur Cox LLP	304	-8	312
3	2	A&L Goodbody LLP	299	-21	320
4	5	Mason Hayes & Curran LLP	278	+19	259
5	4	McCann FitzGerald LLP	273	-11	284
6	6	William Fry LLP	188	-19	207
7	7	ByrneWallace LLP	150	+13	137
8	9	Maples and Calder (Ireland) LLP	112	+4	108
9	8	Eversheds Sutherland	111	-1	112
10	10	Ronan Daly Jermyn	104	-2	106
11	13	Dillon Eustace LLP	89	+3	86
12	11	Beauchamps LLP	86	-9	95
13	15	Philip Lee	72	+9	63
14	14	Hayes Solicitors LLP	66	+2	64
15	15	LK Shields Solicitors LLP	63	0	63
15	–	Fieldfisher LLP	63	–	–
17	15	Eugene F Collins LLP	60	-3	63
18	15	Walkers Ireland LLP	58	-5	63
19	20	DAC Beachcroft Dublin	49	-4	53
20	–	DLA Piper Ireland LLP	46	–	–
TOTAL			2,779		2,873

These figures represent the total number of solicitors with a practising certificate, advised to the Law Society, up to and including 31/12/21. The total firm figure represents a firm's primary and suboffices on the Law Society's database

SOURCE ALL TABLES: LAW SOCIETY OF IRELAND

increase of 42 PCs compared with its performance in 2019 and 2018, when its figures remained unchanged during both years.)

The greatest contraction in 2021, however, was experienced by A&L Goodbody, which lost 21 PC holders during the year. This decline allowed Arthur Cox LLP to manoeuvre into second place on the grid.

What is most surprising about the 2021 results is the decline in solicitor numbers in the top three firms compared with 2020. In fact, among the top 20 firms, only six showed an increase in PC numbers (+50) during the year under review. This is a direct reversal of the situation in 2020, when only six firms experienced a fall in PC numbers.

The figures reveal a sharp decline of 102 PC holders among 11 of the the top 20 firms in just one year – an indication, if any were needed, of the impact of the pandemic on the profession.

Bucking the trend among the top ten law firms was Mason Hayes & Curran, which grew its solicitor numbers by 19, thus leapfrogging McCann FitzGerald LLP by one place to move fourth on the table – its highest ranking during the past seven years.

ByrneWallace LLP also boosted its performance and welcomed 13 new solicitors to its ranks, followed by Maples and Calder (Ireland) LLP, which grew by four. Despite its growth, however, ByrneWallace was boxed in at seventh position. The increase of four PC holders at Maples and Calder (Ireland) LLP saw it switching places with Eversheds Sutherland, moving from ninth to eighth position.

William Fry LLP and Ronan Daly Jermyn maintained their sixth and tenth positions, respectively. Standing out on the table is Philip Lee, which welcomed nine new PC holders in 2021, slipstreaming two places higher to 13.

The other standouts in the top 20 are Fieldfisher LLP, which makes its first appearance on the table, in 15th position with 63 solicitors. (The firm merged with Irish firm McDowell Purcell in May 2019, which featured in 19th place on the table in 2018.)

Another newcomer this year is DLA Piper Ireland LLP, which appears on the table for the first time, in 20th position, with a total of 46 PC holders. It also opened its Irish office in May 2019.

So a year of mixed results then, during which most firms managed to maintain their positions during a 'stop-start' 2021. Hopefully 2022 will bring some welcome surprises – and turbo-charged results! g

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Mark McDermott is editor of the Law Society Gazette.

Lettori of the law

The European Commission has opened an infringement case against Italy for persistent discrimination against non-national university teachers. Henry Rodgers looks at this long-running breach of the freedom-of-movement provisions

THE LANDMARK 1993 *ALLUÉ* RULING CLARIFIED BEYOND ALL AMBIGUITY THAT *LETTORI* HAD THE RIGHT TO THE SAME CONTRACTUAL WORKING CONDITIONS AS COUNTERPART ITALIAN WORKERS

Most of the cases listed in a September 2021 European Commission press release on infringement proceedings against member states attracted little subsequent press attention. The newsworthy exception was a case opened against Italy for its persistent discrimination against non-national university teachers ('*lettori*') – the longest-running breach of the freedom-of-movement provision of the treaty on record.

The reason given in the press release was Italy's non-compliance with the decision in Case C-119/04, an enforcement case on which the Grand Chamber of the Court of Justice ruled back in 2006. An enforcement case implies non-implementation of an earlier ruling of the court. The ruling in the earlier discrimination case was handed down in 2001.

Italy's breach of the freedom-of-movement provision in the case of *lettori* predates the present century. The line of litigation for parity of treatment extends back to 1987 and the reference to the Court of Justice by the Pretura di Venezia of the first of two cases taken by Spanish national Pilar Allué against a discriminatory Italian *lettori* law of 1980.

A misreading of the first ruling in her favour caused Allué to have recourse to the court a second time. The landmark 1993 ruling clarified beyond all ambiguity that *lettori* had the right to the same contractual working conditions as counterpart Italian workers. It was for non-implementation of the *Allué* case law that the commission took (and won) the subsequent two cases against Italy in 2001 and 2006.

Parity of treatment

The time span encompassed within this brief legal history exceeds the average duration of a university teaching career. As a consequence, non-national teaching staff from all the member states of the EU have never worked in Italian universities under the conditions of parity of treatment, which should be automatic under the treaties. Due to the discriminatory remuneration they received over the course of their careers, *lettori* who have retired live on pensions that would place them below the poverty line in their home countries.

A measure of how seriously the commission viewed the persistent discrimination against *lettori* was that, in enforcement case C-119/04, it asked the court to impose a daily fine of €309,750 on Italy. The fine was averted by the introduction of a last-minute law awarding *lettori* a reconstruction of career from the date of first employment, with reference to the economic parameters of comparable Italian university teaching staff.

The threat of fines removed, Italy subsequently failed to implement the law and make the settlements with *lettori* that the court had deemed satisfactory. The results of a recent national census conducted by our union show that only two universities had implemented the 2006 ruling.

Italy's intransigence

The lengthy litigation has given grounds for a view that Italy's intransigence is deliberate and is based on a view that the eventual retirement of the beneficiaries of the Court of Justice case law will free it of its obligations to the *lettori*. A commission pilot procedure (a mechanism introduced to resolve disputes amicably with member states and prevent recourse to infringement proceedings) was opened in 2011. Over the ensuing ten years, it markedly failed to achieve its purpose.

At La Sapienza University of Rome (Europe's largest university), the initiatives of a *lettori* union have given our colleagues, nationally, renewed hope after a decade of deadlock. Crucial to our progress was the securing of complainant status in the commission's proceedings against Italy. Though not technically party to the proceedings, a complainant has the right to contribute to the case file, have meetings with commission officials, and be

Judges sit in judgment in the Grand Chamber of the European Court of Justice, Luxembourg

consulted and given a right of reply, should the commission consider closing a case.

Organising labour from Trieste to Palermo is not an easy task. With the assistance of FLC CGIL, Italy's largest trade union, we conducted a nationwide census of *lettori* to gauge compliance with the court enforcement ruling of 2006. With the exception of the aforementioned two examples, the census showed that none of the universities had incorporated the ruling into the terms of local *lettori* contracts. In an evidence-based procedure, such data was clearly influential with the commission, which had given an advance commitment to an appraisal of the results of our census.

Irish MEP support

The support of Irish MEPs has been crucial to our campaign. A parliamentary question to the commission by Clare Daly (co-signed by seven other Irish MEPs) framed Italy's ongoing discrimination against *lettori* in the broader context of the benefits and responsibilities of EU membership. Pointing out that Italian universities receive generous EU funding and that Italy has received the greatest share of the COVID Recovery Fund, the signatories asked why Italy refused

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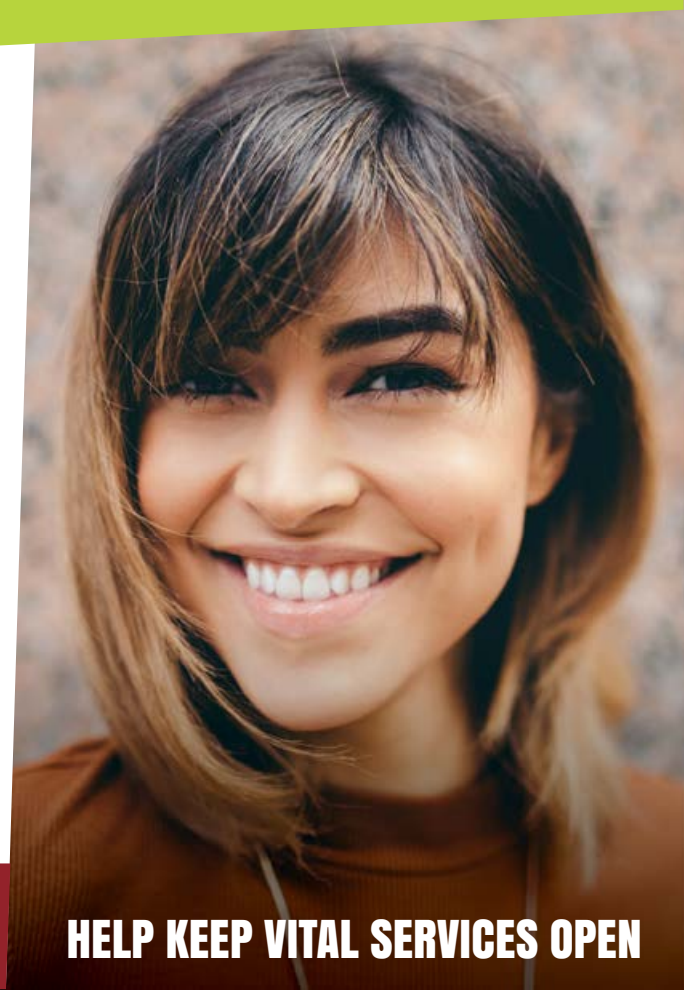

to reciprocate and honour its treaty obligations to *lettori*.

With the spotlight in Brussels firmly fixed on adherence to the rule of law within the EU, the question was timely and carried weight. The response from Jobs and Social Rights Commissioner Nicolas Schmit was effectively an advance signal of the decision to open the infringement proceedings.

The commission is currently appraising Italy's reply to its letter of formal notice of the opening of proceedings. Though documents exchanged in infringement proceedings are confidential, a last-minute amendment to Italy's *Legge di Bilancio 2022* (finance act), which was approved on 30 December, reveals something of Italy's response. A 2019 interministerial decree of byzantine complexity had required the universities to first sign local versions of a national blueprint contract with their *lettori* in order to receive government funding to co-finance backdated settlements for discrimination. As the proposed contracts effectively sought to open the binding case law of the CJEU to negotiation, and to limit and claw back rights won under the ruling in Case C-119/04, local unions refused to sign them.

The waiving of the requirement to sign such contracts in the *Legge di Bilancio* amendment would now seem to pave the way for the adoption of a solution similar to that proposed by Clare Daly MEP and her co-signatories in their parliamentary question to Commissioner Schmit. This simply entails identifying the beneficiaries of the 2006 CJEU ruling and paying them the settlements due to them, proportionate to their years of teaching service.

In a meeting held last month with our union (in its status as a complainant in the proceedings) and with the participation of an invited delegate from FLC CGIL, the legal team directly responsible for the infringement case informed us that exchanges between the commission and the Italian authorities will continue in the coming months, with the aim of checking and ensuring that the CJEU ruling in Case C-119/04 is fully implemented by all of the Italian universities. Should this scrutiny identify continuing breaches, then, in accordance with the infringement procedures, the commission may issue a reasoned opinion and eventually refer the case to the CJEU for what would be a fifth ruling on parity of pay, in the line of jurisprudence that began back in 1987.

Placing the right to parity of treatment in the context of the overall rights of European citizens, the commission states that the right "is perhaps the most important right under community law, and an essential element of European citizenship".

The *lettori* who are the beneficiaries of the Court of Justice case law are now nearing retirement. They retain the hope that they may eventually work under conditions of parity of treatment, if only for the remaining few years of their careers. g

Henry Rodgers teaches at La Sapienza University of Rome and is a founder member of the union Asso CEL L.

LOOK IT UP

- Case C-119/04 *Commission of the European Communities v Italian Republic*
- Joined cases C-259/91, C-331/91 and C-332/91 *Pilar Allué and Carmel Mary Coonan and others v Università degli studi di Venezia and Università degli studi di Parma*

> DUE TO THE DISCRIMINATORY REMUNERATION THEY RECEIVED OVER THE COURSE OF THEIR CAREERS, *LETTORI* WHO HAVE RETIRED LIVE ON PENSIONS THAT WOULD PLACE THEM BELOW THE POVERTY LINE IN THEIR HOME COUNTRIES

The drugs don't work

The number of cocaine users in Ireland rose significantly in 2020 compared with 2017. Mary Hallissey speaks with Emma Kavanagh, clinical services manager at Dublin's Rutland Centre, on the prudence of seeking help for addiction

> COCAINE IS PROBLEMATIC FOR ANYONE USING IT IN THE LEGAL PROFESSION, SINCE IT'S A STIMULANT THAT SPEEDS UP THE CENTRAL NERVOUS SYSTEM, INFLATING CONFIDENCE WHILE DEFLATING ANY SENSE OF RISK

Drug use in Ireland is creeping ever upwards, together with escalating mental-health difficulties.

The Rutland Centre treats 160 patients for addiction each year. Its head of clinical services, Emma Kavanagh, comments: "There is a real crossover between addiction figures and mental-health figures – the figures are linked.

"A large proportion of people presenting for drug treatment also have some sort of mental-health diagnosis or are consistent with mental-health symptoms," she adds.

Those with addictions may also be on psychotropic medication, with dual-diagnosis extremely common. "It's very difficult to know which comes first," says Kavanagh. "It's a convergence."

This means that the full extent of addiction isn't necessarily accurately recorded in statistics, since mental-health services may be dealing with many of those cases. The Health Research Board reports a massive increase in cocaine use in this country: 2,600 people presented for treatment for cocaine addiction in 2020, up from 1,500 in 2017.

"Cocaine is certainly problematic and is becoming more problematic as the years go on," Kavanagh says.

Slide away

Cocaine is certainly deeply problematic for anyone using it in the legal profession, since it's a stimulant that speeds up the central nervous system, inflating confidence while deflating any sense of risk. This leads to very poor decision-making, because the ability to weigh risk is impaired by the narcotic. If lawyers don't have good judgement, what's left?

Statistics from 2020 show a 9% decrease in the number of drug-users entering treatment, but cocaine use continues ever upward. An estimated one-quarter of all drug-users presenting for treatment will be on cocaine.

"Only a small proportion of people using cocaine present for treatment," says Emma, meaning that the number of those using is likely to be exponentially higher.

Dealing with addiction is messy and complicated, she says.

With qualifications in psychology, psychotherapy and addiction counselling, Emma Kavanagh has worked at the bleeding edge of drug use in this country for many years. She heads up all clinical programmes at the Rutland, as well as outpatient and aftercare, and some operations and governance work.

"You need to be abstinent from a substance before you come in," she explains. "It's very much psychological work that you do when you come into a residential treatment centre."

The most severe cases are treated as in-patient residents at the Rutland, in Dublin 16.

Catching the butterfly

One big barrier to accessing residential treatment is the scarcity of medically supervised detox beds, which Kavanagh describes as "a big gap".

It's very dangerous to go 'cold turkey' with alcohol, for instance. Medical supervision is always required for physiological withdrawal, and Librium will often be prescribed.

Coming off prescribed medication, such as benzodiazepines, can also cause severe difficulty, or even fatal convulsions. While 'benzos' are often GP-prescribed, there is also a huge black-market trade, Kavanagh points out.

"And opiates are really, really addictive. We have a long-standing opiate problem in Ireland," Kavanagh says. Detoxing from opiates may require using a substance such as methadone, and can take a significant amount of time.

The Rutland takes both privately insured and public patients and offers assistance programmes for those in financial need: "We would hate for money to be the barrier for people in accessing treatment," Kavanagh says.

She is fully aware that for those with demanding jobs who are tipping over into addiction, a five-week in-patient programme maybe too much of a commitment.

Outpatient treatment is also available, with a commitment to

PIC: SHUTTERSTOCK/GAZETTE STUDIO

THE HEALTH RESEARCH BOARD REPORTS A MASSIVE INCREASE IN COCAINE USE IN THIS COUNTRY: 2,600 PEOPLE PRESENTED FOR TREATMENT FOR COCAINE ADDICTION IN 2020

two group-therapy sessions, and one in-person individual therapy session, each week.

"That can be really suitable for individuals who are unable to take extended periods of leave from work," Kavanagh explains.

Space and time

Generally, people who do well in the outpatient programme have good support systems at home, are living with a family member, and have been able to maintain a period of sobriety on their own. Outpatient treatment can also suit 'binge' users, Kavanagh notes.

"We always say to people it's really a year and five weeks. While the residential treatment takes five weeks, you are required to sign up for aftercare, which runs for a year, so really you are with us for a year and five weeks, minimum."

Many people go on to do a second year of aftercare as well, and the prospects for a sustained long-term recovery are greatly enhanced with lengthy follow-up.

The duration of treatment will depend on how functional the person is, and the severity of the presentation. Some people may still be able to work right up until coming in for treatment. But it's tough, intense work.

"Psychologically, you're going into a very deep, very vulnerable place," says Kavanagh. The goal is to figure out the cause of the addicted behaviour, and to answer the question of what function the addiction is serving. "When someone enters recovery, it can be an amazing thing, but it's a change and change is difficult," she explains.

This time

Addictive behaviours may be carried into sobriety. The work of early recovery is to look at the maladaptive behavioural patterns, such as secrecy or manipulation, that sustain an addiction, Kavanagh continues.

DANGER SIGNS

What do you do if a colleague begins behaving erratically? And what are the signs of drug abuse?

Changes in behaviour may indicate problem drug use or alcohol use, says Emma Kavanagh. This could be a different routine or approach to work. Fluctuations in energy levels could be indicative of an addiction issue, particularly as cocaine is a stimulant.

"When people are using it, they will be very high-energy and manic. And when they're not using it, they will slump in the aftermath of that.

"Increased socialising is often associated with cocaine or alcohol use. Pushing the boundaries and wanting to keep going all the time – the user doesn't want to go home.

"A really common behaviour associated with cocaine use is to be in and out of the toilets all night long, and disappearing for periods of time.

"Physical symptoms include enlarged pupils, bloodshot eyes, and strange jaw movements."

Behaviour

Absenteeism from work over a prolonged period, particularly Monday mornings or around paydays, is also a sign.

If concerned, a colleague could tentatively ask a question. Or point out factual matters without becoming accusatory.

"Keep it factual and specific, and ask 'are you okay, because I've noticed changes?'" she suggests.

But be prepared for a defensive reaction, and don't push the conversation into a place that's hard to come back from, she advises. Denial is a core characteristic of addiction. "Disengage and say: 'look, I can see that you don't want to talk to me about this right now. We can leave it and come back to it later'."

Escalating upwards

Then, it's about escalating it to someone more senior, who has the authority to take it to a more formal level where there can be consequences and a thought-through managed approach, she says. This may be the HR department, which should have a drug-use policy.

She warns that a person's drug use may be too much for a watching colleague to carry alone. It's unfair for a bystander to be left holding the problem and feeling responsible if the colleague 'drops the ball' on an important case.

"I think it's important that people don't hold the problem on their own, and that they go and seek support – for their own sake."

But going to HR can be seen as 'snitching', and what if the HR department hasn't inspired confidence to date?

"Absolutely, and people are very reluctant to do it. But it's about trying to 'play the tape forward' and tease out the consequences of not saying it. Doing nothing is very rarely the solution to the problem. You might feel it's snitching, and the person might be upset with you, but in the long run, they get the help and support they need."

Consequences

While an addict might not be ready for help, Kavanagh says that consequences, boundaries, and understanding the effects the drug use is having on their lives will move them to acceptance.

She points out that the level of responsibility held by those in the legal field probably creates an ethical obligation in these situations: "If someone in the legal profession is not of sound mind, that probably does need to be flagged," she warns.

However, she accepts that not every HR department may be correctly equipped to deal with these situations: "There is never an easy or neat way to bring this together. It's always a difficult subject."

However, a direct link with the family of a colleague in trouble can make the situation easier because, generally, the family will have been aware of the problem long before the employer or the workplace is affected.

Kavanagh accepts that there are some people who will never want to engage with rehabilitation services, but she believes that it's an extremely small percentage.

Regardless of whether someone is ready to stop using, linking with a professional is advisable, as there are other harm-reduction supports available too. Most people will engage when the consequences mount up," says Kavanagh.

"Addiction is tricky, it's complex, it's insidious and, for some people, it will take a long time and a lot of consequences for them to finally admit that something needs to happen."

PIC: SHUTTERSTOCK

"There's a real difference between being sober and being in recovery. Recovery isn't about just putting down the substance. It's about looking at the function that the substance served, and making changes towards being a healthier, more well-rounded person," she adds.

There is a high correlation between those who have been traumatised and those in addiction. A big focus in recovery is finding the function of drug use in that person's life, Kavanagh points out.

"People want escapism, they want to soothe at some unconscious level. Addiction is soothing. It's a balm. These are the reasons why people use, because of psychological pain or an inability to cope with what's coming up in the present."

Kavanagh is an advocate of therapy to get to 'know thyself' better, and thus to become better equipped to face the world. "You don't have to be broken to do therapy," she says, praising the Law Society's psychological service, which is available to all Blackhall Place trainee solicitors.

Rather be

She believes that there are opportunities for earlier interventions and greater awareness, and for offsetting some of the things that correlate with addiction, such as adverse childhood situations.

Cultural markers are strong around alcohol in this country, and Kavanagh believes that legal leaders should put effort into breaking those associations.

"Instead of rewarding closing the deal with boozy nights out and boozy weekends away, maybe staff should be rewarded in different, healthier ways. That would be a good place to start.

"I'd like to see a greater emphasis on promoting a more well-rounded workforce and not one that delivers on deadlines, regardless of the impact on themselves.

"I'd like to see rewards for those who turn off their laptop at six o'clock and take care of themselves, and not just for those who stay back and work every hour."

Younger generations are learning a different language of self-care, Kavanagh believes, and they will bring that into adulthood and the professional sphere as well.

Ultimately, better psychological health in the nation is a key factor in reducing the impact of addiction.

Bitter sweet symphony

"People who develop problems are not bad people," Kavanagh concludes, warning that dealing in stereotypes can mean we miss difficulties in those right in front of us. People who come to the Rutland could be your neighbour, your sister, your mother.

"They're professional people who have lovely, loving relationships, who have good careers and, for a variety of reasons, they find themselves in this really horrible place where they're relying on substances to feel okay.

"No one sets out wanting to be in addiction. It's teeny-tiny steps and teeny-tiny risks, and the links are so small that you don't see where they're headed. And those steps are hard to quantify because they're different for different people.

"Often, they're not feeling great, they're isolated, or they're feeling lonely. Generally, there's a feeling somewhere, and that's what's leading us to take that little behavioural step.

"So, the more we can be in touch with ourselves, the more we can take care of ourselves on an emotional or psychological level, then the less likely it will be for us to act out in a way that's not authentic or healthy for us." g

Mary Hallissey is a journalist at the Law Society Gazette.

> THERE'S A DIFFERENCE BETWEEN BEING SOBER AND BEING IN RECOVERY. RECOVERY ISN'T ABOUT JUST PUTTING DOWN THE SUBSTANCE. IT'S ABOUT LOOKING AT THE FUNCTION THAT THE SUBSTANCE SERVED, AND MAKING CHANGES TOWARDS BEING A HEALTHIER, MORE WELL-ROUNDED PERSON

Shop till you drop

Competition law is aligning with upcoming EU regulation of the tech sector, says Maureen O'Neill

> IT IS WORTH NOTING THE COURT'S REFERENCE TO GOOGLE AS HOLDING AN 'ULTRA-DOMINANT POSITION' – A TERM THAT HAS NOT BEEN USED IN CASE LAW TO DATE TO DISTINGUISH LEVELS OF DOMINANCE

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

On 10 November 2021, the General Court of the European Union upheld, almost in its entirety, the European Commission's 2017 decision fining Google €2.42 billion for abusing its dominant position in the market for online general search services by favouring its own comparison-shopping service (CSS) over that of competing CSSs. The commission's decision followed the first in a series of investigations undertaken by its Competition Directorate, in a move that was seen by many as an attempt to regulate 'Big Tech' through competition law.

The judgment of the court in the *Google Shopping* case (Case T-612/17) may have put to bed (for the moment) the fundamental question of whether the competition law tools of the *Treaty on the Functioning of the EU* (TFEU) remain fit for purpose in the brave new world of Big Tech. Notwithstanding, the judgment provides plenty of food for thought and speculation around the scope of article 102 of the TFEU, which prohibits the abuse of a dominant position. The court appears to endorse the commission's extension of that prohibition in the direction of greater regulation of dominant firms, a development that is not necessarily limited to the tech sector.

Personal shopper

The commission would say that the *Google Shopping* case is not novel from a competition law enforcement perspective. It found that Google had a (very) dominant position in the market for general internet search services. It has long been established that having a dominant position is not in itself a breach of competition law. However, concerns of abuse of Google's dominance arose as it expanded to offer CSS in a neighbouring market in which it faced competition. In very simple terms, a CSS collates and compares a product's features, in particular price, from across different online retailers. The CSS does not sell the product itself, but rather directs users to the retailers' websites to make a purchase. The retailer pays a fee to the CSS when a user clicks through to their website.

Following a seven-year investigation, the commission found that Google had used its dominant position in the general search market to give its CSS an advantage over competitors. Users of Google's general search engine would see results from Google's own CSS listed prominently at the top of their results page, while links to competitors of Google Shopping were demoted. The higher up on the results page that a result is placed, the more likely it is that users will click on the search result link, which generates revenue for a CSS. The commission found that this "self-preferencing" by Google, regardless of whether a rival's services were better or more relevant, was an abuse of a dominant position.

The court agreed with the commission. It confirmed that neither holding a dominant position, nor seeking to extend that dominant position into a neighbouring market, constitutes abuse in and of itself. However, the court held that, on the facts of the case, Google's practices in the general search market could result in a weakening of competition in the market for CSS.

User referrals from Google's general search engine – the search engine of choice for most users – are key to CSS in generating both user traffic and user engagement. The court noted the importance of Google's general search-engine results page to rivals' ability to compete effectively in the market for CSS. When Google demoted and reduced the visibility of the websites of CSS rivals on its general search-result page, the court agreed with the commission that Google was not competing on the merits.

Hey, big spender

It is worth noting the court's reference to Google as holding an "ultra-dominant position" on the market for general search services, a term that has not been used in case law to date to distinguish levels of dominance. As a result, in the court's view, Google had a "special responsibility" to uphold genuine and undistorted competition in the internal market.


PIC: SHUTTERSTOCK

The concept that there may be a duty on a dominant platform to give access and equal treatment to rivals active on its platform will resonate, for example, with those familiar with telecommunications regulation and energy regulation. A quasi-regulatory obligation of access also exists under competition law, but only in very narrow circumstances when the services of a dominant entity amounts to what is known as an "essential facility" (Case C-7/97 *Oscar Bronner GmbH & Co KG v Mediaprint Zeitungs und Zeitschriftenverlag GmbH & Co KG*).

Google had argued that, at its core, the commission's case was that it had refused to supply rivals, and that the commission had failed to apply the principles set down in *Bronner*. For an abuse of dominance to be found based on the essential facilities doctrine, the commission would have had to establish that Google had refused its competitors access to "indispensable" services in circumstances where they had no access to an economically viable alternative, and that this would effectively eliminate competition. Google argued that its general search engine was not "indispensable" within the meaning of the *Bronner* case law.

The court described the characteristics of Google's general search-engine-results page as "akin" to an essential facility. It also spoke of the "universal vocation" of Google's general search engine, which it referred to as open infrastructure, the credibility of which is enhanced by the fact that the results presented to users contain all possible content, including that of third-party sources. In these circumstances, the court found that there was a "certain form of abnormality" in Google favouring its own CSS over that of competitors.

In a significant development, the court held that *Bronner* was not applicable, as this case involved "an unjustified difference in treatment" by Google in the form of self-

> NEITHER HOLDING A DOMINANT POSITION, NOR SEEKING TO EXTEND THAT DOMINANT POSITION INTO A NEIGHBOURING MARKET, CONSTITUTES ABUSE IN AND OF ITSELF

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preferencing of its own CSS, rather than a refusal to supply, which is a different type of abuse. Consequently, the court held, the commission was not required to meet the restrictive requirements of *Bronner* as regards indispensability.

Healthy competition

It would seem, therefore, that dominant firms are less likely to run afoul of article 102 if they outright refuse to deal with a competitor, than if they agree to supply such a competitor, but on less favourable terms to those on which they self-supply. In the former case, the commission will be required to meet the more burdensome standards of *Bronner* in establishing an abuse of dominance.

In any case, the court was clear that the commission must conduct a robust assessment of the actual or potential anticompetitive effects stemming from any self-preferencing practices of a dominant company, which it was satisfied the commission had done in the *Google Shopping* case.

The commission's recent decisional practice in the digital space is reflected in EU legislative initiatives, such as the proposed *Digital Markets Act* (DMA), which seek to regulate digital platforms and their ever-increasing influence on user behaviour and data.

Regulation and competition law, in principle, pursue different objectives. However, the court's endorsement of the commission's expansive approach to abuse of dominance in *Google Shopping* sees an alignment of competition law with the proposed DMA, at least in respect of self-preferencing by ultra-dominant companies – a key theme across the EU's legislative initiatives in this space.

It remains to be seen whether

PIC: SHUTTERSTOCK

Google will appeal the judgment to the Court of Justice of the EU and, assuming that it does, whether the ECJ will agree with the direction of travel that the commission has set, and that the court has now endorsed. g

Maureen O'Neill is the principal of MON Legal Consulting.

LOOK IT UP

- Case T-612/17 *Google and Alphabet v Commission*
- Case C-7/97 *Oscar Bronner GmbH & Co KG v Mediaprint Zeitungs und Zeitschriftenverlag GmbH & Co KG* [1998] ECR I-7791; [1999] 4 CMLR 112

RECENT DEVELOPMENTS IN EUROPEAN LAW

CONSUMER LAW

Case C-826/19 *WZ v Austrian Airlines AG*, 22 April 2021

An Austrian Airlines passenger sought flat-rate compensation of €250 for the diversion of his flight between Vienna and Berlin. The flight had been diverted from Berlin Schoenfeld Airport to Berlin Tegel Airport, with a delay of nearly an hour. No onward transportation was offered, nor did Austrian Airlines offer to bear the cost of transportation between the two airports. Austrian argued that diversion to a close-by airport does not grant a right to flat-rate compensation. The delay was caused by significant weather difficulties.

The Austrian regional court referred the dispute to the CJEU to interpret the *Air Passenger Rights Regulation* (261/2004). The regulation provides that, where a flight is diverted to an alternative airport – but one that serves the same town, city or region – the air carrier is to bear the cost of transferring the passenger from the alternative airport to the original one, or another close-by destination agreed with the passenger.

The court held that the diversion of a flight to an airport serving the same town, city or region does not grant the passenger a right to compensation for cancellation of a flight. For the airport of substitution to be regarded as serving the same town, city or region, that airport must not necessarily be situated in the same territory as the town, city or region in which the airport for which the booking was made is situated. What matters is this: that it is near that territory.

A passenger is entitled to flat-rate compensation for reaching his or her destination three hours or more after the original planned arrival time. In order to determine the extent of the delay in arrival, reference should be made to the time at which the passenger arrives, either at the airport for which the booking was made or another close-by destination agreed with the air carrier.

To be released from its obligation to pay compensation, the carrier can rely on an extraordinary circumstance that affected, not the delayed flight, but an earlier flight by the same carrier using the same aircraft. There must be a causal link between the occurrence of the circumstance and the long delay of the later flight.

It is for the air carrier to offer to bear the cost of the transfer to the destination airport for which the booking was made, or to another close-by destination agreed with the passenger. If the air carrier fails to do this, the passenger is entitled to be reimbursed for the cost of the failure of the air carrier. However, breach of this obligation to bear the cost of transfer does not entitle the passenger to flat-rate compensation.

REPORT OF LAW SOCIETY COUNCIL MEETING
3 DECEMBER 2021

Cybersecurity Working Group

Mindful of the significant change to working environments brought about by the pandemic and the increased risk of cyber-attack as a result, the working group was established to investigate how best to assist the profession in mitigating that risk.

The Council considered the working group's report and recommendations and assigned the matter to the Coordination Committee to charge various sections of the Society with further consideration of same, prior to returning the issue to the Council.

Four jurisdictions meeting

The president reported on the November 2021 meeting of the law societies of Ireland, Northern Ireland, England and Wales, and Scotland, which had considered a range of matters that included post-pandemic court recovery, climate justice, regulatory reform, bullying, harassment and sexual harassment, mental health and wellbeing, GEDI, and the supports being provided by each society to assist Afghan lawyers.

The group will meet again in June 2022.

Judicial appointments commission

The director general summarised the report on the pre-legislative scrutiny of the general scheme of the *Judicial Appointments Commission Bill 2020* for the benefit of the meeting, and advised that the Committee on Justice had made ten recommendations in respect of the bill.

She expressed concern around one such recommendation, which proposed that eligibility criteria (in respect of knowledge and experience of the practice and procedures of the court to which a person was applying), which the general scheme proposed to apply to the superior courts, would be extended across all courts.

She had engaged with the committee to reiterate the Society's position that such criteria should be recognised as a barrier to consideration for appointment to judicial office, and removed. She had also highlighted the incompatibility of the recommendation with others that related to diversity in judicial appointments, and the consideration of legal academics for judicial office.

The Council agreed that the president should write to the Minister for Justice to express concern around the absence of solicitor appointments in the last number of rounds of appointments to the High Court bench.

Education

Committee chair Richard Hammond reported that a recent meeting had discussed difficulties arising from the lack of a visa scheme (within the Irish Naturalisation and Immigration Service) for trainee solicitors who were not citizens of the European Union or countries in the European Economic Area, and confirmed that the president had written to the Minister for Justice on the matter.

The committee had also received a report on the nascent, but ongoing, success of the PPC Hybrid in improving diversity within trainee solicitors, which would, in turn, increase diversity across the profession.

Finance

Committee chair Paul Keane reported on matters that included the 2022 budget, additional investment in low-risk bonds, the numbers of in-house solicitors holding practising certificates, and the final accounting for the Solicitors Mutual Defence Fund.

Professional indemnity insurance

Committee chair Bill Holohan reported on the 2021 renewal process and ongoing efforts to attract new insurers to the Irish market.

Miscellaneous

The Council considered and approved the following:

- *Solicitors Practising Certificate (Application Fee) Regulations 2021* and the *Registered European Lawyers (Application Fee) Regulations 2021*,
- Amendments/adjustments to committees for 2021/2022, and
- Appointment of extraordinary members of the Council representing the Law Society of Northern Ireland.

PRACTICE NOTES

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

CONVEYANCING COMMITTEE

LPT – NEW VALUATION PERIOD

A new valuation period for Local Property Tax (LPT) commenced on 1 November 2021 and will apply for the period of four years from 1 January 2022 to 31 December 2025. However, Revenue has not yet finalised revised guidelines for the transfer of property during the new valuation period, but as soon as these are available, the committee will review them and will issue guidance to the profession.

Among the significant changes that have been brought about by the *Finance (Local Property Tax) (Amendment) Act 2021* are:

- The exemption from LPT that previously applied to builders' trading stock is no longer available beyond 2021. If builders or developers have houses suitable for use as a dwelling on a liability date (that is, 1 November in any year), they must now register them with Revenue and, as owners on the relevant liability date, must pay the LPT due in respect of those properties. A builder or developer who owns a house suitable for use as a dwelling on a liability date is, in respect of that (finished) house, in the same position as any other owner of a residential property. A property that becomes suitable for use as a dwelling after 1 November in any year in a valuation period will not be liable for LPT until the following 1 November. The property will be valued as of the valuation date for the valuation period – this is 1 November 2021 in the current valuation period. For example, if a new house is built and becomes suitable for use as a dwelling on 1 July 2022, the property will become liable to LPT for the first time on 1 November 2022, but the valuation date is 1 November 2021.
- To facilitate builders and developers, Revenue has set up a new service on its website for the registration of properties that are completed between liability dates (www.revenue.ie/en/online-services/services/property/register-property-lpt.aspx). There is no obligation on a builder or developer to avail of this service. Houses that are completed and become suitable for use as a dwelling after 1 November in any given year do not require an LPT ID number in order to stamp the deed of assurance.

Interest on deferred liability

Revenue has advised that a change has been made whereby, since 25 October 2021, interest on deferred liabilities will be calculated on a weekly basis, and the amount of interest due will be reflected in the liable person's online records and also on the Property History Summary screen. In other cases (that is, where there are arrears for the previous period), solicitors should continue to exercise care when there are arrears of LPT showing on the LPT Property History Summary, as the interest due in respect of such arrears is not reflected on the Property History Summary. Solicitors are referred to the practice note issued by the committee on 2 July 2021 in this regard.

CONVEYANCING COMMITTEE

NEGATIVE INTEREST RATES

The Conveyancing Committee has drafted sample clauses to address the issue of negative interest rates in solicitors' client accounts in conveyancing. These are now available in the committee's page on the website under the 'Resources' tab.

There are three sample clauses – one where the purchaser bears the negative interest cost, one where the vendor bears the cost, and one where the cost is shared between the purchaser and vendor. It is not the function of the committee to say who should bear the cost in any given set of circumstances, as this is a matter for negotiation between the parties.

The samples provided are not intended to be precedents or in any way mandatory. They may not cover the circumstances of every case, and will need to be adjusted to the facts of a given transaction.

Practitioners are reminded to obtain the relevant instruction from the client prior to utilising the clauses.

The committee hopes the sample clauses provided will be of assistance to practitioners.

CONVEYANCING COMMITTEE

CONSENT TO REGISTRATION OF LEASE – FORM 48

Under rule 97 of the *Land Registration Rules 2012*, the consent of a person authorised to concur in the registration of a burden is to be given by written assent. This assent may be given in the instrument creating the burden. Otherwise, it is to be given in Form 48 or included in the Form 17.

In the case of the creation of a lease (for instance, in the case of a development of apartments), the assent to registration of the lease as a burden on the freehold folio will almost always be contained in the lease, and practitioners will be familiar with this requirement.

However, there are circumstances where there may not have been compliance with the requirement, and where the issue may not be so apparent.

Where the freehold title was not registered in the Land Registry at the time the lease was created, but is subsequently registered, then the question of whether the necessary assent to the registration of the lease as a burden on the freehold property was given might not arise until the leasehold property is assigned on a subsequent sale, which could be many years later. In those circumstances, the PRA may well require an assent in Form 48.

The freehold may be held by the owners' management company or, in many cases, by the original developer, and practitioners should be aware of the need, where the assent has not previously been made, for the freehold owner to execute an assent in Form 48 at the earliest stage possible to avoid subsequent difficulties with registration. g

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NOTICES: THE HIGH COURT

● **In the matter of Michelle Cronin, a solicitor practising as Michelle Cronin Solicitors at Kennedy Buildings, 24 Main Street, Tallaght, Dublin 24, and in the matter of the *Solicitors Acts 1954-2015* [2021 no 64 SA]**
Law Society of Ireland (applicant)
Michelle Cronin (respondent solicitor)
Take notice that, by order of the President of the High Court made on 18 October 2021, it is ordered that Michelle Cronin, solicitor, practising as Michelle Cronin Solicitors at Kennedy Buildings, 24 Main Street, Tallaght, Dublin 24, be suspended from practice from 28 November 2021, and be prohibited from holding herself out as a solicitor entitled to practice until further order of the court.
Registrar of Solicitors,
Law Society of Ireland,
November 2021

● **In the matter of Ann Houlihan, a solicitor previously practising as Ann Houlihan Solicitors at Alexandra House, The Sweepstakes, Ballsbridge, Dublin 4, and in the matter of the *Solicitors Acts 1954-2015* [2021 no 72 SA]**
Take notice that, by order of the President of the High Court made on 13 December 2021, it is ordered that the name of Ann Houlihan be struck from the Roll of Solicitors.
John Elliot, Registrar of Solicitors,
Law Society of Ireland,
16 December 2021

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 Ann Houlihan, a solicitor previously practising as Ann Houlihan Solicitors at Alexandra House, The Sweepstakes, Ballsbridge, Dublin 4, and in the matter of the *Solicitors Acts 1954-2015* [2020/DT05 and High Court record 2021 no 72 SA]**
Law Society of Ireland (applicant)
Ann Houlihan (respondent solicitor)
On 5 October 2021, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of professional misconduct, in that she:

1) Failed to maintain proper books of account, in breach of regulations 13 and 25 of the *Solicitors Accounts Regulations*,
2) Allowed a deficit of €380,461.79 in client funds as of 30 November 2019,
3) Failed to discharge a mortgage of €202,747.52 on behalf of a client, despite being in funds to do so, and instead misapplied this money,
4) Failed to pay a client settlement of €60,000 to her, despite being in funds to do so, and instead misapplied this money,
5) Failed to discharge stamp duty in relation to nine matters, and registration fees in each of those matters, along with an additional matter totalling €117,109, four of which appeared to contain undertakings to financial institutions, and instead misapplied this money,
6) Updated three deeds upon stamping to avoid interest and penalties,
7) Concealed the deficit on the client account by a process of teeming and lading,
8) Was in breach of the *Solicitors Accounts Regulations* and, in particular, in breach of regulations 7(1), 7(2), 9(2), 9(4), 11(4), 12(3), 13, and 25,
9) Took money directly from the client's bank account of €30,497.72 in breach of regulations 9 and 7 of the *Solicitors Accounts Regulations*,
10) Transferred money to the office account in the guise of professional fees totalling €348,198.97, in breach of regulation 12(3) of the regulations,
11) Used other client's money to conceal an overpayment of €20,000 in respect of a named client.

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

On 13 December 2021, the High Court ordered that:

1) The respondent solicitor's name be struck off the Roll of Solicitors,
2) The respondent solicitor pay a sum of €10,000 to the compensation fund,
3) The respondent solicitor pay the measured costs of the Society in the disciplinary and High Court proceedings.

● **In the matter of Thomas Ryan, a solicitor previously practising as Thomas Ryan & Co, Solicitors, at 145 Navan Road, Dublin 7, and in the matter of the *Solicitors Acts 1954-2015* [2020/DT12]**
Law Society of Ireland (applicant)
Thomas Ryan (respondent solicitor)
On 30 November 2021, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of professional misconduct, in that he:

1) Failed to account to the named complainant for the sum of €10,500 received in 2014 in a timely manner or at all, having
2) Received that €10,500 into his personal bank account, in breach of the *Solicitors Accounts Regulations*, and
3) Informed the Society on a number of occasions that he did not receive the sum of €10,500 from the complainant.

The tribunal ordered that the respondent solicitor:

1) Be censured,
2) Pay a sum of €7,500 to the compensation fund,
3) Pay the sum of €2,263 towards the costs of the Society.

WILLS

Archbold, Pamela (deceased), late of 2 Glebe North, Balbriggan, Co Dublin, and Raheny Community Nursing Unit, Springdale Road, Raheny, Dublin 5. Would any person having knowledge of any will made by the above-named deceased, who died on 13 July 2021, please contact AC Forde & Company, Solicitors, 14 Lansdowne Road, Dublin 4; tel: 01 660 8955, email: info@acforde.com

Black, Josie (deceased), late of Mullarney, Castledermot, Co Kildare. Would any person having knowledge of the whereabouts of any will made by the above-named deceased, who died on 18 May 2021, please contact Nichola Delaney, O'Flaherty & Brown, Solicitors, Greenville, Athy Road, Carlow; tel: 059 913 0500, email: nichola@oflahertybrown.ie

Brady, Thomas (deceased), late of Bindoo, Kill, Cootehill, Co Cavan, who died on 26 October 2021. Would any person having knowledge of a will made by the above-named deceased please contact Hanley & Lynch Solicitors, 24 Clonskeagh Road, Dublin 6; tel: 01 269 7633, email: info@hanleyandlynch.ie

Coughlan, Bernard (deceased), late of 24 St Eithne Road, Cabra, Dublin 7, who died on 10 April 2020. Would any person having knowledge of the whereabouts of any will made or purported to be made by the above-named deceased please contact Siobhan Purcell, solicitor, Justin Hughes Solicitors, 89 Phibsborough Road, Dublin 7; tel: 01 882 8583, email: info@justinhughes.ie

Dawe, Kevin (deceased), late of 33 Cluan Enda, Dundalk, Co Louth, who died on 23 December 1995. Would any solicitor or person having knowledge and details of a will made by the above-named deceased please contact Daniel O'Connell & Son, Solicitors, Francis Street, Dundalk, Co Louth; tel: 042 933 4065, email: info@danieloconnell.ie

RATES

PROFESSIONAL NOTICE RATES

RATES IN THE PROFESSIONAL NOTICES SECTION ARE AS FOLLOWS:

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

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ALL NOTICES MUST BE PAID FOR PRIOR TO PUBLICATION. ALL NOTICES MUST BE EMAILED TO catherine.kearney@lawsociety.ie and PAYMENT MADE BY ELECTRONIC FUNDS TRANSFER (EFT). The Law Society's EFT details will be supplied following receipt of your email. **Deadline for March *Gazette*: 11 February 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*.

Gallagher, Anthony (deceased), late of 3 Glasnamana Place, Finglas East, Dublin 11, who died on 24 October 2020. Would any person having knowledge of the whereabouts of any will made or purported to be made by the above-named deceased, or if any firm is holding same, please contact Conor Griffin, Duncan Grehan & Partners, 26 Fitzwilliam Street Upper, Dublin 2; tel: 01 677 9078, email: cgriffin@duncangrehan.com

Hearne, John (deceased), late of 4 Ard Na Mara, Malahide, Co Dublin, who died on 9 December 2020. Would any person having knowledge of the whereabouts of any will made by the above-named deceased, or if any firm is holding same, please contact Cashin Clancy Solicitors LLP, 3 Francis Street, Ennis, Co Clare; DX 25004 Ennis; tel: 065 684 0060, email: slynch@cashinclancy.ie

Hevey, Michael (Lorenzo) (deceased), late of 44 The Dingle, Palmerstown, Dublin 20, who died on 2 November 2021. Would any person having knowledge of the whereabouts of any will made by the above-named deceased, or if any firm is holding same, please contact Nicole Dillon, Porter Morris LLP, Solicitors, 10 Clare Street, Dublin 2; tel: 01 676 1185, email: ndillon@portermorris.ie

Kavanagh, John (deceased), late of 342 Orwell Park Close, Templeogue, Dublin 6, who died on 27 July 2021. Would any person having knowledge of the whereabouts of any will executed by the above-named deceased please contact Hennessy & Perrozzi Solicitors, Town Centre Mall, Swords, Co Dublin; DX 91012 Swords; tel: 01 890 1888, email: omar@hpsol.ie or info@hpsol.ie

Kennedy, Justin (deceased), late of 49 Regency Court, Friary Street, Kilkenny, who died on 9 May 2021. Would any person having knowledge of the whereabouts of any will made or purported to be made by the above-named deceased please contact Patricia Barber, solicitor, Justin Hughes Solicitors, 89 Phibsborough Road, Dublin 7; tel: 01 882 8583, email: info@justinhughes.ie

Leahy, Nora (deceased), late of 373 Conneyburrow Road, Lifford, Co Donegal, and formerly of 84 Tawnies Crescent, Clonakilty, Co Cork, who died on 6 September 2020. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Joseph McCarthy, McCarthy & Co LLP, Solicitors, 10 Ashe Street, Clonakilty, Co Cork, P85 E403; tel: 023 888 0088, email: joseph@mccarthy.ie

McCann, Maureen (deceased), late of 6 Idrone Drive, Knocklyon Woods, Knocklyon, Templeogue, Dublin 16, who died on 26 January 2021. Would any person having knowledge of the

whereabouts of the original will executed by the above-named deceased on 28 April 2017 please contact Suzanne McDonnell, McDonnell & Company, Solicitors, 13 Rathborne Village Centre, Ashtown, Dublin 15; tel: 01 899 6005, email: info@mcdonnell-solicitors.ie

McCarthy, Eileen (deceased), late of Nire Road, townland of Knockaun (also known as Knockaunbrandaun), Ballymacarbry, Co Waterford, who died on 15 July 2020. Would any person having knowledge of the whereabouts of the original will executed by the above-named deceased on 12 October 1998 please contact Mary T Ronayne and Associates, Solicitors, The Brewery, Shandon, Dungarvan, Co Waterford; tel: 058 48717, email: info@mtronayne.com

McGillycuddy, Marguerite (deceased), late of Claddagh, 2 Mansfield Drive, Wexford, Co Wexford, who died on 3 June 2016. Would any person having knowledge of a will made by the above-named deceased please contact MJ O'Connor LLP Solicitors, Drinagh, Wexford, Co Wexford; DX851006 Drinagh; tel: 053 912 2555, email: sturner@mjoc.ie, within 28 days of the date hereof

Margaret Martin (deceased), late of Castlelumney, Dunleer, Co Louth, who died on 10 July 2020. Would any person having knowledge of the whereabouts of any will executed by the above-named deceased please contact Branigan & Matthews, Solicitors, 33 Laurence Street, Drogheda, Co Louth; tel: 041 983 8726, email: info@branmatt.ie

Morgan, Brian (deceased), late of 80 River Gardens, Glasnevin, Dublin 9. Would any person having knowledge of the whereabouts of any will made by the above-named deceased, who died on 24 November 2021, please contact Paul W Keogh & Co, Solicitors, 103 Lower Baggot Street, Dublin 2; tel: 01 676 2129, email: info@paulwkeogh.ie

O'Brien, Timothy (deceased), late of 11 Arkle Square, Brewery Road, Stillorgan, Co Dublin, who died on 28 October 2021. Would any person having knowledge of any will made by the above-named deceased please contact Coonan Cawley, Solicitors, Wolfe Tone House, Naas Town Centre, Naas, Co Kildare; tel: 045 899 571, email: office@coonancawley.ie

O'Shea, Simon (deceased), late of Erinagh, Clonlara, Co Clare, who died on 5 November 2021. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Margaret O'Connell, Dermot G O'Donovan Solicitors, Riverpoint, Lower Mallow Street, Limerick; tel: 061 314 788, email: moconnell@dgod.ie

O'Toole, James (deceased), late of 60 Old County Road, Crumlin, Dublin 12, who died on 3 September 2021. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact David O'Brien of McMahon O'Brien Tynan, Solicitors, Mill House, Henry Street, Limerick; DX 3004; tel: 061 315 100, email: dobrien@modlaw.com

Tweedie, Patricia (deceased), late of 10 Westway Close, Blanchardstown, Dublin 15, who died on 8 October 2021. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Carmody Moran Solicitors LLP, 11/12 The Plaza, Main Street, Blanchardstown, Dublin 15; tel: 01 827 2888, email: solicitor@carmodymoran.ie

TITLE DEEDS

In the matter of the *Landlord and Tenant Acts 1967-2019* and in the matter of sections 3 and 17 of the *Landlord and Tenant (Ground Rents) Act 1967*, as amended, and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978*, as amended, and in the matter of the premises known as O'Herlihy's, situate at 26 Main Street, Castleisland, Co Kerry: an application by M O'Herlihy Limited

Notice to any person having any interest in the freehold estate of the following property: all that and those property known as O'Herlihy's, 26 Main Street, Castleisland, Co Kerry, demised by a lease dated 30 December 1930 from Mary Roche, Josephine Roche, Redmond Roche, Bernard Roche, William Roche, Mary Roche and Kate Roche of the one part and Aloysius Roche of the other part (the lease) and therein described as "all that and those the dwellinghouse, shop and premises with the appurtenances thereunto belonging, situate in the Main Street in the town of Castleisland in the county of Kerry, now in the occupation of the said lessee for a term of 99 years at a yearly rent of £29.7.6".

Take notice that M O'Herlihy Limited (the applicant), being the person entitled to the interest of the lessee under the lease in respect of the property described above and known as O'Herlihy's, 26 Main Street, Castleisland, Co Kerry, intends to apply to the county registrar of the county of Kerry for the acquisition of the freehold interest and all intermediate interests in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid property is called upon to furnish evidence of their title to same, to the below, within 21 days from the date of this notice.

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

Date: 4 February 2022
Signed: David Twomey & Co (solicitors for the applicant), 55 Main Street, Castleisland, Co Kerry

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of the land and premises known as no 58/59 Grenville Lane, Dublin 1: an application by John White

Take notice that any person having an interest in the freehold estate or any superior or intermediate interest in the property known as 58/59 Grenville Lane, Dublin 1, being the land demised by a lease dated 16 November 1953 made between Thomas Meagher of the one part and Peter Taylor of the other part for the term of 50 years from 1 September 1953, subject to the yearly rent of £2, should give notice of their interest to the undersigned solicitors.

Take notice that the applicant, John White, intends to apply to the county registrar for the county of the city of Dublin for the acquisition of the freehold and all intermediate interest in the said property, and any party asserting that they hold an interest therein is called upon to furnish evidence of their title to the undersigned solicitors within 21 days from the date of this notice.

In default of any such notice of interest being received, John White intends to proceed with the application before the county registrar on the aforementioned date and will apply to the county registrar for the county of the city of Dublin for such directions as may be appropriate of the basis that the person or persons beneficially entitled to all or any of the superior interests in the said property are unknown or unascertained.

Date: 4 February 2022
Signed: EP Daly & Co (solicitors for the applicant), 23/24 Lower Dorset Street, Dublin 1

In the matter of the *Landlord and Tenants Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents)*

(No 2) Act 1978 **and in the matter of part of the premises situate at rear of 21 Castle Street, Dalkey, Co Dublin**

Take notice any person having an interest in the freehold estate or the intermediate interest in the following property: part of the premises to the rear of 21 Castle Street, Dalkey, Co Dublin, held under an indenture of lease dated 14 April 1966 and made between Anne Maria Ivimey of the one part and Kathleen Kelly of the other part for a term of 94 years from 1 May 1966.

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

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

Date: 4 February 2022
Signed: John O'Connor, Solicitors (solicitors for the applicant), 60 Merrion Road, Ballsbridge, Dublin 4

In the matter of the *Landlord and Tenant Acts 1967-2019* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978*, and in the matter of the premises known as 13 Gladstone Street, Clonmel, Co Tipperary, comprised in Folio TY4685L of the leasehold register of Co Tipperary, and in the matter of an application by Bernard (orse Benny) McCarthy, Noel Brennan and Joe Kearney (the applicants)

Take notice that any person having any interest in the freehold estate or any superior leasehold estate of the following property: all that and those the property shown coloured green as plan(s) D032U on the registry map, situate in the parish of St Mary's, Clonmel, in the townland Burgagery-Lands West, in the barony of Iffa and Offa East, in the electoral division of Clonmel West Urban, comprised in a lease created and dated 25 May 1870 (the lease) from Pierse Grace and Jerome J Guiry to Thomas Reidy and Thomas Joseph McGredy for a term of 199 years from 1 May 1870, subject to a yearly rent of £40 pounds sterling (subsequently adjusted to £38.50) (the rent) reserved by the lease and the lessee's covenants and conditions therein contained, now comprised in folio TY4685L of the leasehold register county Tipperary, and in the lease therein described as "all that that and those the large store in Johnson Street in the town of Clonmel, lately in the occupation of Michael Guiry Esquire, deceased, adjoining the premises lately taken by the Munster Bank, together with the large yard partly at the rear of the said store and partly at the rear of the said Munster Bank premises, together with the full, free, and uninterrupted but not exclusive right of way and of ingress, egress, and regress unto said demised premises through the passage leading from Johnson St aforesaid thereto, and said Munster Bank premises as same or more particularly marked out, delineated, and described in the map or terchart in the margin hereof, situate, lying, and being in the parish of St Mary, in the said town of Clonmel, barony of Iffa and Offa East, and county of Tipperary aforesaid".

Take notice that applicants, the registered owners of the property comprised in Folio TY4685L, being the persons entitled to the lessee's interest created by the lease, namely (1) Bernard (orse Benny) McCarthy of 1 Springfields, Clonmel, Co Tipperary, as full owner as tenant-in-common of one undivided one-third share; (2) Noel Brennan of Bramble Lodge, Mountain Road, Clonmel, Co Tipperary, as full owner as tenant-in-common of one undivided one-third share; (3) Joe Kearney of Galboola, Thurles, Co Tipperary, as full owner as tenant-in-common of one undivided one-third share, intend to submit an application to the county registrar for the county of Tipperary at Clonmel Courthouse, Nelson Street, Clonmel, Co Tipperary, for the acquisition of the freehold interest in the aforesaid premises, and any party asserting that they hold a superior interest, including the freehold reversion in the aforesaid premises (or any of them), are called upon to furnish evidence of title to the applicants' below-named solicitors within 21 days from the date of this notice.

Take notice that, in default of any such notice being received by their solicitor, the applicants intend to proceed with the application before the county registrar on the expiry of 21 days from the date of this notice and will apply to the county registrar for directions as may be appropriate on the basis that the persons beneficially entitled to the superior interest including the freehold reversion in the aforesaid premises are unknown or unascertained.

Date: 4 February 2022
Signed: Henry Shannon & Co (solicitors for the applicants), Kickham Arch, Davis Road, Clonmel, Co Tipperary

In the matter of the *Landlord and Tenant Acts 1967-2019* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of an application by Bart Cunningham and Kathleen Cunningham in respect of the premises known as Mount Pleasant Business Centre, Ranelagh, Dublin 6

Take notice any person having an interest in that portion of land the subject of an indenture of lease (the lease) dated 3 April 1941 between Lionel Wood Church and Haviland Waters of the one part and Elizabeth Doran of the other part for a term of 99 years from 25 February 1941 at a rent of £57 per annum (but apportioned as to £19 in respect of the premises), included in an indenture of assignment dated 17 December 1947 between Kevin Browner and Gerard Browner of the one part and James McGurk of the other part and therein described as all and singular the garden or plot of ground delineated on the map endorsed on these presents and on said map edged with a red line and situate at the rear of the houses and premises numbers 1, 2, 3 and 4 Kensington Villas, Upper Rathmines, in the city of Dublin, together with the carriageway separating the said premises numbers 1, 2, 3 and 4 Kensington Villas aforesaid on the west side thereof from the said garden or plot of ground and the carriageway separating the said premises numbers 1, 2, 3 and 4 Kensington Villas aforesaid on the north side thereof from the premises known as Gulistan Terrace.

Take notice that Bart Cunningham and Kathleen Cunningham, being the persons entitled to the leasehold interest therein under the lease, intend to submit an application to the county registrar for the county of Dublin for acquisition of the fee simple and any intermediate interest in the aforesaid premises, and any party asserting that they hold a superior interest in the aforesaid premises (or any of them) are called upon to furnish evidence of the title to the aforementioned premises to

the below named within 21 days from the date of this notice.

In default of any such notice being received, Bart Cunningham and Kathleen Cunningham intend to proceed with the application 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 each of the aforesaid premises are unknown or unascertained.

Date: 4 February 2022

Signed: McHale Muldoon (solicitors for the applicant), Denshaw House, 121 Lower Baggot Street, Dublin 2, D02FD45

In the matter of the *Landlord and Tenant (Ground Rents) Acts 1967-2019* and in the matter of the *Landlord and Tenant (Amendment) Act 1980* and in the matter of an application by Ronald S Naylor, Teeling Street, Ballina, Co Mayo

Any person having interest in the superior interest and/or the freehold estate of the following property: the hereditaments and premises at Teeling Street (formerly Arthur Street) in the town of Ballina, parish of Kilmoremoy, barony of Tyrawley, and county of Mayo, held under lease dated 12 September 1925 and made between John Egan of the one part and Mary Francis McCawley of the other part for a term of 99 years from 1 October 1925 at the annual rent of £6.

Take notice that the said Ronald S Naylor intends to apply to the county registrar of the county of Mayo to vest in him the fee simple and any intermediate interest in the said property, and any party asserting that they hold a superior interest in the aforesaid property is called upon to furnish evidence of title to same to the below-named solicitors within 21 days from the date of this notice.

In default of any such notice being received, Ronald S Naylor intends to proceed with the application before the county registrar for the county of Mayo at the end of 21 days from the date of this notice and will apply to the Mayo County Registrar for such directions as maybe appropriate on the basis that the person or persons beneficially entitled to the superior interests including the freehold reversion in the aforesaid property are unknown or are unascertained.

Date: 4 February 2022

Signed: Ian Dodd (solicitor for the applicant), Abbey Street, Ballina, Co Mayo, F26 KH36

RECRUITMENT

Conveyancing/probate solicitor required for busy office in Carrick-on-Shannon, Co Leitrim.

Ideal candidate to have experience in the purchase of new and second-hand residential properties, purchase and sale of agricultural land and commercial units. Experience in the drafting of wills, gathering in of assets, and submitting relevant forms to the Probate Office, administering estates and distributing the assets. Must have working knowledge of CAT legislation. Computer skills essential. Good communication skills and ability to deal with clients. Have ability to work on their own initiative and work as part of a team. Profit-sharing arrangement/partnership in time for ideal candidate.

If you wish to apply for this role, please email your CV and cover letter to info@georgelynch.ie. Closing date for the application is 21 February 2022 by 5.30pm.

PRO BONOBO

Gotta catch 'em all? You gotta catch 'em all...

● Two LA police officers have been fired for ignoring a robbery so they could catch a character in a game of Pokémon Go, *The Guardian* reports.

According to court documents, their car's video system revealed that one of the officers had managed to capture a Snorlax before the pair drove to another location, where a Togetic character had been spotted. Louis Lozano and Eric Mitchell were asked to respond to a robbery in progress with "multiple suspects" at a Macy's in south-west LA, but chose to ignore radio calls in favour of pursuing the Snorlax.

They appealed, arguing that the city had violated the law by using the in-car system recording as evidence. The court denied their petition.

Come with me if you want to live

● Talking terminator tech terror-toads are a step closer than ever. Although a spokesman would presumably refuse to put it in those terms, boffins do say that 'living robots' made in a lab have found a new way to self-replicate. In a sci-fi staple, scientists have witnessed a never-before-seen type of replication in organic robots (given the completely non-threatening name 'xenobots') that were created in the lab using frog cells.

Among other things, the findings could have implications for regenerative medicine. Researchers from the University of Vermont, Tufts, and Harvard published the discovery in the *Proceedings of the National Academy of Sciences*.

Time to get the banana skins out

● A German court has ruled that a man who fell while walking from his bed to his home office can claim on workplace accident insurance, as he was technically commuting, *The Guardian* reports.

While moving between the connecting rooms, the man slipped on a spiral staircase and broke his back.

The federal social court noted that the employee usually started working in his home office "immediately, without having breakfast beforehand". It later said that statutory accident insurance was only afforded to the "first" journey to work, suggesting that a fall on the way to get breakfast after already being in the home office could be rejected.

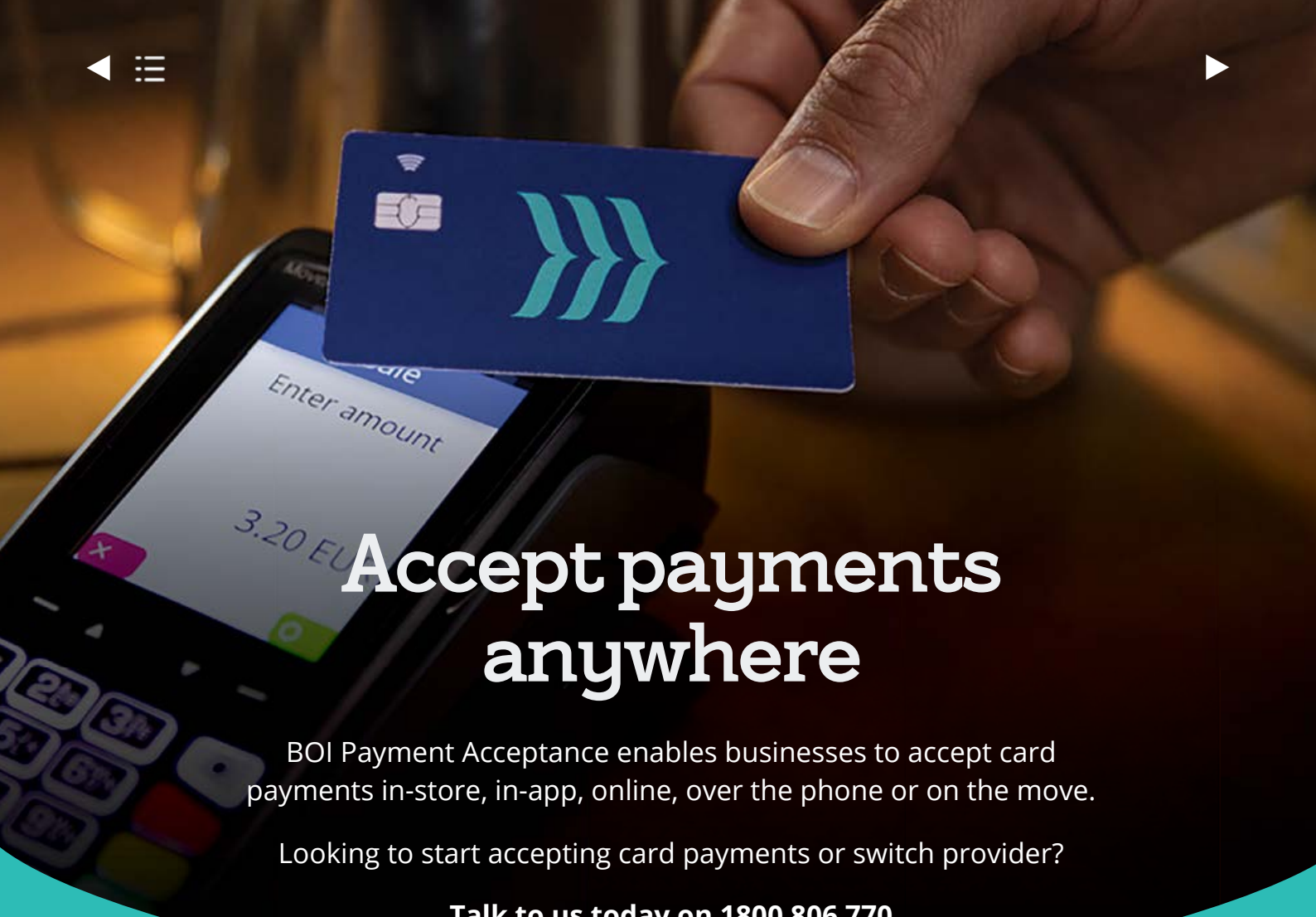
Two lower courts had disagreed on whether the journey was a commute, but the federal social court sagely found "the first morning journey from bed to the home office [to be] an insured work route".

Not a leg to stand on

● An Austrian court has fined a surgeon for amputating the wrong leg of a patient, RTÉ reports.

While the 43-year-old defendant said her actions were due to human error, the judge found her guilty of gross negligence and fined her €2,700, with half the amount suspended.

The surgeon had marked the wrong leg of the 82-year-old patient for amputation ahead of the operation in May in the central town of Freistadt, only noticing the mistake two days after carrying out the surgery. The court awarded €5,000 in damages plus interest to the widow of the patient, who died before the case came to court.



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