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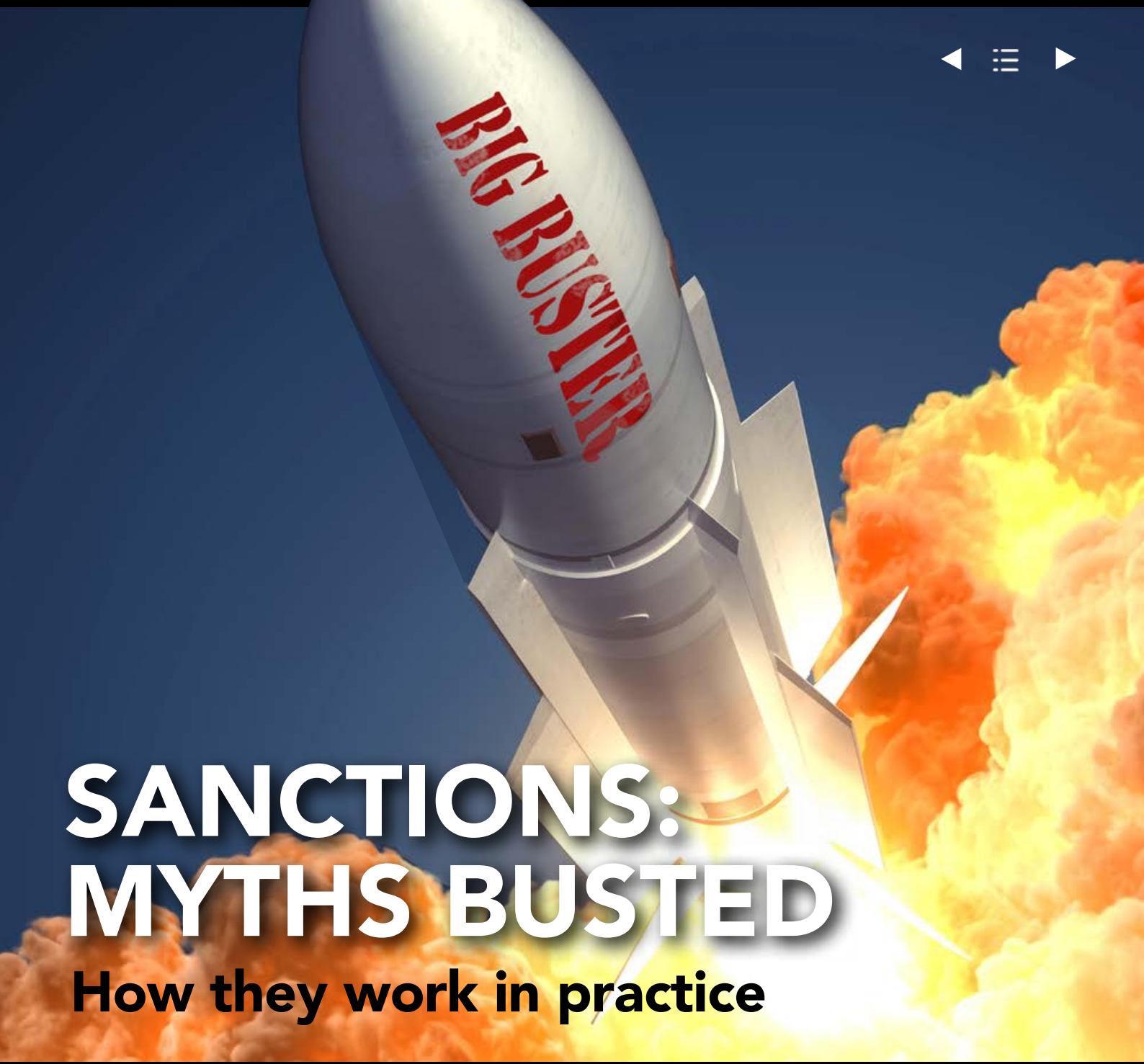
LAW SOCIETY

LAW SOCIETY OF IRELAND



SANCTIONS: MYTHS BUSTED

How they work in practice

AMAZING GRACE

Solicitor and sexual-assault survivor Sarah Grace talks about renewal

BIRD IN THE HAND

A detailed look at the recent case law on the pensions pot of gold

SECURITIES GUARD

The management and disclosure of information and Irish securities law

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navigating your interactive

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LAW SOCIETY

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gazette
LAW SOCIETY

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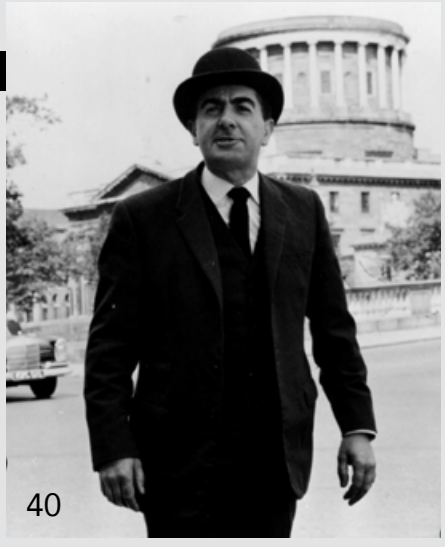
FEATURES

REGULARS



Reaching out

I hope that you are having a constructive start to the new court term and the last quarter of the calendar year. We are very much in 'back-to-business' mode in Blackhall Place. The first group of trainees has now started the new fused PPC course – 470 trainees, a number not seen for well over a decade.

This new course streamlines the taught elements of solicitor training and is the most significant reform to solicitor education in Ireland in over two decades. It is part of our work to increase access to solicitor training – in conjunction with the Hybrid PPC, which will start on a fused basis in January.

I had the very welcome opportunity to meet with the trainees in person as they began their studies at Blackhall Place, and to celebrate the continued success of trainees in international mooting, negotiating, and client-counselling competitions.

Ireland for Law in NY

The Law Society has taken part in a mission to New York with the Government, State agencies, and the Bar of Ireland as part of the Ireland for Law initiative. Ireland was promoted as a jurisdiction for all forms of legal services by all participants during the visit. Discussions were very constructive and highlighted Ireland's many strengths as an English-speaking, common-law jurisdiction in the EU.

In September, the Law Society of Northern Ireland commemorated the centenary of its founding. I had the privilege of attending the 100th anniversary meeting of the Council of the Law Society of Northern Ireland and the dinner to mark the historic founding of our sister organisation on this island.

I also had the honour of hosting our annual Committees Dinner, which returned after a two-year gap caused by the pandemic. We celebrated with our colleagues from all sectors of the profession who give up their time to work as volunteers on our many committees and task forces. Our committee members work tirelessly and selflessly on matters of legal significance for the general public, clients, and their solicitor colleagues.

Gala Dinner

The Law Society's Gala Dinner will take place on 14 October, which is our annual fundraiser on behalf of the Solicitors' Benevolent Association. This year, we will be awarding the first Law Society Justice Award. The award, which will be made to the people of Ukraine, will be accepted on their behalf by the Ukrainian Ambassador to Ireland, Gerasko Larysa.

> THE NEW FUSED PPC COURSE IS THE MOST SIGNIFICANT REFORM TO SOLICITOR EDUCATION IN IRELAND IN OVER TWO DECADES

I hope to see many of you, including colleagues from the private and public sectors, large and small practices, and from all parts of the country, at this excellent networking event, on what promises to be a very enjoyable evening.

Michelle Ní Longáin

MICHELLE NÍ LONGÁIN,
PRESIDENT

THE BIG PICTURE

DOWN TO THE WATERLINE

A girl walks on the exposed river bed of the Yangtze River in Chongqing, China, in September 2022. The country has been hit by its most severe heatwave in six decades, leading to the lowest water levels along the Yangtze River. China recorded its highest temperatures and one of its lowest levels of rainfall in 61 years during a two-month summer heatwave that caused forest fires, drought, damaged crops and reduced power supplies. The national meteorological agency reported that 267 weather stations across China recorded their highest-ever temperatures during the month of August

PIC: ZUMA PRESS, INC./ALAMY LIVE NEWS

Mayo solicitors meet at Mount Falcon

At the Mayo Solicitors' Bar Association (MSBA) annual dinner at Mount Falcon Castle in Co Mayo were Law Society President Michelle Ní Longáin, Marc Loftus (president, MSBA), and Mark Garrett (director general, Law Society)

Marc Loftus with guest speaker Mary Robinson (former President of Ireland) and Nick Robinson

ALL PICS: JOHN O'GRADY

Paul Moylan (president, Belfast Solicitors' Association), Brigid Napier (president, Law Society of Northern Ireland), and Marc Loftus (president, MSBA)

On behalf of the MSBA, Marc Loftus made presentations to mark the recent retirements of Judge Raymond Groarke (retired president of the Circuit Court), Fintan Murphy (retired county registrar for Mayo), and Judge Patrick Durcan (retired, District Court)

Brian O'Keeffe, Barbara Loftus, Marc Loftus, Rosemarie Loftus, Mary Loftus, Lyndann Kiely, David Kiely, Deirdre Loftus, Garrett Loftus, and Angela McKenna

Derek Duffy, Siobhan Duffy, Deirdre Loftus, Marc Loftus, Elizabeth Duffy and John Duffy

Marc Loftus and Judge Sandra Murphy

Mary Catherine Durcan, Siobhan Murphy, Judge Sandra Murphy, Judge Patrick Durcan, Charlie Murphy, and Patrick Murphy

David and Muiríosa O'Malley

Marc Loftus made long-service awards to solicitors Patrick Moran (50 years), Adrian Bourke (52 years), and John Gordon (51 years). Rory O'Connor, who would have been 53 years practising, received a posthumous award

Paul Moylan (president, Belfast Solicitors' Association) and Wendy Davidson

Society launches new fused PPC

ALL PICS: JASON CLARKE PHOTOGRAPHY

The Law Society launched its new fused Professional Practice Course on 6 September 2022. It represents a once-in-a-generation change to the system of solicitor training in this jurisdiction. A total of 470 trainee solicitors attended welcome lectures and events held on the Blackhall Place campus. They were welcomed by President Michelle Ní Longáin, Mark Garrett (director general) and TP Kennedy (director of education)

Warm Wicklow welcome for president and DG

Damien Conroy (president of the Wicklow Solicitors' Bar Association) welcomed Law Society President Michelle Ní Longáin and director general Mark Garrett to the 'Garden County' on 19 July. Their meeting was followed by the association's AGM and annual dinner – *(front, l to r)*: Michael Moran, Mark McGuire (secretary), Mark Garrett (director general), Michelle Ní Longáin (president, Law Society), Damien Conroy (president, WSBA), Brian Robinson (vice-president, WSBA), Ian Bracken, and Donal O'Sullivan; *(middle, l to r)*: Gus Cullen, Paddy Jones, David Tarrant, George Colley, Paul McKnight, Paddy McNeice, and Dervla Quinn; *(back, l to r)*: Andrew Tarrant, Denis Hipwell, Cathal Louth, Maria Byrne, and Patrick Egan

On parole

Law Society President Michelle Ní Longáin, Justice Minister Helen McEntee, Mr Justice Michael White (chair of the Parole Board), and authors Dr Shane McCarthy and Vivian Geiran at the launch of *Probation and Parole in Ireland: Law and Practice* (Clarus Press) on 26 May

Guiding lights

PIC: JASON CLARKE PHOTOGRAPHY

At the launch of the new edition of the *Solicitor's Guide to Professional Conduct* on 21 September were Law Society Director General Mark Garrett, Law Society President Michelle Ní Longáin, President of the High Court David Barniville, Justine Carty (chair, Guidance and Ethics Committee), Brendan Dillion (committee member), and Pamela Connolly (committee secretary)

Media skills refresher

The Law Society has announced details for its Communications Day 2022, which is free of charge and open to all Society members.

The online Zoom webinar (Wednesday 26 October, 10am to 1.30pm) will focus on building effective media skills. The purpose is to support members to develop a mix of practical communications skills to build a subject-matter expert profile. This will enable solicitors to engage with the media to share their expertise in their local communities and contribute to the wider national discourse on the law and access to justice in Irish society.

Advance registration is essential before 5pm on Monday 24 October. Visit www.lawsociety.ie/news/news/Stories/communications-day-2022.

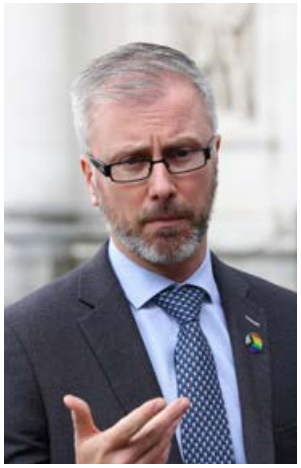
Bill will introduce paid leave for victims of domestic violence

The Government has approved the publication of a bill that will introduce paid leave for victims of domestic violence. The proposed legislation also includes a range of measures aimed at improving family-friendly work practices and supporting women in the workforce.

The Department of Children, Equality, Disability, Integration and Youth says that, once the *Work Life Balance and Miscellaneous Provisions Bill 2022* is enacted, those who are suffering or at risk of domestic violence will be entitled to five days of paid leave a year.

The Government has also pledged to put in place measures for employers to help them to develop policies on domestic violence and to provide better support for employees experiencing domestic violence.

These measures were recommended by the *Domestic Violence Leave Report*, which the Government has also approved.



Minister Roderic O'Gorman will introduce legislative provisions

The bill also contains three main measures designed to support families and carers:

- A right to request flexible working arrangements for caring purposes, for parents and carers,
- A right to leave for medical-care purposes, both for employees with children up to age 12 and carers, and
- Extension of the current entitlement to breastfeeding/lactation breaks from six months to two years.

The bill follows a 2019 EU directive on work/life balance, which set a deadline of August this year for member states to introduce the required measures. On 22 September, the European Commission issued letters of formal notice to Ireland and a number of other EU states over their failure to notify the EU about the transposition of these measures. Minister Roderic O'Gorman will now introduce legislative provisions providing for a form of domestic-violence leave as committee-stage amendments to the bill.

Ireland files intervention in Ukraine case against Russia, says ICJ

The International Court of Justice says that Ireland has filed an intervention in a case taken by Ukraine against Russia under the *Convention on the Prevention and Punishment of the Crime of Genocide*. Ireland argues that it can intervene in the proceedings, as it is a party to the convention.

In its declaration, according to the ICJ, Ireland refers to "the essential function of the prohibition of genocide in ensuring the interests of humanity", as well as the universal nature of states' rights and obligations under the convention. "As a contracting party, Ireland has a direct interest in the construction that might be placed by the court on the relevant provisions of the convention, and wishes to see the consistent interpretation, application, and fulfilment of the convention among all contracting parties," its intervention states.

The ICJ, based in The Hague, has invited Ukraine and the Russian Federation to give written observations on Ireland's intervention.

In its application, Ukraine contends that Russia has falsely claimed that acts of genocide have occurred in the Luhansk and Donetsk regions of Ukraine, and is using this claim to justify its recognition of the so-called 'Donetsk People's Republic' and 'Luhansk People's Republic' and its invasion of Ukraine.

Ukraine "emphatically denies" that such genocide has occurred, and it also accuses Russia of "planning acts of genocide in Ukraine".

Several other EU states have also filed interventions in the case. Ireland had already announced that it planned to seek leave to intervene in another case taken by Ukraine against Russia before the European Court of Human Rights.

New *Guide to Professional Conduct* launched

● The fourth edition of the *Solicitor's Guide to Professional Conduct* was launched on 21 September at the Presidents' Hall in Blackhall Place by High Court President Mr Justice David Barniville and Law Society President Michelle Ní Longáin.

Compiled by the Law Society's Guidance and Ethics Committee, which is chaired by solicitor Justine Carty, the guide was described by Mr Justice Barniville as an "exceptionally important publication" for the solicitors' branch of the profession. "It's an extremely impressive piece of work and, without doubt, the most important publication that every solicitor must have close at hand at all times," he said.

In his speech, Mr Justice Barniville referred to the unanimous Court of Appeal judgment this year in *Law Society v Doocey*, which upheld the decision to strike off a young solicitor on grounds of dishonesty. He pointed to the judgment's position that the continuing vitality of the standards of honesty, integrity, and trustworthiness was essential to the maintenance of confidence in the solicitors' profession, which was a key component in the administration of justice.

Committee chair Justine Carty told the launch that the guide, last published in 2012, was overdue an update because of changes in legislation. The latest edition did not impose any new obligations on solicitors, Carty explained, rather "it incorporates updates to legislation, in practice notes, and in case law, with a new section in relation to best practice in undertakings".

ALL PICS: JASON CLARKE PHOTOGRAPHY

Mr Justice David Barniville

The guide is a reference in ethics and professional conduct for all solicitors – by solicitors and for solicitors – whether in private practice, in the public sector, or working in-house, and for those beginning their career and those on the brink of retirement. "The guide is to be used as an information tool to assist solicitors in their decision-making in relation to the many and varied decisions that arise in practice," she added.

One copy of the guide will be posted to each practice in the country, with further copies available on application, Carty explained. The guide is also available online, using the opt-in function of the members' area of the Law Society's website.

President Michelle Ní Longáin commented that she was delighted to attend the launch of such an important publication, which outlined best practice in both conduct and ethics for solicitors. "It's an invaluable support for our professional lives, and the foundation of the values upon which the solicitors' profession in Ireland rests, " she said.

Its publication had been a huge task, taken on by the highly dedicated Guidance and Ethics Committee, she said. Providing this update in guidance and ethics assured the public in general, and clients in particular, of the very clear expectation and requirement that solicitors in Ireland worked to high standards at all times, she said.

She praised the dedication and voluntary hard work that had gone into producing the guide, which was designed to be user-friendly and to give answers quickly: "I encourage each of my colleagues to read and absorb it, and have it as a bible to consult and reflect upon," she said.

Fraud offences jump 43%

● **The latest CSO figures show that fraud crimes jumped 43% (or 4,877) in the year to Q2 2022 compared with the same period in 2021. There were 16,202 fraud, deception, and related offences in the year to Q2. This increase was largely driven by unauthorised transactions and attempts to obtain personal or banking information online or by phone.**

Most categories of recorded crime increased in that period, though homicide and related offences were down 38% (-24). Attempts or threats to murder, assaults, harassments and related offences rose by 21%. Controlled drug offences, meanwhile, fell by 27% (-6,133), while theft and related offences were up 23% (+10,559). Public-order and other social-code offences increased by 10% (2,753). Weapons and explosives offences were down 11% (-314).

Ireland's trafficking blind spot

● **The Council of Europe has flagged the low level of convictions in Ireland for human trafficking, urging the country to "step up its fight".**

Gardaí identified 103 suspected victims in 2017; 64 in 2018; 42 in 2019; 38 in 2020; and 44 in 2021. To date, there have been no convictions for labour trafficking in Ireland.

European Commission Q&A on SCCs

To keep all data protection solicitors on their toes, the European Commission – almost a year after releasing the new standard contractual clauses (SCCs) – issued a Q&A on them on 25 May, *writes Elaine Morrissey (senior manager privacy/legal counsel at ICON plc).*

The Q&A deals with article 28 SCCs and international transfers SCCs. While it would have been extremely helpful had it been issued in June 2021 in tandem with the release of the new SCCs, it does provide clarity on a number of key areas of contention – for example, completing the SCCs, altering text, and (most importantly) clarity on the use of the new SCCs for data transfers to controllers or processors whose processing operations are directly subject to the GDPR.

The commission states that the new SCCs are not suitable where the data recipient (data importer) is subject to the GDPR by virtue of article 3. It goes on to say that the commission is in the process of developing new SCCs for this particular scenario – in essence 'SCCs lite'.

While this clarity is welcome,

it does put those engaged in international transfers of personal data in a difficult position, as there is currently, in certain scenarios, no appropriate mechanism for transfers. With the new SCCs being the only available 'option' in certain scenarios, some companies are continuing to use the new SCCs in the absence of any other option. While data-protection solicitors eagerly await the release of 'SCCs lite', the topic of international transfers and SCCs remains a challenging one that is not likely to abate anytime soon.

Please refer to the June 2022 issue of the *Gazette* for a detailed article on international transfers.

ENDANGERED LAWYERS

MARYAM DARVISH AND MARYAM ALKOZAY, AFGHANISTAN

In late July, the CCBE received this email:

"My name is Maryam Darvish and I am a human-rights activist and defence lawyer from Kabul, Afghanistan. I worked as a defence lawyer for the International Development Law Organisation and a member of the Afghanistan Independent Bar Association for more than four years. Most recently, I served as a researcher for the Institute of War and Peace Studies in Kabul.

"Personally, as a victim of domestic violence, and as a defence lawyer, I had been working on many cases of domestic and family violations against women in Kabul. Several of the domestic-violation cases I had pursued have now posed life threats for me and my son.

"I was working on cases of violation against women and young girls who were forced for marriages. I had fought for their rights until the very last minute before the fall of the Afghan government last year. Some of those cases of women's rights violation and honour killing of women have now turned into trouble for me. I have been under constant threats. I no longer feel safe in Kabul and have been living in hiding for almost ten months. I have knocked on many doors of various countries to seek help, but haven't heard anything from anyone so far. I came across your organisation online and am asking for help.

"As a single mom and as a woman victim of domestic violence, life under the Taliban's rule has been extremely difficult for me and my family over the past ten months. I can't work, can't go out without a chaperone, and life has become immensely difficult and suffocating. I am reaching out to you for help. Please kindly help me if you can or refer me to any organisation or entity that can be of help.

"I would highly appreciate your help and support. Your support saves my life and my family's. I look forward to hearing from you."

In early August, the CCBE received another appeal. Both appeals were circulated to its members.

"I am Maryam Alkozay from Afghanistan. I was a defence lawyer. After the arrival of the Taliban, my life was in danger. My family and I were able to reach Pakistan with many difficulties. I am currently living in Pakistan. This country will bring me back to life; Afghanistan, maybe the Taliban will destroy me. The Taliban went to our house several times and searched for me. My life is in danger. I am seeking international protection. Please help me. I need your help. Please transfer me to a safe place."

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

Maximise tax relief via pension contributions

The deadline for final tax payment for the 2021 tax year under the self-assessment system is fast approaching.

One way to reduce your tax liability is to make a contribution to an approved pension arrangement.

You can still be eligible for a tax refund for 2021 by putting money into a pension scheme and submitting a claim to Revenue before 31 October 2022 (16 November if you submit your return online).

Tax relief is available at your marginal rate of tax, subject to an earnings limit of €115,000 and contribution rates that are dependent upon your age.

There are also tax advantages at retirement, in that you can take up to 25% of your fund as a lump sum, with up to the €200,000 available tax free (subject to conditions). Your funds also accumulate tax free while invested.

Law Society members who are self-employed, in partnership, or in non-pensionable employment are eligible to make a pension contribution to the Law Society Retirement Trust Scheme. The scheme offers all the flexibility of a personal policy and, in addition, offers a number of enhanced features, including a simple and transparent charging structure and best-in-class investment management.

There is also a flexible 'Lifestyle Strategy' in place that gradually reduces the level of equity risk in your retirement fund the closer you get to your chosen retirement age.

More information can be obtained from the scheme administrator at Mercer by emailing JustASK@mercer.com or by phoning 01 411 8505. A copy of the scheme's explanatory booklet can also be found on the Law Society's website (search for 'financial benefits').

Age	% of net relevant earnings
Up to age 30	15%
30 to 39	20%
40 to 49	25%
50 to 54	30%
55 to 59	35%
60 and over	40%

IRLI IN TANZANIA

SHARED EXPERIENCES IN TANZANIA

The IRLI team in discussion with judges of the Tanzania Court of Appeal and the High Court at the Integrated Justice Centre in Mwanza

In July, IRLI's Aonghus Kelly (executive director), Norville Connolly (country director, Tanzania and Zambia), and Sean McHale (programme manager) met with counterparts from the judiciary, police, NGOs, and other international organisations in Tanzania, as part of the ongoing project on institutional partnership building between the Irish, Northern Irish, and Tanzanian criminal justice systems.

The team was fortunate to meet many organisations and individuals committed to preventing and combatting child sexual abuse (CSA). In Dar es Salaam, the Legal and Human Rights Centre and the Legal Services Facility (NGOs run by lawyers) showed the power of promoting access to justice and increasing citizens' knowledge of legal rights and processes. At the same time, the Tanzanian Women Judges' Association is working hard to highlight the problems surrounding CSA cases and train judges on how to overcome them.

In the capital, the police showed their commitment to the vital task of increasing both the number and quality of Police Gender and Children's Desks across the country. These act as a first port of call for reporting CSA crimes but, in a country that is approximately the size of France and Germany combined, providing an effective first-responder service is no small task, especially in rural areas where societal norms often give preference to informal or interfamilial resolutions.

In Mwanza, IRLI visited the Integrated Justice Centre and saw the efforts being made to improve the experience of young and vulnerable witnesses giving evidence. Despite such efforts, however, securing the evidence of survivors and witnesses to CSA crimes can be very difficult, and remains a large obstacle in the successful investigation, prosecution, and fair adjudication of such cases.

The trip was very productive and deepens IRLI's ongoing work in Tanzania and its commitment to tackling CSA in the country. Insights and other information gathered will shape the agenda for the visit of four Tanzanian judges to Ireland in November, as well as future visits from the Tanzanian police and a mutual learning programme to be implemented during the lifetime of the project.

Aonghus Kelly is executive director of IRLI.

Kerry cluster upskills solicitors on key issues

● Dozens of solicitors from across Kerry took part in the 'Essential Solicitor Update Kerry' conference at the Ballygarry House Hotel, Tralee, on 15 September.

Organised by Law Society Skillnet in association with Kerry Law Society, the event is the fifth in an annual series of specialised training events that are designed to support local solicitors to upskill on topics related to legal practice.

John Galvin (secretary, Kerry Law Society) said that the association was heartened to see such a positive response to this year's first in-person event since 2019. "Over 120 solicitors from across Kerry and the surrounding areas attended the conference in order to upskill in essential areas of practice to better serve local clients," he told the *Gazette*.

"Expert speakers in conveyancing and probate addressed the conference, highlighting key issues for local solicitors and their clients – including buying and selling property, making a will, and planning ahead," he said. "The event discussed the top-ten conveyancing and registration tips to ensure that local solicitors are providing their clients with the best advice when it comes to their next property transaction."

The conference also discussed recent developments in the Fair Deal Scheme and how solicitors could help their clients plan ahead. "Solicitors are at the heart of local communities and deal with clients of varying ages and needs every day," explained Galvin. "We understand the importance of making a will and ensuring it is kept up-to-date, and we encourage everyone above the age of 18 to have a will made. We also understand the pressures that come with caring for loved ones, whether that is in making decisions on their behalf or establishing plans for their long-term care needs. For this reason, local solicitors are up-to-date and can advise on initiatives like the Fair Deal Scheme and how it can best work for your family's personal circumstances."

Security experts welcome oversight

● International experts on the oversight of national security have welcomed Ireland's plans for legislation on the issue, but have raised concerns about some aspects of the proposals.

They were speaking at a conference entitled 'Oversight of national security in Ireland: lessons from Australia and the UK', which took place on 23 September at NUI Galway.

The general scheme of the *Policing, Security and Community Safety Bill* includes a proposal to strengthen oversight of national security through the establishment of the Independent Examiner of Security Legislation.

David Anderson, a former UK Independent Reviewer of Terrorism Legislation, described the Government's move to set up the new oversight role as "radical".

See Gazette.ie for the full story.

Central Bank issues home under-insurance warning

PIC: SHUTTERSTOCK

The Central Bank has told insurance companies that they must do more to warn customers about the consequences of under-insuring their homes. A review carried out by the regulator found that under-insurance in the home insurance market had been steadily increasing over the last five years – from an average of 6.5% of paid claims being under-insured in 2017, up to 16.5% in 2021.

Under-insurance is when the sum insured on a property is less than the amount it would cost to rebuild or replace the property. If an under-insured policyholder makes a claim, an insurer can reduce the sum it must pay against the claim in proportion to how much the policyholder is under-insured.

The Central Bank gives the example of a house with a rebuilding cost of €200,000 that is insured for only €100,000, or 50% of its value. If there is partial damage to the house of €50,000, then only 50% of the €50,000 will be paid out by the insurance firm.

The review found that the average reduction due to under-insurance in claims paid out in 2021 was around 19%, leaving consumers with substantial remaining costs.

The Central Bank carried out the exercise due to the rising costs of rebuilding, which will affect the level of insurance cover that people should have on their property. It has now told insurers to communicate the risks of under-insurance "in a clear and understandable way", including:

- Writing to all home insurance policyholders explaining under-insurance,
- Setting out the implications of being under-insured, the reasons why this is currently a heightened risk, and how policyholders can better estimate an adequate value,
- Providing clear examples of the consequences of under-insurance, and
- Treating the risk of under-insurance as 'key information' and disclosing it as such to customers.

Kelly's heroes

Irish Rule of Law International (IRLI) has announced that executive director Aonghus Kelly is to take up a six-month role as a senior advisor on the Prosecution of International Crimes in Ukraine.

Kelly has been seconded by the Irish Department of Foreign Affairs and, from the end of September, will work with the EU Advisory Mission.

IRLI said: "We wish Aonghus all the best in this difficult and important role in Ukraine and, of course, look forward to working with him again on his return."

IRLI's current director of programmes James Douglas will act as executive director in the interim.

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

The neurodiverse lawyer

Q I am a senior associate working in a small-to-medium-sized firm. I was diagnosed with autism in early adulthood. At times, I feel overwhelmed by the increasing day-to-day responsibilities and the demanding workload. I want to seek advice as to how I might disclose my new diagnosis to my manager, and how I might ask for reasonable adjustments to my work. I also wonder what my firm can do to support neurodivergent legal professionals?

A Struggling with a workload without having adjustments is common among neuro-divergent persons for a variety of reasons, including executive dysfunction and sensory stimuli that cause distraction. Workloads are high in the legal profession, and the pressure to fulfil targets can feel overwhelming. This may have an adverse effect on neurodivergent persons, who can struggle with consistency and keeping stress levels low. It's crucial to realise that this does not make you bad at your job; it just means that you need to do things differently. You probably bring other valuable things to your team.

After a lengthy period in the company, disclosure may seem difficult. However, you can disclose and seek adjustments at any point throughout your employment. Neurodiversity understanding isn't perfect, and adjustments aren't always given in the way you desire, but hold firm in the knowledge that you are not asking for too much or obtaining an unfair advantage This is simply levelling the playing field – and a legal right. For this reason, ensure you keep a record of any correspondence about adjustments.

Asking for adjustments and disclosing can be quite straightforward. Pick a superior with whom you feel comfortable talking, then (depending on the structure of your firm) you may be referred to HR for a two-way discussion.

Discussing may be tiring, so choose a comfortable time and place. You should be honest about your difficulties – this isn't an admission of failure. To avoid forgetting anything, it is helpful to write these down beforehand. Your employer may not always know what you need, but there are many resources and organisations that can assist. It is also useful to meet other neurodivergent people and discuss what helps them.

The sorts of support required vary widely depending on the individual, but some examples include deadline flexibility and working from home, organisational software or administrative assistance, and more regular meetings with management.

Firms can take many measures to support neurodivergent staff. First, create an adjustments policy that tells employees that they can disclose at any time, and how to request adjustments. This should be a standard element of hiring and supporting all employees, regardless of whether they have disclosed. These adjustments are often affordable and help more than one person.

Second, firms may consider neurodiversity in day-to-day practices. Have they developed a structure for a meeting, given everyone enough time to speak, considered room volume and lighting, etc?

Third: flexibility is key. If you're autistic and can't come in one day due to sensory overload, the firm's capacity to provide work from home can make a world of difference. Inclusion requires abandoning the mindset "this is how it's always been done".

Neurotypical employees should learn from neuro-divergent persons and challenge their own biases. Instead of expecting every team member to have the same abilities and inputs, management should recognise varied talent profiles.

To help people 'bring their complete selves' to work, we should encourage open dialogues about these topics, challenge misconceptions, and stop perceiving neurodiversity as a weakness – but, rather, a normal diversity in cognitive functioning. This is about supporting the full person, strengths and weaknesses. g

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

This question and response are hypothetical and were written by Amelia Platton, founder of the Neurodiverse Lawyer Project (https://neurodiverselawyer.co.uk). 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. Visit the Law Society Psychological Services' website for more information.

Two become one?

Two new sources of social-media content law could lead to 'rule duplication'. For two decades, the only regulation of significance protected companies – not users. Arthur Denneny argues that perhaps the new rules will be better than no rules at all

> THE ARRIVAL OF THE *ONLINE SAFETY AND MEDIA REGULATION BILL 2022* AND THE LESSER-KNOWN *DIGITAL SERVICES ACT* SO CLOSELY TOGETHER – AND TARGETING THE SAME SECTORS – MAY LEAD TO UNCERTAINTY, CONFUSION AND REGULATORY OVERLAP

Practitioners will be aware that, for over 20 years, the primary source of European law relating to social-media companies has been set out in the *eCommerce Directive*. Unfortunately, the protective focus of this directive was not directed at service users. Instead, the directive offered protections to social-media companies themselves.

The much-anticipated *Online Safety and Media Regulation Bill 2022*, and the lesser-known *Digital Services Act*, look set to shift the regulatory focus from one of industry protection to one of industry obligation. However, the arrival of both sets of regulatory proposals, so closely together and targeting the same sectors, has led to accusations of possible 'rule duplication'.

Protective directive

Recital 8 of the *eCommerce Directive* indicates that its purpose was to create a legal environment that facilitated the free movement of online services throughout the EU. To move freely, social-media companies needed a consistent European regulatory structure – preferably, one where they were protected from liability in respect of any harmful content that users placed on their platforms. Without these protections, the free movement of such enterprises would not be feasible.

It is within this context that the *eCommerce Directive* emerged. For social-media companies, articles 12, 13 and 14 of the directive meant that member states were obliged to create rules where social-media companies, subject to some restrictions, would be immune from platform-content liability. Though change is on the horizon, this regulatory framework still applies today.

Regulatory refocus

Two pieces of proposed legislation will now compel a European wide regulatory refocus. Both the *Online Safety and Media Regulation Bill 2022* (being the Irish State's transposition of the *Audio-Visual Media Services Directive 2018*) and the *Digital Services Act* (a European Commission proposal the final text of which is scheduled for formal adoption by the European Council in September 2022) will compel member states to create a suite of new rules that will be applied to social-media companies.

While the protections afforded by the *eCommerce Directive* will remain, it is the double source of these new regulations that has caused industry consternation. In May, Ronan Costello (senior policy manager at Twitter) advised the Joint Committee on Media, Tourism, Arts, Culture, Sport and the Gaeltacht that Ireland should consider delaying the enactment of some of the provisions of the *Online Safety and Media Regulation Bill* if those provisions "overlap with proposals currently under development in the context of the *Digital Services Act*".

Costello's suggestion clearly denotes concern that both sets of proposals contain some similar provisions. Similar provisions, directed at the same sectors but from two different sources, may lead to uncertainty, confusion, and regulatory overlap.

Inevitable crossover

In the circumstances, it is inevitable that regulatory crossover will occur. Both sets of proposals are replete with many iterations of this. For example, article 38 of the *Digital Services Act* and section 6 of the *Online Safety and Media Regulation Bill 2022* both require member states to create competent authorities to implement and oversee the operation of each new regulation.

Additionally, once established, article 6 of the *Digital Services Act* and section 139K(4) of the *Online Safety and Media Regulation Bill* will oblige each new competent authority to create new rules that will oblige social-media companies to detect and assess the availability of illegal content on their platforms. However,

'Silly games that you were playing, empty words we both were saying' – Spice Girls

PIC: ALAMY

despite these similarities, some very significant differences exist also.

Similarities and differences

The similarities between the two provisions are heavily outweighed by the significance of their respective differences. For example, the *Digital Services Act* will undoubtably apply to the same social-media companies that are protected by the *eCommerce Directive*. Article 2(f) effectively ensures this by explicitly duplicating the same definitions for targeted services as are defined in the *eCommerce Directive*.

However, the *Online Safety and Media Regulation Bill* is less certain when it comes to targeting social-media companies. Sections 139K(1) and 139K(3) permit member states to create new rules for social-media companies only if their platforms are (a) used to post harmful content (content that is a risk to a person), or (b) the service provided by the social-media company is essentially an online television-like service.

A member state must be satisfied that at least one of these thresholds is reached before designating a social-media company as a service to which the new rules apply. If

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'Free your mind of doubt and danger'

PIC: ALAMY

a service does not reach this threshold, then the new rules may not apply.

Meanwhile, article 47 of the *Digital Services Act* will require the creation of a supranational European Board for Digital Services Coordinators. This board will consist of the digital services coordinators from each member state and will serve to advise the European Commission on matters relating to the *Digital Services Act*. This concept is not reciprocated within the *Online Safety and Media Regulation Bill 2022*.

Additionally, for the *Digital Services Act*, size is a factor – articles 26 and 27 will require social-media companies with over 45 million monthly users to determine if their services are used to disseminate illegal content. If so, steps are to be taken to prevent or restrict this. Again, the *Online Safety and Media Regulation Bill 2022* makes no such reciprocal size distinction.

Legitimate observation

Arriving so close together and targeting the same sectors, both provisions will justifiably attract accusations of duplication. Therefore, Mr Costello makes a legitimate observation.

For the practitioner, however, it is best to view both the *Online Safety and Media Regulation Bill 2022* and the *Digital Services Act* collectively. They represent a limited first step towards online safety regulation. Combined, they enter a space where, for two decades, the only regulation of significance served to protect, not users, but social-media companies. In that context, new rules, even if duplicated, would seem to be better than no rules at all. g

Arthur Denneny is a senior solicitor at the Child and Family Agency (TUSLA).

LOOK IT UP

LEGISLATION:

- *Audiovisual Media Services Directive* (Directive (EU) 2018/1808)
- *Digital Services Act* (Regulation 2022 on a single market for digital services and amending Directive 2000/31/EC)
- *Electronic Commerce Directive* (2000/31/EC)
- *Online Safety and Media Regulation Bill 2022*

LITERATURE:

- *Digital Services: landmark rules adopted for a safer, open online environment* (European Parliament press release, 5 July 2022)
- *Questions and Answers: Digital Services Act* (European Commission, 20 May 2022)

FOR THE *DIGITAL SERVICES ACT*, SIZE IS A FACTOR – ARTICLES 26 AND 27 WILL REQUIRE SOCIAL-MEDIA COMPANIES WITH OVER 45 MILLION MONTHLY USERS TO DETERMINE IF THEIR SERVICES ARE USED TO DISSEMINATE ILLEGAL CONTENT. IF SO, STEPS ARE TO BE TAKEN TO PREVENT OR RESTRICT THIS. AGAIN, THE *ONLINE SAFETY AND MEDIA REGULATION BILL 2022* MAKES NO SUCH RECIPROCAL SIZE DISTINCTION

All at sea

Why were former Chief Justice Frank Clarke and former High Court President Peter Kelly cajoled into resigning their judicial positions in the United Arab Emirates, when the ultimate beneficiaries would have been UAE litigants, asks Seth Barrett Tillman

> IF THERE IS NOTHING WRONG WITH A RETIRED JUDGE BEING PAID FOR LECTURES AND BOOKS, THEN THERE IS NOTHING WRONG WITH PAYING A RETIRED JUDGE TO REMAIN ACTIVE IN THE TRADITIONAL JUDICIAL FUNCTION

On 27 July 2022, two Irishmen won a grand prize. Had they won gold medals at the Olympics, or the Fields Medal in maths from the International Mathematical Union, or an Oscar from the Academy of Motion Picture Arts and Sciences, their countrymen would have cheered.

However, these two Irishmen had the misfortune of winning an even greater prize – one rarely offered. These two retired Irish judges – former Chief Justice Frank Clarke and former President of the High Court Peter Kelly – were appointed as judges to a foreign court, a specialised commercial court in the United Arab Emirates (UAE), which applies common law as opposed to Sharia law. This is the equivalent of the Nobel Prize in law.

Instead of wild applause, many of their countrymen booed. After pressure and criticism was publicly voiced from many quarters, the judges resigned from their foreign judicial posts. As a result, an opportunity that should have been seized and promoted was lost and squandered. If the stakes were not so serious, one might laugh.

So why did they boo? What's wrong with one of your citizens being appointed to a UAE or other foreign court? Two reasons were put forward. First, accepting a UAE judicial post 'legitimises' a brutal regime – one with a terrible human-rights record. I fully credit that characterisation. The UAE is a brutal regime: it lacks a democratically elected legislature, and it does have a terrible human-rights record. But that is precisely why these appointments should have been celebrated.

Judicial independence

Very few regimes round people up and shoot them on the spot. Today, even the most brutal regimes, absent an active war, go through legal formalities, including trials and appeals. If the system is unjust, it is because the laws are unjust or because the judges depart from basic principles of fair play and neutrality. Here, the UAE's government was trying to do just the opposite: the law to be applied was not local law, but common law and, so, presumptively fair; and the judges would not be people with local attachments, but foreigners unconnected to local prejudice, custom, clan, and religion. Such foreign judges were institutionally well positioned to be fair to people of any condition, colour, or creed.

To put it another way, the touchstone of whether Clarke and Kelly should have kept their foreign posts was not whether the regime was a good one; rather, it was whether they would have enjoyed judicial independence when deciding cases, causes, and claims. If they would have had the opportunity to decide cases absent political interference, then their being on that court would have only enhanced human rights in the UAE. And is not that the goal? In those circumstances, it is true that the UAE might have enjoyed a bit of an improvement to its international reputation – but, in those circumstances, that result would have been quite deserved. The upshot of the resignation of the Irish and other foreign judges would be to leave those trapped in UAE judicial fora with only local judges applying local law. Is that a good result? Quite obviously, it is not.

To put it slightly differently, if Ireland were selling weapons or instruments to a regime that could use them to torture or monitor its citizens, then a human rights-based argument against trade would make some sense.

But as long as Ireland permits UAE citizens and students to vacation here and study here, and as long as Ireland continues to export its butter, lamb, and technology to the UAE, then there is every good reason to export judicial legal services as well. Treating legal services differently from agricultural and technological exports is

PIC: ALAMY

pure elitism and pure virtue signalling – it has nothing to do with improving the lot of those actually living (and litigating) in the UAE.

Monetising judicial office?

The second objection was that Clarke and Kelly were monetising judicial office. That's just wrong. They are not in office – they are retired. What they do or would have done in a UAE court would have no consequential effect on litigation in Ireland, where they had held judicial office. What they were monetising was their knowledge and experience accrued while members of the bench and bar. That's a good thing, not a bad thing.

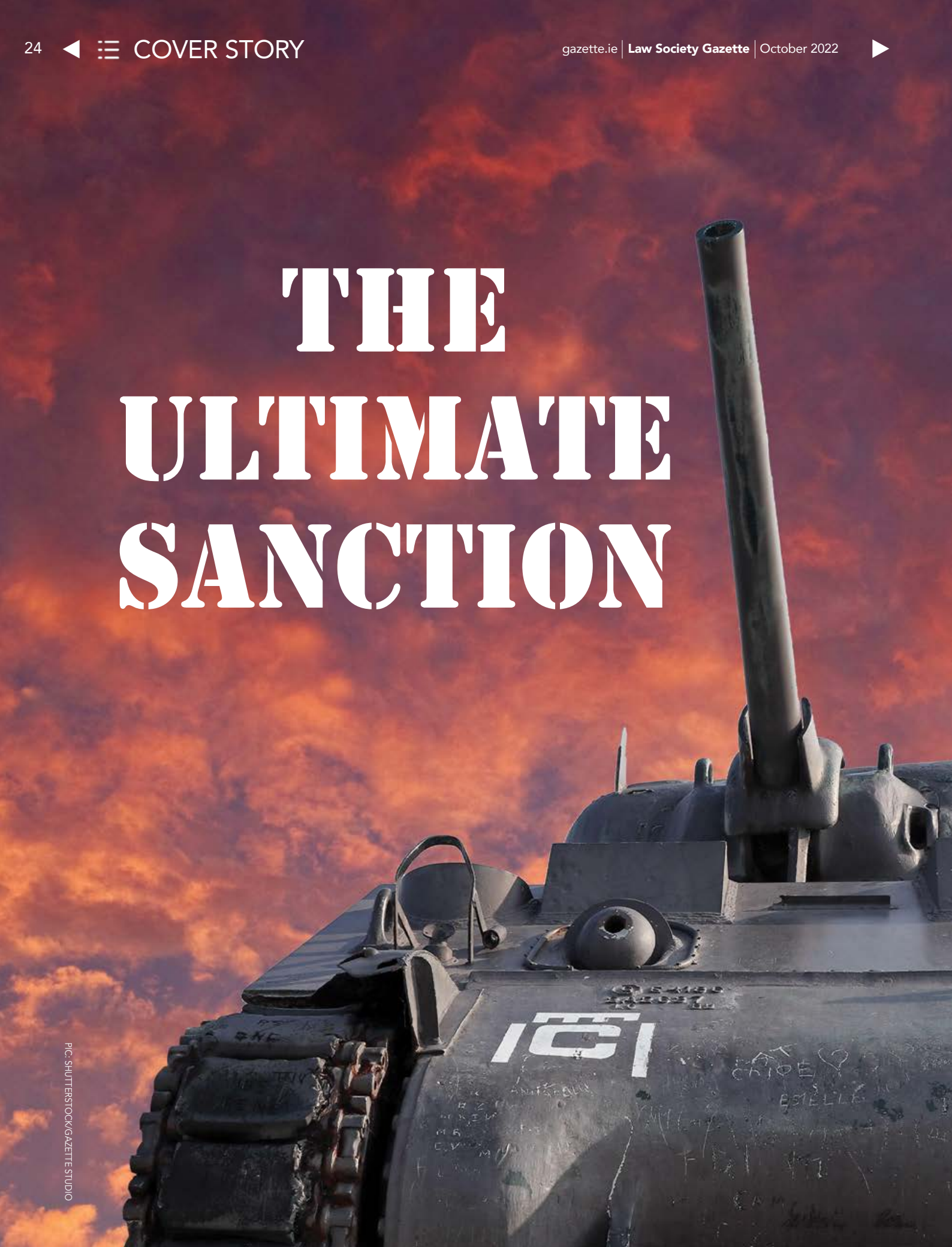
Does anyone doubt that it is a good thing that retired judges become faculty members in universities and law departments, give public lectures, and write books and articles? Has anyone ever suggested that they must do those things for free?

The reason we are at sea in this particular situation is because it is so rare for a judge to receive a foreign judicial post – but the principle to be applied is the same one. If there is nothing wrong with a retired judge being paid for lectures and books, then there is nothing wrong with paying a retired judge to remain active in the traditional judicial function.

I think this *imbroglio* did undermine the reputation of the Irish judiciary, but that is only because the judges gave in to bullying. They should have held firm. It would have been a better result, a far better result, for themselves personally, for Ireland, and for the litigants in the courts of the UAE. g

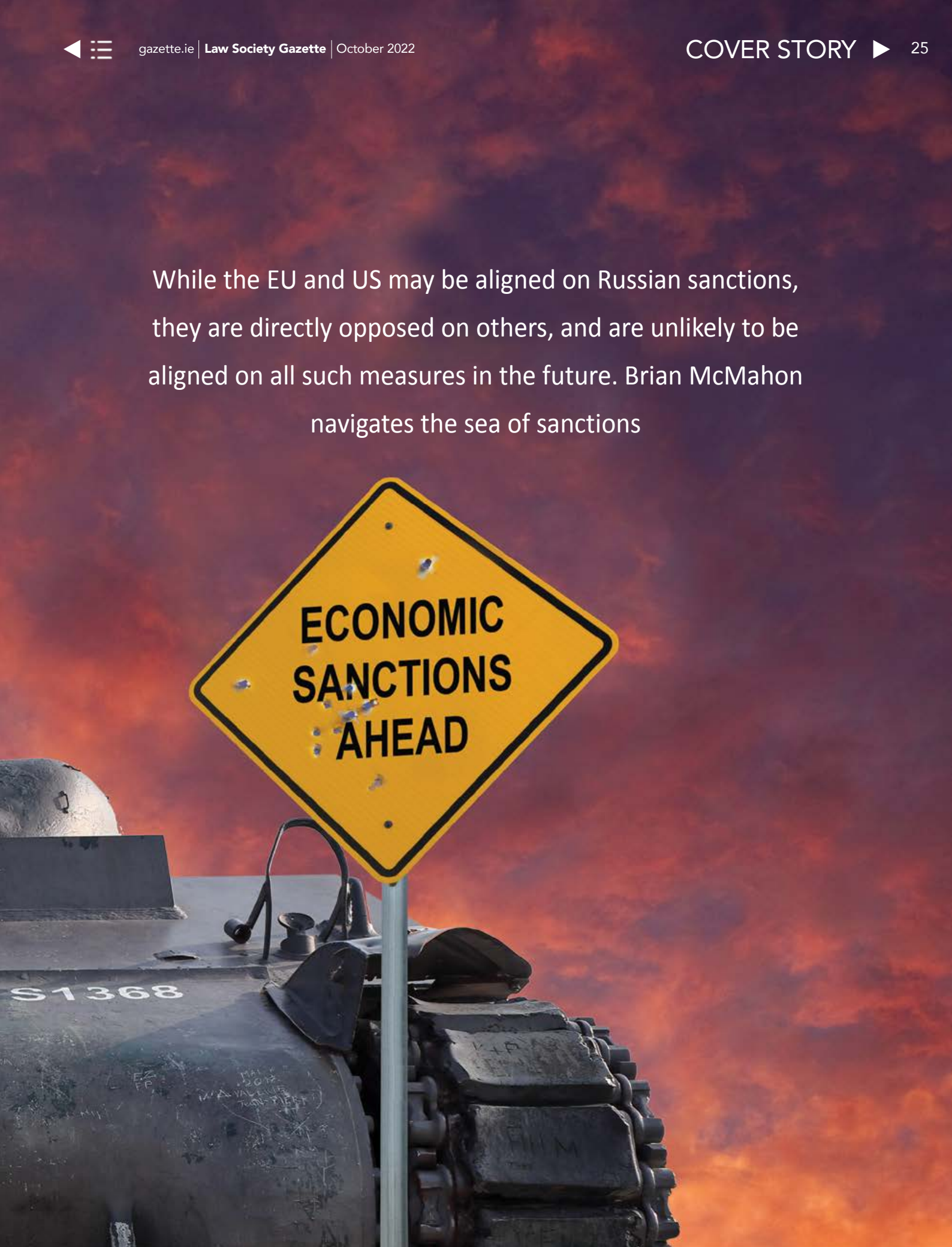
Seth Barrett Tillman is an associate professor in the Maynooth University School of Law and Criminology/Scoil an Dlí agus na Coireolaíochta Ollscoil Mhá Nuad.

THE ULTIMATE SANCTION



PIC: SHUTTERSTOCK/GAZETTE STUDIO

While the EU and US may be aligned on Russian sanctions, they are directly opposed on others, and are unlikely to be aligned on all such measures in the future. Brian McMahon navigates the sea of sanctions



The Russian invasion of Ukraine has led to a range of sanctions by the European Union on Russian companies and individuals. The sanctions imposed on Russia by the EU are not the first sanctions by the EU. For example, prior to any of the latest sanctions, the EU had sanctioned entities such as the 'Islamic State' group.

Not many Irish businesses have dealings with the Islamic State, however, whereas the size and importance of the Russian economy has meant that the Russian sanctions have a real and immediate impact for many Irish businesses and professionals.

Of course, the EU and its member states are not the only countries that impose sanctions, and any solicitors advising their clients on compliance with sanctions have to keep in mind not only the EU and Irish sanctions regimes, but also the regimes of other countries – in particular, that of the United States.

Sanctions – what are they?

In the words of the European Commission, EU sanctions may target governments of non-EU countries, as well as companies, groups, organisations, or individuals through arms embargoes, travel bans, asset freezes, or other economic measures, such as restrictions on imports and exports. Member states, including Ireland, are responsible for the implementation and enforcement of EU sanctions, as well as for identifying breaches and imposing penalties.

Of course, the EU is not the only world power to use sanctions nor, indeed, is it the first or the largest imposer of sanctions. That honour must fall to the US, where sanctions have been used as a foreign-policy tool for decades and where, following the collapse of the Soviet Union in 1989 – an event that left the US with comparatively huge economic power – their use by the US expanded greatly. The post-September 11 period saw the US expand its sanctions' regime further to exploit its control of the world's reserve currency, the US dollar, to create what are known as 'secondary sanctions'.

Primary and secondary

The EU limits itself to primary sanctions, which prohibit parties in Europe engaging in transactions with sanctioned entities. The US has expanded its sanctions' regime beyond primary sanctions, to secondary sanctions. These are much more extensive, and act to prohibit parties in the US from engaging in transactions with third parties anywhere in the world that engage in transactions with sanctioned entities.

PIC: ALAMY

> THE *BLOCKING STATUTE* AIMS TO PROTECT EU OPERATORS BY NULLIFYING THE EFFECT WITHIN THE EU OF ANY FOREIGN DECISION, INCLUDING COURT RULINGS, BASED ON THE FOREIGN SANCTIONS ANNEXED TO THE STATUTE

Many entities based in the EU will have numerous contacts with the US, and will need to retain access to the US market and the US financial system, and to maintain an ability to conduct business in US dollars. Secondary sanctions put all these requirements at risk, since they prevent any US entity from engaging in business with an EU entity that does business in breach of US sanctions.

Secondary sanctions effectively present companies based in the EU with the choice of continuing to deal with the sanctioned entity, or maintaining access to the US market and dollar-denominated system. Faced with this choice, companies will almost inevitably choose the US.

Sanctions on Iran

At the moment, the US and the EU are relatively closely aligned on the sanctions applicable to Russia. But they are not always so closely aligned and, in fact, in the recent past, the EU and the US have adopted contrary positions on certain sanctions, most particularly in relation to Iran.

In 2015, the EU and US agreed with Iran to lift sanctions in return for moves related to nuclear disarmament. With the election of Donald Trump to the US presidency, however, the US reneged on its agreement and reimposed sanctions, including secondary sanctions, on Iran. This action, in addition to severely undermining the agreement with Iran, exposed the relative weakness of the EU in the face of US sanctions.

No sooner had the US imposed secondary sanctions than EU companies, notwithstanding EU support for economic engagement with Iran to bolster the nuclear-disarmament agreement, quickly shied away from any dealings with Iran. The French oil giant Total abandoned its investment in Iran's oil fields, and the Belgian Society for Worldwide Interbank Financial Telecommunication cut off Iranian access.

The European Commission has stated that the American action in imposing secondary sanctions is "contrary to international law, that it threatens the integrity of the single market and the EU's financial systems, reduces the effectiveness of the EU's foreign policy, and puts strain on legitimate trade and investment in violation of basic principles of international law".

The EU response to what amounted to a *de facto* challenge to foreign policy independent of the United States was largely twofold. Firstly, the EU established a 'special-purpose vehicle' named INSTEX, designed to process payments between Iran and its international trading partners, and thereby facilitate trade that would otherwise be inhibited by American sanctions.

The EU also revived the 1990s-era *Blocking Statute* (Council Regulation 2271/96), which prohibits compliance with the US sanctions. The *Blocking Statute* aims to protect EU operators by nullifying the effect within the EU of any foreign decision, including court rulings, based on the foreign sanctions annexed to the statute. The statute prohibits EU persons from complying with such sanctions, and allows affected EU persons to recover damages caused by the sanctions (though not, of course, from the US government, which benefits from State sovereignty).

> FOR IRELAND, AN EU MEMBER STATE WITH DEEP ECONOMIC TIES TO THE UNITED STATES AND GROWING TIES TO CHINA, THE CONFLICTING SANCTIONS REGIMES OF THESE THREE MAJOR ECONOMIC POWERS COULD PRESENT A PARTICULARLY DIFFICULT CHALLENGE

The law also allows parties to seek derogations from the European Commission from the obligation to comply with the statute, and requires EU persons and companies to inform the commission if the targeted sanctions affect their economic or financial interests.

Bank Melli Iran case

The Court of Justice has ruled on one case concerning the *Blocking Statute*: the case of *Bank Melli Iran v Telekom Deutschland GmbH*.

Following the reintroduction of sanctions against Iran by President Trump, Bank Melli Iran – an Iranian bank with a branch in Germany, whose main business was to settle foreign trade transactions with Iran – was made subject to US primary sanctions on 5 November 2018. At the time, the bank had a contract with Telekom Deutschland GmbH for the provision of telecommunication services. The contract itself was of insignificant value, about €2,000 per month, but Telekom Deutschland is a subsidiary of Deutsche Telekom, a company with a significant presence in the US market, where it generates over 50% of its turnover.

On 16 November 2018, Telekom Deutschland terminated its contract with the bank and, on 28 November, the bank sued Telekom for breach of the *Blocking Statute*, claiming that the termination of the contract was motivated solely by the desire to comply with US secondary sanctions annexed to the statute.

Initially, the bank secured an injunction from the regional court in Hamburg, requiring Telekom to continue to provide services until the end of the contractual notice period, and then sought a further order compelling Telekom to continue to provide the service, even after the termination date. This request was refused by the regional court, and appealed by the bank to the Hanseatic Higher Regional Court in Hamburg, which referred a number of questions concerning the *Blocking Statute* to the Court of Justice.

LAW SOCIETY SANCTIONS HUB

The Law Society website provides a detailed guide to the EU's sanctions on Russia and Belarus. Search 'sanctions' on the site or see lawsociety.ie/sanctions.

In responding to the questions raised, the court agreed with Advocate General Hogan that the *Blocking Statute* applies not only where US authorities compel or direct a European entity to comply with its sanctions, but also to spontaneous decisions by such an entity to comply, as in the *Telekom* case. The court also broadly agreed with the advocate general on the question of giving reasons for termination, and it held that, where all the evidence indicates, *prima facie*, that the reason was to comply with secondary sanctions, then the regulation requires that the burden of proving otherwise is put on the terminating party.

Appropriate sanction

On the final question of the appropriate sanction for breach of the *Blocking Statute*, the advocate general felt compelled to go so far as to say that, because the statute created rights for persons subject to primary sanctions (Bank Melli in this case), and in order to ensure consistent and effective enforcement of the statute, any decision to terminate a contract simply to comply with sanctions should be regarded as invalid and ineffective, and the national courts must order the party to continue the contractual relationship in question.

On the question of whether this outcome was a proportionate restriction on the freedom of enterprise under article 16 of the *Charter of Fundamental Rights*, the advocate general felt that the option to apply for a derogation under the statute was sufficient to ensure that any prohibition did not infringe a substantive freedom.

The court, on the other hand, gave some scope to avoid the drastic consequences that could flow from the advocate general's view, and held that it was for the national courts to strike a balance between the requirement to pursue the objectives of the *Blocking Statute* (which would favour continuing the contract) and the economic losses a party would incur by doing so, and whether those would result in disproportionate effects. The court did note, however, that Telekom Deutschland did not apply for a derogation under the statute, a fact that it suggested was relevant in assessing proportionality.

Commission consultation

In early 2021, the European Commission announced that it was considering amending the *Blocking Statute* to make it more effective in deterring and counteracting the application of secondary sanctions on EU operators.

The commission's subsequent public consultation confirmed that, overall, the *Blocking Statute* had not been successful in protecting European entities from the consequences of secondary sanctions. The consultation indicated that the statute suffers from a lack of awareness and enforcement among the judiciary, and its effectiveness was compromised by complexity and expense.

Respondents to the consultation suggested strengthening the effectiveness of the statute through restrictions on access to the EU market and punitive damages targeted at specific sectors or specific operators, as well as exploring resolutions through diplomacy and international organisations.

The future

The reaction to Russia's invasion of Ukraine shows how prominent a part sanctions may play in the future and, while the US and the EU may be aligned on Russian sanctions, they are not aligned – indeed, they are directly opposed – on other sanctions, and are unlikely to be aligned on all sanctions in the future.

To make the situation even more complicated, the commission's consultation noted how China has exploited its predominance in technology to introduce secondary sanctions similar to America's. With the commission considering expanding the *Blocking Statute*, economic conflict seems likely.

For Ireland, an EU member state with an open economy and deep economic ties to the United States and growing ties to China, the conflicting sanctions' regimes of these three major economic powers – and the possibility that the conflict between them will intensify – could come to present a particularly difficult challenge. Irish solicitors will be at the forefront of negotiating the delicate path through these conflicting and powerful interests on behalf of their clients. g

Brian McMahon is a solicitor and head of contentious matters in An Post. This article is written in a personal capacity.

LOOK IT UP

CASES:

- *Bank Melli Iran v Telekom Deutschland GmbH* (Case C-124/20)

LEGISLATION:

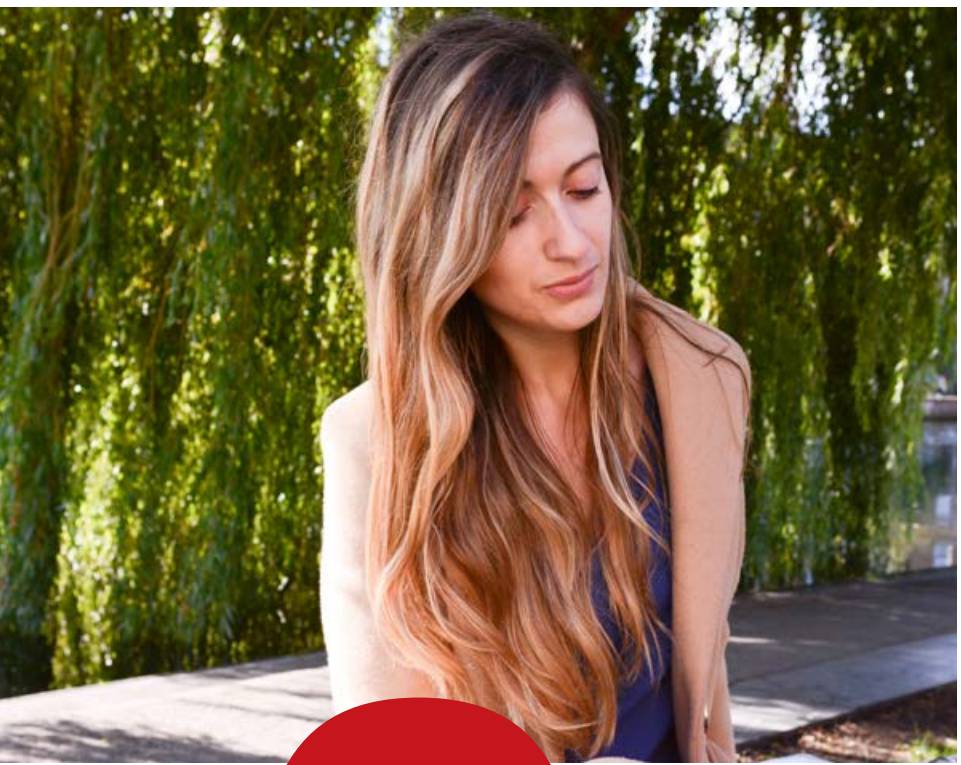
- Council Regulation (EC) No 2271/96 of 22 November 1996 protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom (*Blocking Statute*)
- *EU Charter of Fundamental Rights*, article 16

ASH SALT

Solicitor Sarah Grace is the survivor of a violent sexual assault. She talks to Frank McNamara about survival mode, navigating the courts system, and her campaign to change that system in order to deter it from inflicting further pain

ALL PICS: DAVID MURPHY PHOTOGRAPHY

IN IRELAND, NEARLY HALF OF SURVIVORS DON'T TELL ONE OTHER PERSON. THEY WILL TELL NOBODY IN THEIR ENTIRE LIFE BECAUSE OF THE STIGMA AND THE SHAME THAT ATTACHES TO SEXUAL ASSAULT. A PERSON CAN REPRESS THINGS TO PROTECT THEMSELVES, BUT ACTUALLY THAT IS NOT PROTECTING THEMSELVES – THAT IS KEEPING THE POISON INSIDE



On 17 July 2019, Sarah Grace survived a violent sexual assault that turned her life upside-down when a burglar broke into her Dublin apartment and attacked her as she slept. Following a nightmarish fight for her life and her subsequent recovery from the assault, she found herself navigating what she terms "an outdated courts system".

In her bid to ensure that her attacker couldn't do the same to another woman, Sarah started campaigning publicly for changes to Ireland's criminal justice system for other sexual-violence survivors. This culminated in her meeting with Justice Minister Helen McEntee and the Director of Public Prosecutions in March 2021 to discuss legal reforms, and their work continues to this day.

In an effort to face the reality of the attack, and as an aid to her recovery, she started writing a book, titled *Ash + Salt*, which revisits the memories of her assault, its aftermath, and the trial.

She explains the book's title: "An event as traumatic as rape or sexual assault is like a volcano,

THE WHOLE POINT OF MY BOOK IS TO HELP PEOPLE, SO I DIDN'T SEE THE POINT OF JUST WRITING ABOUT MY STORY BECAUSE, TO BE HONEST, THAT'S JUST A LITTLE VOYEURISTIC. I WANTED TO HELP PEOPLE UNDERSTAND AND PUT INTO PRACTICE THE LEARNINGS I WAS SHARING

blowing a hole through your life and reducing everything in it to ashes. And yet, volcanic ash is one of the most fertile types of soil, due to the many minerals and plant nutrients it contains. While ash marks the place of devastation, it can also be an opportunity to replant, rebuild, and regrow life that will flourish more beautifully than the one that burnt down before it.

"Salt, however, is toxic. It corrodes almost all materials and weakens even the strongest of metals. After sacking and burning the mighty city of Carthage to the ground, legend has it that the Romans sowed salt over the ashes to ensure nothing could ever grow from there again. I use salt in my book as a metaphor for the toxic elements that hinder healing – toxic friends, toxic environments, and toxic thoughts. The aim of my book is to offer the tools necessary to clear the salt from the ash, and chart the pathway to recovery."

Diary entries

Following her assault, Sarah kept diaries in order to help keep her mind clear and deal with the trauma. "I have three full diaries – back to back. Some pages are black with text, because I kept contemporaneous notes throughout the whole process. I did that for several reasons. I was really struggling to keep track of everything that was happening, and I was experiencing the effects of post-traumatic stress disorder. Due to those effects, I found that my memory was failing me at times, so I wanted to make sure I was detailing and tracking everything. Throughout the criminal-justice process, I was spotting certain mistakes that were being made by the gardaí and the

prosecution, and I wanted to make sure that, come the trial, I would be as ready as possible.

"So, when it came to writing the book, my diaries were my first port of call. I was astounded by how many of my diarised memories had been 'deleted' from my mind – most likely as a survival mechanism. It certainly wasn't easy to revisit those, but the purpose of the book was to help others going through the same experience.

> "I figured that all of the information I had gathered along the way – links I had saved and tips I had received from therapists and lawyers – would be incredibly useful, not only for future survivors, but also for people who have no idea what survivors go through and who wish to better understand it. I also wanted my experience to guide those trying to achieve the reforms that are so badly needed – and to help to ensure that survivors would be treated better."

Past and present

How does 'past' Sarah, as revealed in her diaries, differ from 'present' Sarah?

"Certainly, at the beginning, the 'earlier' Sarah was almost a shell of a person. In fact, in the beginning of my first diary, I just didn't have the strength to write full notes, only bullet points. There's no personality in them whatsoever, no emotion. They're written by somebody in a completely disassociated state, so it's difficult to look back at them and see that everything had shut down in me."

How did she cope?

"I did different things – learning a lot by trial and error. The hardest part was the anger – and realising that you are constantly angry. It took me a long time to realise that. People were pointing out how impatient I was about small things – printers not working or trains being late – and I would just go into a fury. The same was true when I read in the news about how survivors were being treated by our courts system, and the lack of empathy there. It was a mix of therapy, yoga and exercise that eventually got me through my anger.

"I remember when I wrote my victim impact statement for the trial, and I had to list out every single impact the crime had had on my life. My parents read it and were dumbfounded. While they knew about everything that had happened, they didn't actually realise how much of an impact it had had on me, day to day. I think that's the case with a lot of survivors.

"In Ireland, nearly half of survivors don't tell a single person. They will tell nobody in their entire lives because of the stigma and the shame that attaches to sexual assault. A person can repress things to protect themselves, but actually that's not protecting themselves – that's keeping the poison inside."

The importance of evidence

Did her training as a lawyer help her in any way?

"It was definitely a start. It certainly helped in terms of understanding the importance of evidence immediately after the assault. I insisted on being taken to hospital – even though I was being advised not to – because I understood the importance of the medical evidence to be collected. If I hadn't gone, we would have lost key evidence that swung the verdict the right way.

"There are very clear checklists at the end of every chapter of my book about everything that everybody needs to know in order to give themselves the best possible chance, come the trial – if there is one.

"The whole point of my book is to help people, so I didn't see the point of just writing about my story because, to be honest, that's just a little voyeuristic. I wanted to help people understand and put into practice the learnings I was sharing. Before I started writing the book, I was actually working with Minister for Justice Helen McEntee on a checklist for survivors and what they needed to know at each stage of their criminal-justice procedure journey. That checklist grew to become *Ash + Salt*.

"I wrote the book to take the stigma out of being a sexual-assault survivor because, when I was going through it, there was no role model for this. There was nobody I could think of that I could look up to and be guided by how they were managing their journey, and maybe adapt my behaviour to theirs. We often think of rape as almost a 'death sentence', which can be due to the social stigma around it. I'm trying to show people that it isn't."

Silver lining?

Surely she's not saying that there's a silver lining to what she experienced?

"I have very much reached the point in my life now where I've embraced what's happened to me, my journey, and the person I am now. If I could go back in time, I wouldn't change it. That's not to take away from the horror of it, and how painful it was, and I wouldn't want to experience it again – but I would still take that over not having gone through it at all, because of the person it has made me today."

Why decide to tell the world? Surely it would have been easier to stay below the radar?

"I was very reluctant to give up my anonymity. I'm a private person, and I don't enjoy being in the spotlight. But I was thinking of other survivors going through this and how, when I was going through it, I would have loved to have had this book or the checklists it offers – firstly, to know that I'm not alone and that what I'm going through emotionally is normal and, secondly, to know what to do.

"After the verdict, there were several articles in Irish newspapers that, while they didn't name me, went into such intrusive detail on the facts of the case that anybody who knew about the break-in would know that this was me. You don't often hear of a homeless person breaking into a woman's room in the middle of the night and climbing on her bed and attempting to strangle her. Those articles were just shock value, focusing only on the worst things, including the guy's nationality, which I didn't want to be talked about because I knew that it would trigger a highly racist conversation on social-media platforms, instead of focusing on the issues with our courts system."

FOCAL POINT

Sarah Grace is a solicitor and certified yoga teacher. Of French and Irish nationality, she was raised in Japan and France and graduated from University College London and Université Paris II Panthéon-Assas with an LLB degree in law and French law. After moving to Ireland in 2016, she qualified as a solicitor in 2018, and now works as international corporate counsel for Stripe.

Taking the reins

"After those articles, I decided to take back the reins. I reached out to *The Irish Times* to tell my story. I wanted to practice what I was preaching about how we shouldn't be ashamed; we shouldn't be made to suffer in silence. The World Health Organisation estimates that one in three women worldwide will be sexually or physically assaulted in their lifetime. I really wanted to start encouraging an open conversation, and to show people that there's nothing to be afraid of speaking about here. We can have this conversation, and we don't need to shy away from it."

In her book, she goes into significant detail about the importance of being able to give evidence behind a screen in court: "Giving evidence about having been sexually assaulted is the most daunting and humiliating thing to have to do. To have to take the stand and go into so much anatomical detail of what was done to you, in a room full of 30 strangers, while the person who did this to you is sitting within touching distance of you, is something I could not have done if it weren't for the separation screen. I was terrified of seeing his face and becoming completely overwhelmed, of not being able to speak or being able to get through it. I mean, you're on the stand for hours."

What other reforms would she like to see?

"The main one that I'm fighting for is stopping this practice around seizing the counselling records of the victim, which is barbaric. It is the most inhumane practice I've ever seen, and it's happening with the sole purpose of disproving what the victim is saying. You have to take the stand knowing that your attacker and the defence and prosecution teams have all read your deepest, darkest thoughts, voiced in a place that should be one of safety, of privacy, to a licensed therapist."

Getting things right

Did the criminal-justice system get anything right?

"In my case, the gardaí were excellent. They went above and beyond. They clearly cared about the case. I was horrified to find out that some of them had no training whatsoever, but they still handled the whole thing very well.

"I also think that the judge handled the case very well. He was careful to be balanced, which was infuriating to me at times because it was such a clear-cut case, but I could see afterwards the value of that, because it meant that there was no appeal."

> I'M FIGHTING FOR STOPPING THE PRACTICE AROUND SEIZING THE COUNSELLING RECORDS OF THE VICTIM, WHICH IS BARBARIC. IT'S HAPPENING WITH THE SOLE PURPOSE OF DISPROVING WHAT THE VICTIM IS SAYING. YOU KNOW THAT YOUR ATTACKER AND THE DEFENCE AND PROSECUTION TEAMS HAVE ALL READ YOUR DEEPEST, DARKEST THOUGHTS, VOICED IN A PLACE THAT SHOULD BE ONE OF SAFETY, OF PRIVACY, TO A LICENSED THERAPIST

Does she ever see glimpses of the 'old' Sarah?

"I think in terms of the core, the old Sarah is still there. But I've grown hugely and, no, I think I am a very different person today. I'm much calmer – a lot more confident. I'm doing things that used to terrify me, like speaking publicly. I still find it daunting but, you know, people are so supportive about what I do, so that's very encouraging – and it does seem to be helping people.

"One of the things that keeps me going also is that many people, the 'non-survivors', who normally would not want to deal with this, are speaking up, or showing an interest, or listening and taking on board what's being said, and starting to have a dialogue around this. I find that so encouraging.

"It's the only reason why I'm continuing to do it, because it's something that doesn't come to me naturally at all. But I think it's doing a lot of good. So as long as it does, I'll keep doing it."

Frank McNamara is a solicitor in Beauchamps LLP and a member of the Law Society's Younger Members Committee.

> IN THE FILM *WALL STREET*, MICHAEL DOUGLAS'S GORDON GEKKO CHARACTER DEALT IN SHARES OF BLUESTAR AIRLINES BEFORE THE ANNOUNCEMENT OF A REGULATOR'S REPORT THAT EXONERATED THE COMPANY FROM WRONGDOING. HE GOT THIS INFORMATION FROM CHARLIE SHEEN'S BUD FOX CHARACTER, WHO IN TURN GOT IT FROM HIS ENGINEER FATHER, WHO WORKED FOR THE AIRLINE

PIC: ALAMY

SENSE OF SECURITIES

Those in companies with access to confidential information should never selectively disclose any unpublished information unless it is demonstrably consistent with information already in the market. Paul Egan explains

The protection, disclosure, and the misuse of information are at the core of many strands of law – data-protection laws protecting sensitive personal information; freedom-of-information laws giving the right to information on governmental decision-making processes; anti-corruption laws prohibiting the peddling of influence and use of secrets for personal advantage; and, indeed, the *Official Secrets Act 1963*, which protects sensitive State information.

The disclosure and management of information is at the core of Irish securities law. When securities are offered to the public or listed on a securities market, the prospectus or market admission document must contain specified information, which must be verified as true and accurate. Once listed, certain types of information must be made public by being announced to the markets, such as annual and half-yearly financial information, and directors dealings in company securities.

The most complex area of this law is the law that requires a listed company to make known 'inside information' to the market in a timely manner. This requirement arises under the EU *Market Abuse Regulation* (MAR). The principle behind it is to ensure a fair market in the company's securities. If all inside information is announced to the markets by a company, then (the theory goes), it will be impossible for trades to take place in the company's securities on the back of unpublished information – that is, insider dealing.

That is a fine principle but, as is the case with many noble principles underpinning systems of law, the devil is in the detail.

Information society

'Inside information' is defined by MAR as "information of a precise nature, which has not been made public, relating, directly or indirectly, to one or more issuers or to one or more financial instruments, and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments or on the price of related derivative financial instruments".

The key elements are:

- The information must be precise,

- It must not yet have been made known to the public,
- It must relate directly or indirectly to a company (or companies) or securities of such company (or companies),
- The information must be likely to affect the price of the securities, and
- That effect must be significant.

The three key obligations with respect to inside information are:

- The company must announce the information to the public without delay, unless the circumstances entitle the company to delay the announcement,
- The information should not be disclosed selectively to any person prior to a general announcement to the market, and
- No-one should use (or more correctly misuse) the information by dealing in the securities of that company.

A listed company is entitled to delay announcing inside information for as long as three conditions are satisfied:

- Immediate disclosure is likely to prejudice the company's legitimate interests (for example, for a transaction or a regulatory clearance for a transaction),
- The delay in disclosure is not likely to mislead the public (for example, what is being withheld from the market does not represent a contradiction of a company policy announced to the market, such as "we will not be making acquisitions", and what is withheld is a proposed acquisition), and
- The company is able to ensure the confidentiality of that information (for example, by ensuring that as few people as possible have access to the information, and putting confidentiality agreements in place).

Where there is a delay in disclosure of information and the unannounced event or transaction comes to pass, the announcement of it must include a statement that it contains 'inside information' and the Central Bank of Ireland must be notified of the fact of its being delayed, along with evidence of compliance with these three conditions.

Precision instrument

The trickiest point to navigate under this law is whether the information is 'precise enough'.

In the film *Wall Street*, Michael Douglas's Gordon Gekko character dealt in shares of Bluestar Airlines before the announcement of a regulator's report that exonerated the company from wrongdoing. He got this information from Charlie Sheen's Bud Fox character, who in turn got it from his engineer father, who worked for the airline. When would that information become 'precise' under the law? When the inspectors started to indicate that the airline was not at fault? Or when the inspector's report was finally published?

An indication of the answer to this question arises from a recent UK case under MAR. (Despite all the Brexit noise, UK law was, and is, identical to ours.) In a decision by the UK's Financial Conduct Authority (FCA) announced in August 2022, the chairman of the UK-listed ConvaTec Group PLC was fined £85,000 for selective disclosure of inside information. That he had made selective disclosures was not at issue, but what was at issue was whether the information disclosed was sufficiently 'precise' to amount to 'inside information'. That information related to deteriorating trends in the company's trading performance and the potential retirement of the CEO, which was disclosed to some of the company's customers. The basic argument made to the FCA by the chairman was that the information disclosed was fundamentally unsuitable for announcement, and therefore did not constitute inside information within the meaning of article 7 of MAR.

The chairman argued that if and when inside information has arisen is often a complex judgement, particularly in the context of an evolving situation, which was the position in this case. The company was in close consultation with its brokers and was following its policies and procedures in performing a continuous assessment of whether it possessed inside information in respect of its anticipated financial performance, and the connected issue of the CEO's potential retirement.

The company had concluded, after obtaining advice from its brokers, who were experienced and aware of all pertinent facts and matters, that 'inside information' arose on a particular date and not before. He argued that the disclosures contained limited and inherently uncertain information, as the matters under discussion were "depending on the board's analysis", which had not yet occurred.

Price watch

These arguments were rejected, with the FCA concluding that the chairman should have realised that the information he disclosed amounted, or may have amounted, to inside information. The key point emerging from the case is not that the information is, of itself, precise, but rather that it is sufficiently precise to have an effect on price. The bar is therefore set fairly low for information to have the necessary degree of precision. It is the effect, rather than the quality of the information, that is key.

This opens another issue. Viewed from the present, certain things are likely to occur, and there is an infinity of things that may occur. On the face of it, the law requires a likelihood of an effect on price. However, in the implementation of the law, it would appear that courts and regulators will judge a likelihood of a price effect to exist by reason of the movement in share price, even where (to the detached observer, as a matter of objective fact), the particular information raised only a possibility rather than a likelihood. It is treated as a sort of *res ipsa loquitur*.

In *Lafonta v Autorité des Marchés Financiers*, the ECJ considered the mixed issues of precision of information and likelihood of price effect. This was in the context of a debt-equity swap in the Saint-Gobain group of companies. It was argued by the offending party in that case (a creditor that converted its debt to equity) that, in order for there to be inside information, there had to be a likelihood of the effect of the information being to send the share price in a particular direction.

The court did not accept this. It held that "in order for information to be regarded as being of a precise nature … it need not be possible to infer from that information, with a sufficient degree of probability, that, once it is made public, its potential effect on the prices of the financial instruments concerned will be in a particular direction".

The court accepted that particular information could lead to widely differing assessments, depending on the investor. However, they concluded that, if it were

accepted that information is to be regarded as precise only if it were possible to anticipate the direction of a change in prices, it would mean that the holder of that information could profit from that information to the detriment of others in the market.

In order for the information to be considered 'inside information', the effect on price must be 'significant'. When insider-dealing law was first enacted in Ireland in 1990, a securities industry working group concluded that a 5% movement in price relative to the market generally would be significant (or 'material', which was the word used in the then law). It is safer to interpret the word 'significant' as 'noticeable'.

Super asymmetry

There are several asymmetries under the law relating to the three key obligations:

- A company failing to announce inside information may be subject to administrative penalties under the *European Union (Market Abuse) Regulations 2016*, but will not be subject to criminal liability. On the other hand, a person using information in order to deal, or disclosing the information selectively, will be exposed to criminal liability.
- As we saw in the *ConvaTec* case, where a person makes a selective disclosure, rather than a general disclosure to the market, the fact that the company has not considered the information to be precise enough to make a general announcement will be no defence.
- If a company has inside information that (without justification) it fails to announce, and a person uses that information to deal in the company's shares, the company nonetheless has a civil right to claim damages from that person under part 23 of the *Companies Act 2014*.

Under prior law, in *Fyffes v DCC*, information by both Fyffes and its shareholder, DCC, was subsequently judged to be just that. There was no legal sanction at that time for failure to announce, but DCC was held liable in a statutory claim by Fyffes – see Egan (2021).

Sense and sensitivity

Listed companies need to be alert to the need to ensure that a false market in their shares does not arise. This means being sensitive to trends that may later be judged by the courts to have created a likelihood of a share price change when that share price change ultimately takes place. If the information is of itself imprecise, but nonetheless capable of moving the share price, an announcement will be called for.

Those in companies with access to confidential information should never selectively disclose any unpublished information unless it is demonstrably consistent with information already in the market.

And finally, when dealing in shares, the dealer needs to reflect carefully on the information available to it and discuss it with the broker handling the purchase or sale. Courts and regulators work from the premise that, if something happens, then the likelihood of it happening must have arisen at a particular time. If that particular time predates the dealing in shares and the dealer has been exposed to unannounced information, it exposes the dealer to being accused of insider dealing. g

> THE KEY POINT EMERGING FROM THE CASE IS NOT THAT THE INFORMATION IS OF ITSELF PRECISE, BUT RATHER THAT IT IS SUFFICIENTLY PRECISE TO HAVE AN EFFECT ON PRICE. THE BAR IS THEREFORE SET FAIRLY LOW FOR INFORMATION TO HAVE THE NECESSARY DEGREE OF PRECISION

PIC: SHUTTERSTOCK

Paul Egan SC is a senior consultant with Mason Hayes & Curran LLP and author of Irish Securities Law *(Bloomsbury, 2021).*

LOOK IT UP

CASES:

- *Final Notice 2022: Sir Christopher Gent*, Financial Conduct Authority, 5 August 2022,
- *Fyffes plc v DCC plc and others* [2005] IEHC 477; [2007] IESC 36
- *Lafonta v Autorité des Marchés Financiers* (Case C628/13, 11 March 2015)

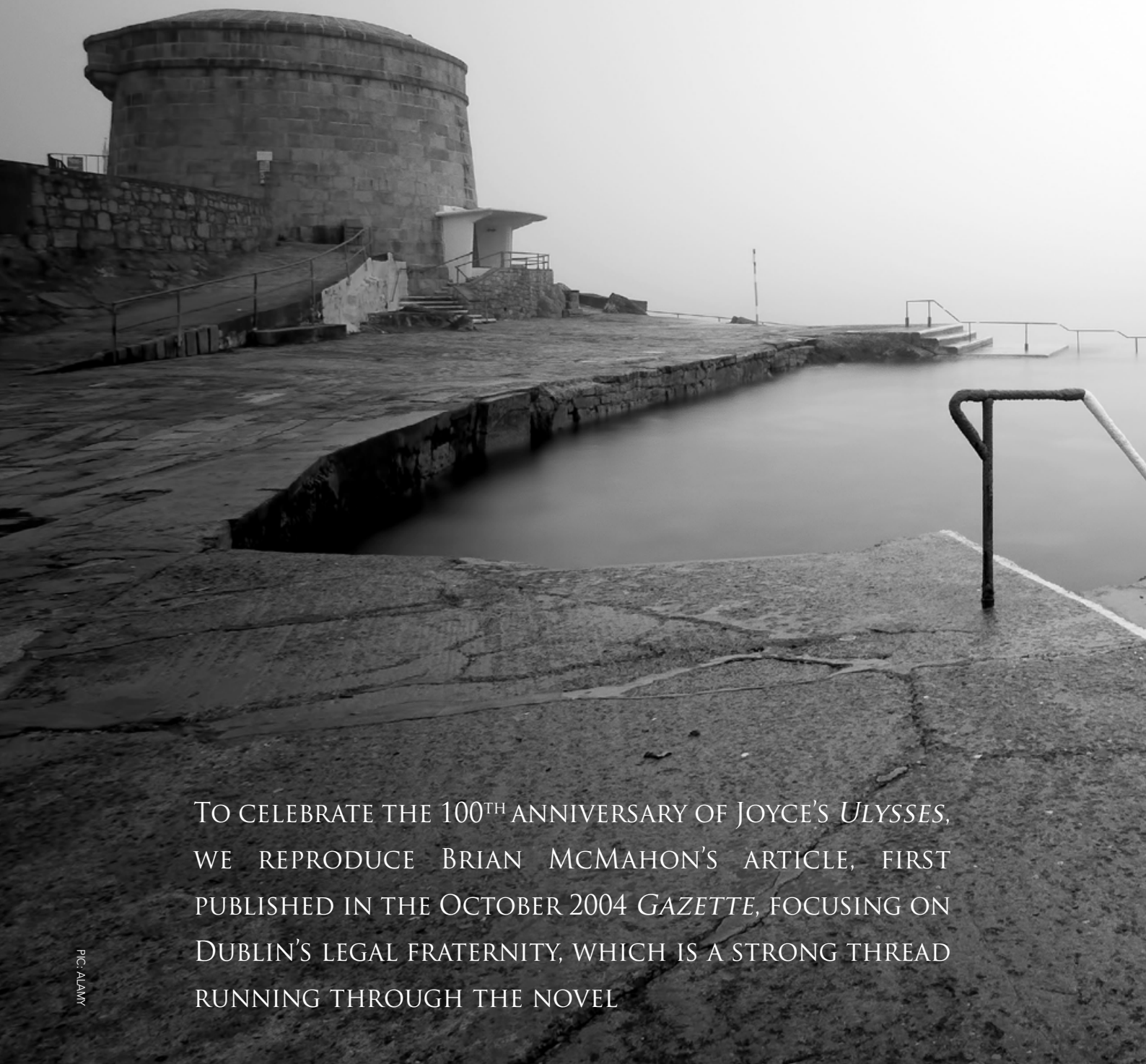
LEGISLATION:

- *Companies Act 2014*, part 23
- *European Union (Market Abuse) Regulations 2016* (SI 349/2016)
- *Market Abuse Regulation* (EU) 596/2014

LITERATURE:

- Egan, Paul (2021), 'A fundamental incongruity revisited: an exploration of current insider dealing law, applied to the facts in Fyffes plc v DCC plc', *Irish Jurist*, vol 66, 134

BLOOMING LAWYERS



PIC: ALAMY

TO CELEBRATE THE 100TH ANNIVERSARY OF JOYCE'S *ULYSSES*, WE REPRODUCE BRIAN MCMAHON'S ARTICLE, FIRST PUBLISHED IN THE OCTOBER 2004 *GAZETTE*, FOCUSING ON DUBLIN'S LEGAL FRATERNITY, WHICH IS A STRONG THREAD RUNNING THROUGH THE NOVEL

James Joyce's *Ulysses* is set in Dublin on 16 June 1904, and its two principal characters are Leopold Bloom and Stephen Dedalus. Bloom is the novel's hero, and his journey around Dublin echoes Odysseus' journey in Homer's *Odyssey*.

The novel opens in the Sandycove Martello Tower near Dun Laoghaire, and it is on Stephen's journey back to the city, when he calls into the Irishtown house of his uncle, Richie Goulding, that the first legal reference occurs. Richie Goulding is a legal costs drawer who works for the firm Collis and Ward, a name to which he adds his own on his legal costs bag. When Stephen calls, he is sitting in bed drafting bills for masters Goff and Shapland Tandy.

Thom's Official Directory 1904 shows that the firm of Collis and Ward was located at 31 Dame Street, and two of the taxing masters then working at the consolidated taxing office of the Supreme Court were James Goff and Shapland Morris Tandy.

Cockles and mussels

Leopold Bloom, after breakfasting at home in Eccles Street, walks across the city to Irishtown to join the funeral procession of Paddy Dignam. On the journey back across the city to Glasnevin Cemetery, Martin Cunningham tells those in the carriage, including Bloom, how Reuben J's son tried to commit suicide by jumping into the Liffey, but was saved by a workman who was rewarded with a florin.

The Irish Worker of 2 December 1911 reported a very similar incident, in which Reuben J Dodd, son of Reuben J, jumped into the Liffey and was saved by a workman who, as a consequence, got sick and missed work. When his wife sought money from Reuben J, he reluctantly gave her 2s 6d. When Joyce was a child, his father had to sell property to pay off debts to Reuben J, a moneylender and costs drawer, starting the family's descent into poverty. The young Joyce knew the young Reuben J Dodd, but disliked him for obvious reasons. Reuben J Dodd became a solicitor in 1901. When the BBC broadcast this extract from *Ulysses* in the 1950s, Dodd successfully sued for defamation, saying he had jumped into the Liffey after his hat.

When leaving Glasnevin, Bloom briefly meets Paddy Dignam's employer, John Henry Menton, solicitor. *Thom's Directory 1904* lists a solicitor named John Henry Menton practising from 27 Bachelor's Walk.

After the funeral, Bloom goes to the offices of the *Evening Telegraph* in Abbey Street, now gone, but marked by a plaque outside Eason's. He joins the conversation, in which JJ O'Molloy, a once-promising young barrister now fallen on hard times, and Professor MacHugh discuss the prosecution of hawkers in the Phoenix Park. *The Freeman's Journal* of 9 June 1904 reported the prosecution of seven people for hawking wares in places forbidden by public notice before Mr Mahony, divisional magistrate in the Northern Police Court. The wares were sold at the site of the murder by the Invincibles of the chief secretary and under-secretary to the lord lieutenant in 1882, and were postcards memorialising this event. The seven were convicted and fined 2s 6d and costs each.

The oul' triangle

JJ O'Molloy then begins praising the speech of Seymour Bushe KC in the *Childs* murder case. When his name is mentioned, the editor confuses him with Charles Kendall Bushe, and Professor MacHugh alludes to the scandal that prevented his appointment as a judge. Seymour Bushe was one of the foremost barristers of his day and a great orator. He was the great-grandson of Charles Kendall Bushe, chief justice of the King's Bench, Ireland, from 1822 to 1841. At that time, the King's Bench and Common Pleas had a

chief justice each: Exchequer, a chief baron; and Chancery, a lord chancellor. Seymour Bushe missed judicial appointment because of involvement in an adulterous affair. In a trial held in October 1899, attended by James Joyce, Bushe successfully defended Samuel Childs of the murder of his 76-year-old brother at 36 Bengal Terrace, beside Glasnevin Cemetery.

JJ O'Molloy then begins to tell a story about the famous Chief Baron Christopher Palles, chief judge in the Court of Exchequer in 1904, but unfortunately is cut short. The conversation returns to oratory, and mention is made of Mr Justice Fitzgibbon's style of discourse and his speech to the Trinity College Historical Society. In 1904, Gerald Fitzgibbon was a judge of His Majesty's Court of Appeal. His son would go on to be a judge of the Supreme Court of the Irish Free State.

In the early afternoon, the setting is the National Library of Ireland, where Stephen is setting out his theory on *Hamlet* to others in the librarian's office. In the course of the conversation, John Eglington refers to Judge Barton's search for clues that Shakespeare was Irish, and the librarian, just before leaving to deal with a query from Bloom, refers to Mr Justice Madden's *Diary of Master William Silent*. Sir Dunbar Plunkett Barton was a justice of the King's Bench. He was a cousin of Seymour Bushe and wrote a number of studies of Shakespeare. Dodgson Hamilton Madden was also a justice of the King's Bench: his book was an elucidation of Shakespeare using his knowledge of hunting in the west of England. Ironically, the National Library does not have a copy of that book now, but does have many of Madden's legal works.

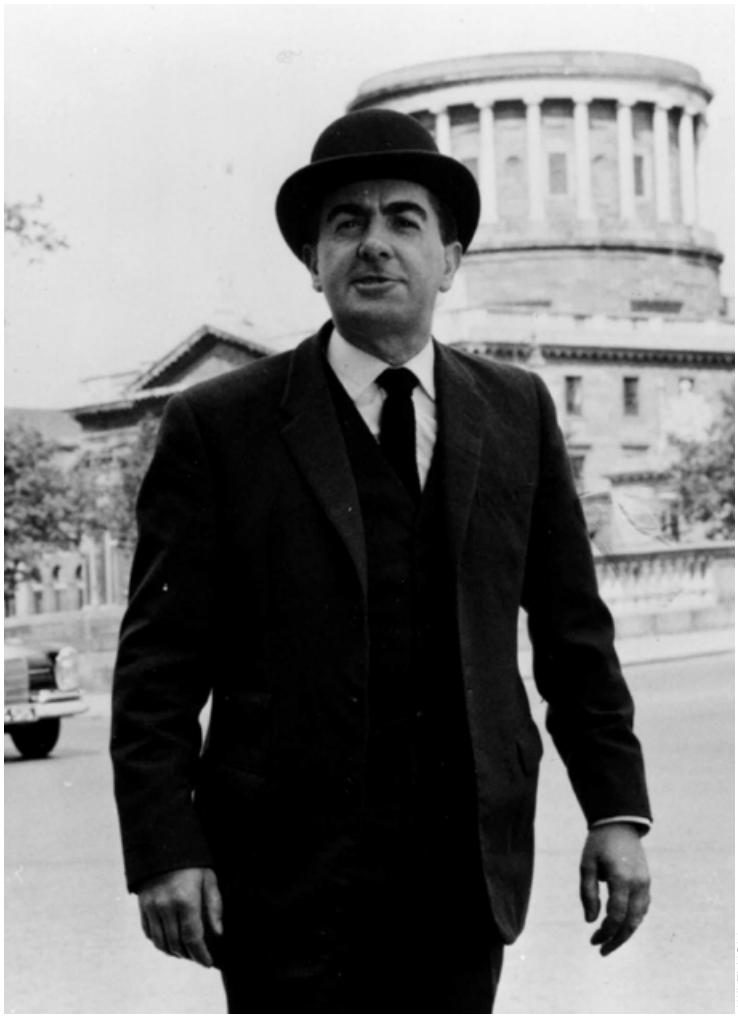
The strawberry beds

In the mid-afternoon, while Bloom is browsing in a bookshop, an elderly lady leaves the Four Courts, having heard the cases *In lunacy of Potterton*, *Owners of the Lady Cairns v the Owners of the Barque Mona*, and *Harvey v Ocean Accident and Guarantee Corporation*. This elderly lady is, perhaps, based on the lady litigants famous in the Irish courts prior to 1919 who, though unable to practise as lawyers, could prosecute cases in which they were concerned.

The Legal Diary for 16 June listed *In lunacy of Potterton* to discharge queries and vouch account.

The *Lady Cairns* case concerned a collision between the two vessels off the Kish Light in March 1904. There was an application in it on 16 June to fix time and mode of trial, and the matter was eventually heard from 21 to 23 June before the King's Bench. The court, disagreeing with the Board of Trade report, held that the *Lady Cairns* was to blame for the accident.

> IRISH PEOPLE ARE FORTUNATE THAT THEIR ENJOYMENT OF *ULYSSES* IS ENHANCED BY THE FACT THAT IT IS A DEPICTION OF A DAY IN THEIR CAPITAL CITY'S HISTORY, AND IRISH LAWYERS ARE MORE FORTUNATE STILL THAT THIS DEPICTION EXTENDS TO THEIR PROFESSION



PIC: ALAMY

Milo O'Shea as Leopold Bloom outside the Four Courts in the 1967 film *Ulysses*

The action was dismissed with costs, and judgment was entered for the defendant on the claim and their counterclaim. The solicitors for the owners of the *Lady Cairns* were D&T Fitzgerald, a very influential firm in their day. In the scene in the *Evening Telegraph*, it is remarked that they used to brief JJ O'Molloy.

Harvey v Ocean Accident and Guarantee Corporation involved a Mr Charles Meade Harvey, who purchased life assurance that provided that, if he should sustain any bodily injury by accident from an outward, external and visible means or cause, and die solely from the effect thereof, the corporation would pay his personal representatives £1,000. The unfortunate man's body was found floating in the River Lee. On 15 June 1904, the appeal of William Harvey (the administrator of the estate) from an order of the King's Bench – following a decision against the estate on a special case stated – concluded, and judgment was reserved.

The elderly lady travels down the quays and is about to enter the offices of Reuben J Dodd – at 34 Ormond Quay Upper in 1904 – when she changes her mind and retraces her steps past King's, the law stationers (then at 36 Ormond Quay Upper), and smiles credulously at the vice-regal cavalcade.

The cavalcade had earlier passed and been ignored by Dudley White BL, who Maurice Healy, in his memoirs, described as a clever mimic and who practised from 29 Kildare Street in 1904. The cavalcade would later be spotted by Gerty MacDowell from outside Roger Greene's solicitors, whose offices were at 11 Wellington Quay in 1904.

Leaving the bookshop, Bloom, pondering where to eat, meets Richie Goulding and they go to the Ormond Hotel. While they are there, George Lidwell comes in. George Lidwell was the solicitor Joyce consulted in his disputes with the publisher of *Dubliners*, and some of the consultations occurred in the Ormond Hotel, near his office at 4 Capel Street. Lidwell advised Joyce that, while Dublin's vigilance committee might press for Joyce's prosecution for the language used in the story 'Ivy Day in the committee room', the advisors to the Crown would not notice the story.

After dining, Bloom leaves the Ormond Hotel and walks by 12 Ormond Quay Upper, noting that it is the address of 24 solicitors, a fact *Thom's Directory 1904* confirms.

The rare oul' times

At five in the afternoon, Bloom makes his way to Barney Kiernan's pub on Little Britain Street and joins the company of the citizen Alf Bergman and others. When JJ O'Molloy and Ned Lambert enter, they all discuss the alleged libel of Denis Breen by publication of 'U.p:up.' on a postcard. Breen had travelled with his libel from Collis and Ward to John Henry Menton, and is sent as a prank to the subsheriff's office on 20 Ormond Quay Upper. JJ O'Molloy cites *Sandgrove v Hole* (2 KB 1 [1901]) and opines that the words are capable of defaming Breen. Their meaning remains a subject of debate among Joyce scholars.

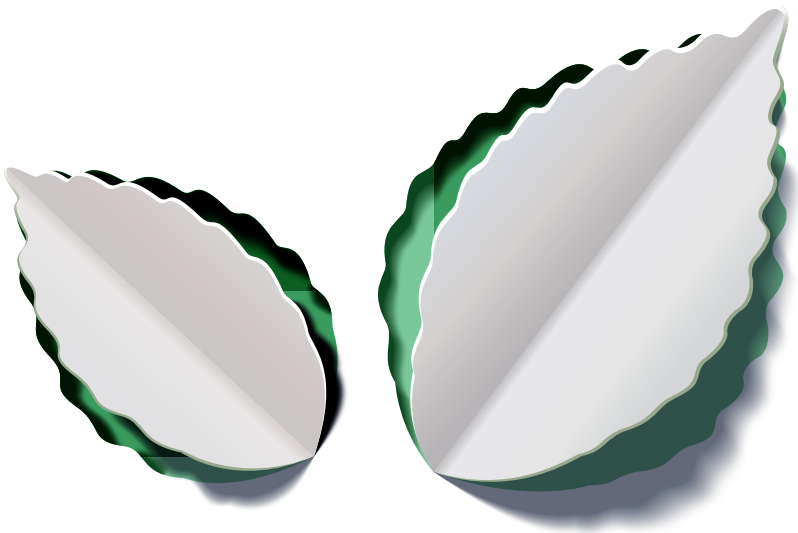
O'Molloy then discusses the 'Canada swindle' case, first mentioned by him in the *Evening Telegraph* office, with Ned Lambert and tells him that the accused was remanded. *The Freeman's Journal* of 17 June reported the prosecution of James Wought, his sweetheart, and her brother before Mr Swift KC in the Southern Police Court for obtaining by false pretences £1 from Benjamin Zaretsky, and 10 shillings from Henry Crown, and defrauding Jacob Cohen of £1 by pretending to be emigration agents who could arrange passage to Canada. Wought had several aliases, including Richards, Sparks, Saphero and Charles & Co. Wought was convicted on 11 July, though his co-accused were acquitted, and was sentenced to 12 months' imprisonment with hard labour by the recorder.

In the novel, Alf Bergman then recalls the threat of the recorder to imprison Reuben J for taking a debt-collection action, and he and Ned Lambert mock the recorder's gullibility. In 1904, Dublin's recorder was Sir Frederick Falkiner. His court was just around the corner from Barney Kiernan's in Green Street courthouse, and it was there that James Wought was sentenced to 12 months' hard labour. Sir Frederick was also chairman of the quarter sessions, Co Dublin. He was known as a poor man's judge, and his biography records his reputation for humanity, though the reputation may have been more for gullibility. Dublin, along with other Irish cities of the time, had a Recorder's Court. Following independence, its jurisdiction was transferred to the Circuit Court by the *Courts of Justice Act 1924*, and the then recorder was appointed to the High Court.

Mention is then made of Arthur Courtenay and a case before Mr Justice Andrews. The former was master of the King's Bench division and the latter a judge of it, who was notorious for the severity of the sentences he imposed.

Take me up to Monto

Bloom leaves Barney Kiernan's in haste and, after visiting Paddy Dignam's widow and Sandymount Strand, meets up with Stephen Dedalus in Holles Street Hospital, and they end up in Dublin's notorious red-light district of Monto. Following an altercation with soldiers in the Monto, Bloom and Stephen walk to the cabman's shelter under the loop-line bridge. En route, Bloom warns Stephen of the dangers of the red-light district and, in particular, of winding up before Mr Tobias in the Bridewell. In fact, Matthew Tobias was not the judge, but the prosecuting solicitor to the Dublin Metropolitan Police, of 4-7 Eustace Street. Indeed, he prosecuted James Wought. Bloom realises his mistake, corrects himself, and refers to Thomas Wall, chief magistrate of the DMP.



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PIC: ALAMY

After leaving the cabman's shelter, Bloom and Stephen go to Bloom's Eccles Street home, where the flowing of water from the taps causes mention of the case taken against South Dublin Guardians for the over-consumption of water by Ignatius Rice, solicitor to Dublin Corporation. Such cases were a common occurrence in then drought-stricken Dublin. *The Freeman's Journal* reports the corporation's case against the guardians as adjourned on 7 and as settled on 8 June, with the guardians agreeing to pay 4d per gallon of water in excess of their permitted amount.

Joyce's *Ulysses* is enjoyed by millions around the world who know very little of Dublin city or its history. Irish people are fortunate that their enjoyment of *Ulysses* is enhanced by the fact that it is a depiction of a day in their capital city's history, and Irish lawyers are more fortunate still that this depiction extends to their profession.

Brian McMahon is a solicitor and head of contentious matters in An Post.

FOCAL POINT

'BLOOMING LAWYERS' NEARLY 20 YEARS ON

Re-reading my article on Joyce's *Ulysses* nearly 20 years later, I note two errors (perhaps others can see more). Firstly, Stephen Dedalus doesn't call into his uncle's house on his way back to the city from the Martello Tower – he merely thinks about it; and, secondly, the National Library does have a copy of the *Diary of Master William Silent*. Indeed, I picked up a first edition of it myself a few years ago and learned from the bookseller that it was one of the poet Siegfried Sassoon's favourite books.

The article itself prompted some correspondence in the *Gazette* that revealed some more interesting legal connections, when Brian Roche speculated in the January 2005 issue about Joyce's possible connection to the office of Roger Greene's solicitors. Those familiar with *Ulysses* will understand his reluctance to go into too much detail!

In the intervening years, I have continued dabbling in the legal background to *Ulysses*. I was greatly encouraged in this when, shortly after publication, Brendan Kilty SC invited me to give a talk in the James Joyce 'House of the Dead' on Usher's Island.

The late Mr Justice Adrian Hardiman also gave a short introductory address, and shared with me a draft of his essay on the Childs' murder trial, an essay that appeared under the title 'A Gruesome Case', alongside many other fascinating essays on Joyce and the law, in his posthumously published *Joyce in Court*. More recently, and just prior to his untimely death, I was in correspondence with Frank Callanan SC concerning his Green Street lecture on John F Taylor's speech which, in *Ulysses*, is recalled by the company in the offices of the *Evening Telegraph*.

Ulysses continues to guard some of its secrets, however. The mystery of the meaning of the alleged libel of Denis Breen remains unsolved and the subject of much discussion among Joycean scholars, while my own efforts to discover whether there is any factual background to JJ O'Molloy's story about Chief Baron Palles have proved unsuccessful. VTH Delany's biography of Palles throws no light on it, and all my other efforts to crack the mystery have proved fruitless.

My interest in the legal background to *Ulysses* continues to enrich my enjoyment of the book and, indeed, my enjoyment of the history of Dublin. A few years after publication, I came by chance across James Whiteside's weather-beaten tomb in Dublin's Mount Jerome Cemetery, and immediately thought of the 'Aeolus' episode in which he is mentioned, and only last year, while passing Killiney Hill Park, I noticed that Frederick Falkiner, *Ulysses*' gullible recorder, was named on the plaque at the gate as a trustee of the park.

FEATHERING THE NEST EGG

Along with the purchase of a house, a pension may be the largest investment a person will make in their lifetime – in terms of both money and timespan. Keith Blizzard and Patrick Ambrose review important case law

PIC: ALAMY

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ensions have featured in the news frequently in recent years, mainly in the context of the pension deficits of large employers, and strains on public-sector finances caused by increased life expectancy. Enhanced regulation from the European Union, as well as domestic reform, shows decision-makers responding to the challenges of providing for retirement in the modern era. The Irish courts have heard a number of cases that demonstrate these challenges, and their judgments have provided clarity on many complicated issues relating to workplace pensions and entitlements to State pensions.

> ENHANCED REGULATION FROM THE EU, AS WELL AS DOMESTIC REFORM, SHOWS DECISION-MAKERS RESPONDING TO THE CHALLENGES OF PROVIDING FOR RETIREMENT IN THE MODERN ERA

Understanding the basics

In the case of a workplace pension, payments into a pension fund are considered deferred remuneration, per the 2005 decision of Kelly J in *In the matter of Central Remedial Clinic Pension and Death Benefits Plan*. The payments were not a gift from an employer – the employee had worked for those contributions and had given consideration for them.

Conditions may be placed on pensions entitlements, including a minimum retirement age or a required number of contributions. *Meagher v Minister for Social Protection* (2014) and *Galvin v Chiefs Appeals Officer* (1997) are examples of individuals disputing their entitlement to State pensions based on the number of contributions made.

Occupational pension-scheme members have rights to equal treatment enshrined in the *Pensions Act 1990*, and entitlements of civil partners have been extended under the *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010*. While pension trustees have discretion in their decision-making, the pension-scheme documentation is the principal source of rights and obligations. Pension schemes are often structured as trusts, to which many of the principles of the law of trusts and equity can be applied. The courts have ruled in the *Central Remedial Clinic* decision, *Greene v Coady* (2014) and *Holloway v Damianus BV* (2015) that there are no special rules of construction for pensions documentation.

Age of retirement

For private or occupational pensions, the age of retirement is not prescribed by legislation, which has led to a number of disputes about the right to continue in employment or to receive pension benefits. Although the age of retirement in the context of receipt of the State pension is clear, the 2007 decision in the European case of *Felix Palacios de La Villa v Cortefiel Servicios SA* determined that a national retirement age was only consistent with EU law where the age was objectively and reasonably justified in the context of national law by a legitimate aim relating to employment policy or the labour market – and that the means put in place to achieve that aim of public interest were not inappropriate and unnecessary for that purpose.

Cases in the courts have revealed very

mixed practices by Irish employers, such as *Patrick Reilly v Drogheda Borough Council* (2008), where a collective agreement between the defendant council and trade unions as to the age of retirement was found not to be binding on the plaintiff employee. *Coonan v Attorney General, Ireland* (2001) declined to find that the previous practice of extending the service of an employee in a particular role beyond the age or retirement created a legitimate expectation that the same would be done in the case of the plaintiff.

In *McCarthy v Health Service Executive* (2010), the court concluded that an employee must have known that the retirement age of 65 was ubiquitous for the Health Service Executive, notwithstanding that she was never provided with a contract of employment. In *Quigley v Health Service Executive* (2017), however, an employee was found to have had a contract of indefinite duration, and was not subject to the mandatory retirement age.

Disputes about retirement also arise in the Labour Courts and in the context of equality legislation.

Personal asset

Pensions can be treated as an asset in an individual's insolvency or divorce, although the 2012 case of *EBS Building Society v Thomas Hefferon and Michael Kearns* highlighted an important point that a person must have a legal or beneficial interest in the pension fund for a claim to be made or a form of attachment sought. In that case, the High Court declined to grant an attachment order by way of equitable execution over the pensions of the defendants on the basis that the defendants, at the time of the proceedings, had no legal or equitable interest in the pensions.

The 2017 *Christopher Lehane* case considered the *Insolvency Act 1988* (as amended), and the distinction between an entitlement to assets of a pension fund against an entitlement to receive pension payments in the context of section 44A of that act, concluding that the official assignee was entitled only to the right to payments due to the bankrupt, and not to the fund assets directly.

In *MP v AP* (a 2005 divorce hearing), O'Higgins J set out the principle that the courts should have regard as to whether reasonable financial provision exists for a spouse in a divorce before it made an order for a pension adjustment.

'Objectionable behaviour'

The Irish courts have not supported the loss of a person's pension due to a criminal conviction or other objectionable behaviour. In the case of *Jeremiah Lovett v Minister for Education, Ireland and the Attorney General*, the High Court held in 1997 that a provision in the *Teachers Superannuation Act 1928* that allowed a teacher's pension to be forfeit on conviction of a criminal offence was *ultra vires*, since it amounted to a penalty for criminal behaviour that was beyond the scope of that legislation.

In *PC v Minister for Social Protection, Ireland and the Attorney General*, the Supreme Court held in 2007 that a prisoner's pension entitlement could not be removed, noting that the State could not operate a disqualification regime that applied only to convicted prisoners, which constituted an additional punishment not imposed by a court. In the context of divorce, the courts may – but likely would be slow to – import a financial penalty for a party's conduct during a marriage into the final settlement: see *DT v CT*.

The question of whether a pension entitlement is a 'property right' protected by the Constitution has not been finally answered, although it has been considered in a number of cases, with differing judicial conclusions.

Although membership of a pension fund bestows well-established legal rights on pension-fund members, the members remain vulnerable to a reduction in their present or future pension payments where the fund suffers a shortfall or an employer's insolvency. In the aftermath of the 2008 financial crash, there were a number of examples of the State seeking to apply such reductions, which were challenged in the courts.

In *Unite Union and Paul Gallagher v Minister of Finance, Ireland and the Attorney General*, members of the Central Bank's pension scheme unsuccessfully challenged such a reduction imposed by the Minister of Finance, despite having established that there was no central government contribution to the scheme.

In *Garda Representative Association v Minister for Finance*, the plaintiff unsuccessfully challenged emergency legislation that reduced employer pension contributions.

In the private sector, in *Scraggs v Pensions Board*, a former employee of Bank of Ireland complained unsuccessfully about the imposition of stamp duty on the company pension scheme.

In *Holloway v Damianus BV*, the plaintiff trustees succeeded in their action to force a struggling employer to increase its settlement offer to fill the shortfall in the employee pension scheme.

Pension trustees

The duties applying to pension trustees are similar to those applying to trustees generally, albeit that the *Pensions Act 1990* and associated regulations contain specific stipulations. These include the duty to act in

> FOR PRIVATE OR OCCUPATIONAL PENSIONS, THE AGE OF RETIREMENT IS NOT PRESCRIBED BY LEGISLATION, WHICH HAS LED TO A NUMBER OF DISPUTES ABOUT THE RIGHT TO CONTINUE IN EMPLOYMENT OR TO RECEIVE PENSION BENEFITS

THE IRISH COURTS HAVE NOT SUPPORTED THE LOSS OF A PERSON'S PENSION DUE TO A CRIMINAL CONVICTION OR OTHER OBJECTIONABLE BEHAVIOUR

good faith, to exercise discretion, to treat beneficiaries equally, to safeguard assets, and not to profit personally.

Depending on the fund documentation, pension trustees will hold discretionary or decision-making powers. The exercise of these powers was considered in the important case of *Greene v Coady*, which related to decisions by the pension trustee of an under-funded pension scheme of an Irish company, which were challenged by the pension-fund members. Charleton J considered the role of the court in interfering in a decision by pension-fund trustees, concluding that the court should not substitute its views for those of the trustees, but rather consider the matter from their point of view and the evidence that was available to them, before deciding whether their decision was outside of the range of what a reasonable body of trustees could have decided.

Regulation of the industry

The *Pensions Act 1990* is the central piece of legislation in Ireland, establishing the Pensions Authority as the regulatory authority. The EU *Directive on Institutions for Occupational Retirement Pensions* (IORP II) recently added obligations such as fit and proper standards for trustees and enhanced reporting to scheme members. The Pensions Authority has used its powers to bring prosecutions, particularly in the case of non-remittal of employers' pension contributions.

The Financial Services and Pensions Ombudsman has significant powers to adjudicate complaints from pension-scheme members and to order rectification or sanctions. The ombudsman's entitlement to jurisdiction of complaints involving the reduction of pension entitlements was considered in *Minister for Public Expenditure v Pensions Ombudsman* (2015), and in *Willis v Pensions Ombudsman* (2013).

The Government's *Roadmap for Pensions Reform 2018-2023* further addressed longer-term issues, such as extension of the age of retirement for State pensions, automatic enrolment, and issues relating to employment gaps.

There clearly remains much work to be done for policymakers to meet the challenges of provision in retirement.

But while clarity in policy is welcome, pensions remain complex instruments in a complex area of law: understanding the available judicial guidance is, therefore, an essential to all those involved in this industry.

Keith Blizzard is a director at Johnson Hana Inc and a barrister. Patrick Ambrose is a solicitor and head of legal (Europe North) at DLL Group, a wholly owned subsidiary of Rabobank. The authors' new work, Casebook of Irish Financial Services Law – Pensions *(2022), is published by Lonsdale Law Publishing.*

LOOK IT UP

CASES:

- *Christopher Lehane (as Official Assignee in Bankruptcy in the Estate of James Coady) and James Coady* [2017] IEHC 653
- *Coonan v Attorney General, Ireland* [2001] IESC 48
- *DT v CT* [2002] IESC 68, [2002] 3 IR 334 (aka *T v T*)
- *EBS Building Society v Thomas Hefferon and Michael Kearns* [2012] IEHC 399
- *Felix Palacios de La Villa v Cortefiel Servicios SA* [2007] ECJ Celex Lexis 6773 (Case C-411/05)
- *Galvin v Chiefs Appeals Officer* [1997] IEHC 218, [1997] 3 IR 240
- *Garda Representative Association v Minister for Finance* [2018] IESC 4
- *Greene v Coady* [2014] IEHC 38
- *Holloway v Damianus BV* [2015] 1 IR 385
- *In the matter of Central Remedial Clinic Pension and Death Benefits Plan* [2005] IEHC 87
- *Jeremiah Lovett v Minister for Education, Ireland and the Attorney General* [1996] WJSC-HC 4045, [1997] 1 ILRM 89
- *McCarthy v Health Service Executive* [2010] IEHC 75
- *Meagher v Minister for Social Protection* [2014] IEHC 39
- *Minister for Public Expenditure v Pensions Ombudsman* [2015] IEHC 183
- *MP v AP* [2005] IEHC 326
- *Patrick Reilly v Drogheda Borough Council* [2008] IEHC 357
- *PC v Minister for Social Protection, Ireland and the Attorney General* [2016] IEHC 315, [2017] IESC 63, [2017] 2 ILRM 369
- *Quigley v Health Service Executive* [2017] IEHC 654
- *Scraggs v Pensions Board* [2013] IEHC 553
- *Unite Union and Paul Gallagher v Minister of Finance, Ireland and the Attorney General* [2010] IEHC 354
- *Willis v Pensions Ombudsman* [2013] IEHC 352

LEGISLATION:

- *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010*
- *Directive on Institutions for Occupational Retirement Pensions* (Directive (EU) 2016/2341)
- *Insolvency Act 1988*
- *Pensions Act 1990*
- *Teachers Superannuation Act 1928*

Decisions, decisions, decisions!

Reforming legislation to increase the rights of persons with reduced mental capacity will commence before the end of the year. John Costello welcomes its arrival – but warns about amending legislation currently before the Seanad

> IT IS ESSENTIAL THAT THE COURT, WHEN RELEASING THE ASSETS TO THE DMR, GIVES DIRECTION REGARDING THE INVESTMENT STRATEGY TO BE FOLLOWED, FOR THE PROTECTION OF THE RELEVANT PERSON'S ASSETS

The *Assisted Decision-Making (Capacity) Act 2015*, as amended – which will commence before the end of the year – is most welcome. It transforms our antiquated legislation (from 1871) for vulnerable persons over 18 by supporting these persons (referred to as the 'relevant person') in making their own decisions about their everyday lives.

It will apply in particular to over 64,000 persons with dementia, over 18,000 adults with an intellectual disability, over 15,000 patients admitted to psychiatric centres every year, and to over 2,500 wards of court. It will also apply to many more thousands of relevant persons who may need support for decision-making from time to time.

Where a relevant person's capacity to make a decision is in question, he or she can appoint a person to assist, co-decide, or have somebody appointed to represent them for the purpose of making a decision.

Decision-support arrangements

There are three types of decision-support arrangements for the relevant person, who is always presumed to have capacity, based on their ability to make a specific decision at a specific time.

The relevant person who has substantial capacity will be able to choose someone they know and trust to be their decision-making assistant. This is written down in a 'decision-making assistance agreement'. The relevant person will make all decisions themselves – for example, about contacting a bank or healthcare provider, or accommodation and employment issues. The assistant will merely gather relevant information and explain it to the relevant person, who makes the decision themselves.

Co-decision maker

If the relevant person needs greater assistance, they will be able to choose someone they know and trust to be their co-decision maker. This is written down in a 'co-decision-making agreement'. The co-decision maker's role is to make certain decisions jointly and together with this person. Any joint decision made must reflect the wishes of the relevant person.

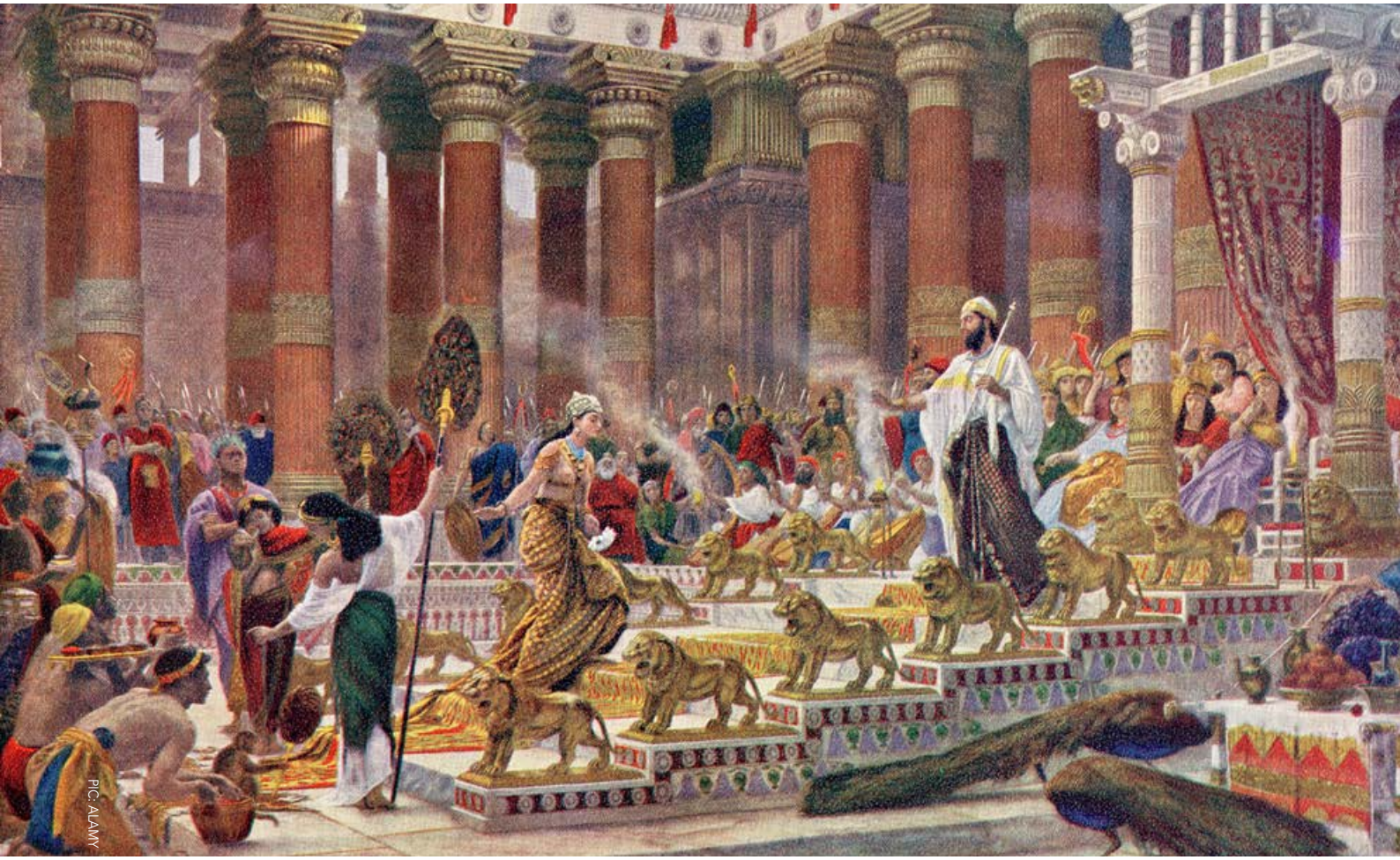
I have talked to parents of children with special needs about this new legislation. They are very alarmed and concerned that their son/daughter could be subject to undue influence in this regard.

Only in April this year, the All Party Oireachtas Committee on Disability recommended that independent advocates should be available to assist relevant persons in appointing a supportive decision-maker. I agree strongly with this recommendation.

Decision-making representative

The new legislation also abolishes wards of court. All existing wards of court, or relevant persons, who have no capacity to make decisions will have a decision-making representative (DMR) appointed to make decisions on their behalf by the Circuit Court. The DMR will usually be someone the person knows and trusts.

All the property and savings owned by the ward or relevant person will be placed under the control of the DMR. At present, there is over €2 billion in assets held for wards of court. The court will make directions regarding the role and duties of the DMR. In my view, it is essential that the court, when releasing the assets to the DMR, gives direction regarding the investment strategy to be followed, for the protection of the relevant person's assets.


PIC: ALAMY

King Solomon: the supreme decision-maker

If the relevant person has signed an 'enduring power of attorney' (EPA), the attorney will make decisions for the relevant person. There will then be no need for any of the three supportive decision-makers to be appointed.

The attorney and any of the three types of decision-supporters can make or assist in decision-making regarding the personal welfare and property and affairs of the person. Personal welfare includes healthcare. However, amending legislation, currently before the Seanad, specifically excludes attorneys from making treatment decisions. A treatment decision is defined as "an intervention that is or may be done for a therapeutic, preventative, diagnostic, palliative or other purpose". The All Party Committee recommended attorneys should make treatment decisions also.

Amending legislation

The amending legislation directs that every EPA must also be registered when signed. This, in my view, is not necessary, and will be an additional cost and expense. It could deter people signing an EPA in the first place. About 80% of EPAs never have to be used. In addition, both the Law Reform Commission and the Oireachtas Committee on Disability only approve registration if the attorney requires to use the EPA.

The new legislation also provides a legal framework, for the first time, for 'advance healthcare directives' (AHD). It is intended that persons will give directions for future medical treatment in an AHD, if they lose capacity. However, from my legal experience, only about 50% of clients who make wills also make an EPA. Less than 2% of such clients make an AHD.

All these supportive decision-makers and attorneys will be supervised by a new office, called the Decision Support Service (DSS). They will also have to submit reports and accounts, where appropriate, to the DSS, as directed in the legislation. The DSS is a new department within the Mental Health Commission.

The DSS has an excellent website with most detailed information on this new legislation (see www.decisionsupportservice.ie). It has published draft codes of practice that are most welcome. The director of the DSS will also have a role in public awareness, information and guidance, developing codes of practice, advising State bodies, making investigations, and keeping records and reports.

Ms Justice Irvine, when President of the Hight Court, handled many wardship cases. At her retirement she said: "The new regime has the potential to greatly enhance the lives of many people currently in wardship, but that will only be the case if it is properly resourced." g

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John Costello is a past-president of the Law Society of Ireland.

Do you copy?

A recent landmark ruling by the CJEU has given a significant boost to EU copyright owners. The court has prioritised IP protection over the exercise of internet users' freedom of expression and information, says Dr Mark Hyland

> COPYRIGHT PROTECTION MUST NECESSARILY BE ACCOMPANIED TO A CERTAIN EXTENT BY A LIMITATION ON THE EXERCISE OF THE RIGHT OF USERS TO FREEDOM OF EXPRESSION AND INFORMATION

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

On 26 April, the CJEU handed down its landmark ruling in Case C-401/19, *Republic of Poland v European Parliament and Council of the EU*. In the case, Poland sought to annul certain parts of article 17(4) of Directive (EU) 2019/790 on copyright and related rights in the digital single market.

By dismissing Poland's application, the CJEU confirmed the validity of article 17(4), a key part of the complex architecture of article 17. In this way, the important liability regime governing online content-sharing service providers is kept intact, and the conditions for exemption from liability for service providers are not watered down.

What is article 17?

Article 17 is a complex provision within a complex directive. At base, article 17 constitutes a new liability regime that applies to service providers. It also incorporates a complicated exemption regime, which is likely to prove difficult to apply in practice.

Article 17 also represents the EU legislature's attempt to recalibrate the EU's digital economy to ensure that copyright holders (such as musicians) are fairly remunerated for their creative works. This recalibration also addresses the so-called 'value gap' in the digital market. The value gap refers to the mismatch between the economic benefits flowing to service providers and the economic benefits flowing to the actual rightsholders.

The value gap is of particular importance to the music sector, where there have been longstanding complaints levelled at, for example, YouTube by music rightsholders, to the effect that the former undercompensates the latter for streams of user-uploaded videos that contain copyright-protected content. For many EU rightsholders, the value gap represents a funnelling of economic value away from creators and into the hands of the online platforms.

The complexity of article 17 is inextricably linked to the triangle of interests apparent in the provision itself. In fact, three distinct sets of interests are referred to in paragraph 20 of the judgment, namely those of (1) the rightsholders, (2) the service providers, and (3) the individual internet users (who use the services of the service providers).

Background to the judgment

On 24 May 2019, almost three years prior to the CJEU judgment, Poland applied to the CJEU for annulment of certain parts of article 17 of the directive. The application was made under article 263 TFEU, and it referred to article 17(4)(b) and (c) *in fine* (that is, the part containing the following wording: "and made best efforts to prevent their future uploads in accordance with point (b)").

As way of an alternative plea, Poland claimed that the CJEU should annul article 17 in its entirety should the court find that the contested provisions could not be deleted from article 17 without substantively changing the rules contained in the remaining provisions of the article.

In essence, Poland's plea alleged infringement of the right to freedom of expression and information guaranteed by article 11 of the *Charter of Fundamental Rights of the EU*.

Both of the contested provisions form part of the rather complicated exemption regime for service providers under article 17(4). In addition, both of the contested provisions require 'best efforts' on the part of the service providers, either in respect of making unavailable on their platforms specific copyright works previously notified to them by rightsholders (article 17(4)(b)), or to prevent future uploads of protected copyright works, also previously notified by rightsholders (article 17(4)(c)).

Poland's core argument was that, for service providers to make 'best efforts' and thereby possibly obtain an exemption from liability under article 17(4),


PIC: ALAMY

'Breaker, breaker one-nine for a copy...'

they are obliged to carry out prior automatic verification (filtering) of user-generated content (UGC) that has been uploaded to their platforms by individual internet users.

Poland asserted that this translates into the necessary introduction of preventive control mechanisms by service providers, which undermines the essence of the right to freedom of expression and information. In addition, Poland also argued that such mechanisms do not comply with the requirements that limitations imposed on the aforementioned right be proportional and necessary.

The judgment

In its analysis of Poland's application for annulment, the CJEU weighed four important rights within the charter. Article 11(1) enshrines the right to freedom of expression. As part of this right, internet users have the right to receive and impart information and ideas without interference by public authority and regardless of frontier. This right has relevance in the context of copyright exceptions and limitations. From a service provider's perspective, article 16 is significant as it enshrines the freedom to conduct a business. Rightsholders' interests are protected by article 17(2) of the charter – it provides that "intellectual property shall be protected". Lastly, article 52(1) is a type of overarching provision that permits limitations on the exercise of the rights/freedoms recognised by the charter, provided certain conditions are satisfied. One such condition is that the limitation "meets the need to protect the rights and freedom of others within the meaning of article 52(1) of the charter".

At paragraph 58 of its judgment, the CJEU concluded that the specific liability regime established in article 17(4) covering service providers entails a limitation on the exercise of the right to freedom of expression and information of internet users, protected by article 11 of the charter. This limitation arises due to the *de facto* filtering of uploaded content by the service providers.

When reviewing the proportionality of the limitation on the exercise of the right to freedom of expression and information of users of online content-sharing services, the CJEU ruled that the limitation "meets the need to protect the rights and freedoms of others within

ARTICLE 17 REPRESENTS THE EU LEGISLATURE'S ATTEMPT TO RECALIBRATE THE EU'S DIGITAL ECONOMY TO ENSURE THAT COPYRIGHT HOLDERS (SUCH AS MUSICIANS) ARE FAIRLY REMUNERATED FOR THEIR CREATIVE WORKS. THIS RECALIBRATION ALSO ADDRESSES THE SO-CALLED 'VALUE GAP' IN THE DIGITAL MARKET

the meaning of article 52(1) of the charter". In this case, the 'others' are rightsholders, and the "need to protect intellectual property [is] guaranteed in article 17(2) of the charter" (paragraph 82 of the judgment).

The CJEU elaborated, stating that the obligations imposed on service providers (and from which the limitations on internet users' freedom of expression and information arise) are there to ensure that intellectual property rights are protected in such a way as to contribute to the achievement of a well-functioning and fair marketplace for copyright. Of particular importance is the final sentence in paragraph 82 of the judgment, where, referring to online content-sharing services, the CJEU states: "Copyright protection *must necessarily* be accompanied to a certain extent by *a limitation* on the exercise of the right of users to freedom of expression and information" (emphasis added).

In plain language, in this specific judgment, the CJEU prioritises IP protection over the exercise of internet users' freedom of expression and information. The ruling revolves around the delicate recalibration of rights and duties in the digital copyright world. On the basis of the parties' legal arguments and the particular facts of the case, the CJEU ruled that the protection of copyright works trumps internet users' freedom of expression and information on this occasion.

Six safeguards

The CJEU ruled that the obligations imposed on online service providers in article 17(4) do not disproportionately restrict the right to freedom of expression and information of users of those services. The court then went on to identify six safeguards put in place by the EU legislature in order to ensure respect for the right to freedom of expression and information of internet users, as guaranteed by article 11 of the charter. The six safeguards also ensure a fair balance between the aforementioned right and the right to intellectual property, as protected by article 17(2) of the charter.

The first safeguard is the clear and precise limit laid down by the EU legislature on the measures that may be taken or required by service providers when implementing the obligations laid down in point (b) and point (c), *in fine*, of article 17(4) of the directive. This safeguard helps to satisfy the requirement of proportionality and acknowledges that the *de facto* filtering of content by the service providers will involve an interference with a fundamental right. The aim is to ensure that the interference is limited to what is strictly necessary. The CJEU emphasised the particular importance of such a safeguard where the interference stems from an automated process, and cited Case C-311/18, *Facebook Ireland and Schrems* in this regard.

The second safeguard refers to the all-important copyright exceptions and limitations that confer rights on the users of works. This safeguard is contained in article 17(7) (second paragraph) of the directive. It requires member states to ensure that users in each member state are authorised to upload and make available content generated by themselves for the specific purposes of quotation, criticism, review, caricature, parody, or pastiche.

In view of the particular importance of the exceptions and limitations for freedom of expression and freedom of the arts, the EU legislature made these exceptions and limitations mandatory in the directive. The reason for this mandatory nature was "to ensure that users receive uniform protection in that regard across the European Union". In marked contrast, the exceptions/limitations were only optional in the 2001 *Information Society Directive* (Directive 2001/29/EC).

The third safeguard relates to service-provider obligations to make content unavailable under article 17(4). However, this obligation is dependent on the relevant rightsholder providing the service provider with "the relevant and necessary information with regard to that content". This important precondition reduces the likelihood of service provider liability and "protects the exercise of the right to freedom of expression and information of users who lawfully use those services".

The fourth safeguard is contained in article 17(8) and provides that the application of article 17 must not lead to any general monitoring obligation being imposed on service providers. This safeguard reflects the *status quo* under article 15 (1) of the *E-Commerce Directive* (Directive 2000/31).

The fifth safeguard comprises a number of procedural safeguards relevant in cases where service providers "erroneously or unjustifiably block lawful content". The first and second paragraphs of article 17(9) of the directive require service providers to put in place "effective and expeditious complaint and redress mechanisms" to support lawful uses of works or other protected subject matter and, in particular, those uses covered by exceptions and limitations to copyright. These provisions enable internet users to submit a complaint to a service provider when they consider that access to uploaded content has been wrongly

PIC: ALAMY

disabled/removed by the service provider. All complaints must be processed without undue delay, and be subject to a human review. Where rightsholders request service providers to disable access to or remove UGC, the reasons for their requests must be duly justified.

The fifth safeguard also encompasses "out-of-court redress mechanisms" and "efficient judicial remedies", both of which can be availed of by individual internet users. Article 17(9) specifically refers to a user's access to a court or "another relevant judicial authority" as being important in relation to the assertion of an exception or limitation to copyright.

The sixth safeguard is arguably more *supplementary* to the system of legislative safeguards than a safeguard itself. Article 17(10) of the directive requires the European Commission to organise, in cooperation with the member states, stakeholder dialogues to discuss best practices for cooperation between service providers and rightsholders. It also requires the commission to issue guidance on the application of article 17 of the directive. It is worth noting that both these things have already occurred. Six stakeholder dialogues were held between October 2019 and February 2020 and, in June 2021, the commission published its comprehensive, albeit non-legally binding, guidance on article 17.

Article 17(10) expressly states that, when discussing best practices, special account must be taken, among other things, of the need to balance fundamental rights and the use of exceptions and limitations.

Referring to its findings in paragraphs 72 to 97 of its judgment, the CJEU disagreed with Poland's assertions and ruled that "appropriate safeguards" had been put in place by the EU legislature to ensure that the right to freedom of expression and information of internet users was respected. Those safeguards also ensured that there was a fair balance between the aforementioned right and the right to have one's intellectual property protected. Accordingly, the CJEU rejected Poland's plea in law and dismissed Poland's application to annul parts of article 17(4) of the directive.

Striking a fair balance

The concluding part of the judgment (paragraph 99) is particularly interesting, as the CJEU requires member-state governments to strike a fair balance between the various fundamental rights protected by the charter when transposing article 17 into domestic law. Further, the CJEU also requires "the authorities and courts of the member states", when implementing the transposing provisions for article 17, to do so in a manner that would not be in conflict with the fundamental rights or general principles of EU law. The CJEU specifically highlights the principle of proportionality and its 2008 judgment in Case C-275/06, *Productores de Música de España (Promusicae) v Telefónica de España SAU*.

While this ruling by the EU's senior court will certainly be welcome news to EU rightsholders, it is also a very good example of how the CJEU can painstakingly craft a compelling legal solution by striking the fairest possible balance between the various fundamental rights protected by the charter. g

Dr Mark Hyland is lecturer in the Faculty of Business, Technological University Dublin, and IMRO adjunct professor of intellectual property law at the Law Society of Ireland.

LOOK IT UP

CASES:

- Case C-275/06, *Productores de Música de España (Promusicae) v Telefónica de España SAU*
- Case C-311/18, *Facebook Ireland and Schrems*
- Case C-401/19, *Republic of Poland v European Parliament and Council of the EU*

LEGISLATION:

- *Charter of Fundamental Rights of the EU*
- Directive (EU) 2019/790 on copyright and related rights in the digital single market
- *E-Commerce Directive* (Directive 2000/31)
- *Information Society Directive* (Directive 2001/29/EC)

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CONVEYANCING COMMITTEE

EASEMENTS BEST PRACTICE

The Conveyancing Committee has been asked to give some guidance on what best practice should be followed by solicitors following the repeal of part 8, chapter 1 of the *Land and Conveyancing Law Reform Act 2009* by the *Land and Conveyancing Law Reform Act 2021*.

The 2021 act effectively reversed the changes to the law introduced by the 2009 act, but provided that, in future, prescriptive easements can only be acquired under the doctrine of 'lost modern grant'.

It is long-established conveyancing practice that a vendor confirms the existence of an easement arising otherwise than by deed by production of a statutory declaration confirming use for a specified period of time continuously (without force, interruption, permission or objection) and openly. Often the title documents will include such declarations from previous owners, confirming the position during their period of ownership.

In many situations, inspection will provide persuasive evidence of the existence of an established easement. Common examples include:

- A dwelling or other premises built over 20 years ago to which there is only one access and there is no indication of any alteration of the access route, and
- Pipes, cables, well or waste-water treatment systems and percolation areas serving a dwelling or other premises built over 20 years ago that appear to have been in place since the erection of the building.

In these situations, it is the view of the Conveyancing Committee that there is no need to revisit the established conveyancing practice of accepting a statutory declaration from the vendor. Once there are appropriate declarations from the vendor and any predecessors in title for in excess of 20 years, and no indication of any difficulty such as to put a purchaser on enquiry, it is the view of the committee that it is reasonable for a purchaser's solicitor to advise the purchaser to accept the position.

Where the position is less clear, such as service pipes or a secondary access, which may have been used in conjunction with the premises only in the recent past, or where it is not clear how long they are in place, then it would be reasonable for the purchaser to seek corroborative evidence, such as a confirmatory declaration of an independent third party with knowledge of the matter.

Where there is a material concern regarding the exercise or nature of the easement, solicitors for purchasers may need to establish the basis on which the claimed easement arose. In those circumstances, the statutory declaration confirming the easement should provide as much detail as is available, to include whether the easement claimed arises under the doctrine of lost modern grant or is an implied easement. Corroborative evidence of the easement may be required.

Where an easement of necessity is claimed, the precise circumstances, including the date of the transaction whereby a holding was divided giving rise to the easement, should be set out in a statutory declaration. Where an easement of common intention is claimed, the precise circumstances should be explained if it is known or still possible to establish.

Section 40 of the 2009 act is very helpful in relation to implied easements. This abolished the rule in *Wheeldon v Burrows* and replaced it with clear wording without affecting the existing law on implied easements or the operation of the doctrine of non-derogation from grant.

Practitioners are referred to the previous practice notes issued in respect of easements, which are available on the Law Society's website. Other material is available under 'Resources' in the committees/conveyancing section of the website. A specimen statutory declaration regarding the existence of an easement has recently been added (download at www.lawsociety.ie/solicitors/knowledge-base/practice-notes – search for 'Easements best practice', then click the link in that practice note).

Prior to the passing of the 2021 act, some conveyancers and lending institutions for purchasers were insisting on easements based on long user being registered in the Land Registry under the section 49A procedure. Following the introduction of the 2021 act, there is no justification for such insistence as a general rule. Where a purchaser perceives that an established easement may be under threat (such as where development is proposed in the servient tenement), they can apply to register the easement once they complete the purchase. Given that such registrations can be difficult to achieve and often take extended periods of time, insistence on registration prior to completion of a conveyancing transaction could jeopardise the transaction.

However, it is recognised that each circumstance is different, and it is not possible to have hard-and-fast rules that apply to every transaction. Each situation must be evaluated on its own merits. In certain instances, such as where there is a material concern as to the existence of an easement or where its exercise has been challenged, the prudent course for a purchaser may be to require registration prior to completing a purchase.

This guidance will be reviewed when new legislation is enacted to reform this area of the law following the report of the proposed Government Departmental Review Group. g

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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 Brendan Flanagan, a solicitor previously practising in the firm of Higgins Chambers and Flanagan Solicitors, Headford, Co Galway, and in the matter of the *Solicitors Acts 1954-2015***
Law Society of Ireland (applicant)
Brendan Flanagan (respondent solicitor)

2018/DT48

On 14 June 2022, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of professional misconduct in that he failed to comply with two undertakings furnished to a named bank on 6 May 2008 and 30 March 2009 in respect of his named clients and borrowers and property at Headford, Co Galway, in a timely manner or at all.

The tribunal ordered that the respondent solicitor:

1) Stand censured,
2) Is directed to pay a sum of €500 to the compensation fund,
3) Is directed to pay a sum of €1,250 as a contribution towards the whole of the costs of the applicant.

2018/DT49

On 14 June 2022, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of professional misconduct in that he failed to comply with an undertaking furnished to a named bank on 4 June 2009 in respect of his named clients and borrowers and property at Clonbur, Co Galway, in a timely manner or at all.

The tribunal ordered that the respondent solicitor:

1) Stand censured,
2) Is directed to pay a sum of €500 to the compensation fund,
3) Is directed to pay a sum of €1,250 as a contribution towards the whole of the costs of the applicant.

2018/DT50

On 14 June 2022, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of professional misconduct in that he failed to comply with an undertaking furnished to a named bank on 15 May 2001 in respect of his named clients and borrowers and property at Annaghadown, Co Galway, in a timely manner or at all.

The tribunal ordered that the respondent solicitor:

1) Stand censured,
2) Is directed to pay a sum of €500 to the compensation fund,
3) Is directed to pay a sum of €1,250 as a contribution towards the whole of the costs of the applicant.

2019/DT07

On 14 June 2022, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of professional misconduct in that he failed to comply with an undertaking furnished to a named bank on 28 October 2004 in respect of his named clients and borrowers and property at Ballinrobe, Co Mayo, in a timely manner or at all.

The tribunal ordered that the respondent solicitor:

1) Stand censured,
2) Is directed to pay a sum of €500 to the compensation fund,
3) Is directed to pay a sum of €1,250 as a contribution towards the whole of the costs of the applicant.

In the matter of John McNulty, a solicitor practising as the principal of Kevin P Kilrane & Co, Solicitors, at Mohill, Co Leitrim, and in the matter of the *Solicitors Acts 1954-2015* [2022/DT01]
Law Society of Ireland (applicant)
John McNulty (respondent solicitor)

On 20 July 2022, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in that he:

1) Failed to respond to the complainant's correspondence and queries in relation to a named estate in a timely manner or at all,
2) Failed to comply with a direction of the Complaints and Client Relations Committee, made at its meeting on 17 November 2020, that he reply to all of the Society's unanswered letters and fully update the Society on the right of way issue, which decision was communicated to him by letter dated 25 November 2020,
3) Failed to respond to the Society's letters in a timely manner, adequately, or at all and, in particular, the letters dated 13 February 2018, 27 April 2018, 21 May 2018, 7 June 2018, 24 June 2020, 10 August 2020, 31 August 2020, 16 September 2020, 16 October 2020, 21 October 2020, 25 November 2020, 11 December 2020, 25 January 2021, 5 March 2021, 22 March 2021, 30 March 2021, 28 June 2021, and 16 July 2021.

The tribunal ordered that the respondent solicitor:

1) Stand censured,
2) Is directed to pay a sum of €6,788 to the compensation fund,
3) Is directed to pay the sum of €3,212 as a contribution towards the whole of the costs of the Law Society. g

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19 October	**Property Law Update 2022** Live Webinar	3 General (by eLearning)	€160	€185
27 October	**Annual Litigation Update 2022** Live Webinar	3.5 General - (by eLearning)	€160	€185
1 November	**Digital Upskilling – Excel level 2**	6 Management and Professional Development Skills (by eLearning)	€160	€185
8 November	**International Arbitration in Ireland** Live Webinar	See website for details	€160	€185
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Available now	**The Arbitration Agreement – Procedure and Practice** Online, On-Demand	2 General (by eLearning)	€135	€160

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WILLS

Byrne, Edward (deceased), late of 6 Fairways Green, Dublin 11, and 17 Claremont Drive, Dublin 11, who died on 19 April 2022. Would any person having knowledge of the whereabouts of any will made by the above-named deceased, or if any firm is holding same or was in recent contact with the deceased regarding his will, please contact Elaine Byrne; tel: 087 659 1504, email: elaine.giblin@gmail.com

Cassells, Thomas (Tom) (deceased), late of 274 Castletown, Leixlip, Co Kildare, who died on 12 June 2022. Would any person having knowledge of the whereabouts of any will made by the above-named deceased since 2000 onwards, or if any firm is holding same or was in recent contact with the deceased regarding his will, please contact Field Solicitors, Office Unit 4, Manor Mills Centre, Maynooth, Co Kildare; tel: 01 629 1155, email: info@fieldsolicitors.ie

Collins, Carl (deceased), late of 18 The Village, Eastham Road, Bettystown, Co Meath, and 27th Infantry Battalion, Gormanstown Camp, Gormanstown, Co Meath, who died on 8 November 2020. Would any person having knowledge of the whereabouts of any will executed by the above-named deceased please contact Vincent McCormack & Co, Solicitors, 11 St Michael Street, Tipperary Town; tel: 062 52899; DX 38 006; email: mailbox@tipplegal.ie

Dolan, Edmund (deceased), late of Kiltycon, Moyne, Longford, Co Longford. Would any person having knowledge of any will made by the above-named deceased, who died on 7 June 2022, please contact Connellan Solicitors LLP, 3 Church Street, Longford, Co Longford; tel: 043 334 6440, email: ekeenan@connellansolicitors.ie

RATES

PROFESSIONAL NOTICE RATES

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

Doyle, Richard (deceased), late of 12 Stormstown Road, Dublin 11, who died at the Mater Hospital, Dublin 11, on 12 July 2021. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Stacey Wade, Doyle & Company LLP, Solicitors, 123 Cabra Road, Dublin 7; tel: 01 838 3388, fax: 01 822 0880, email: stacey@doyleandcompany.ie

English, Adrian Joseph (deceased), late of 11 Kilcolman Court, Glenageary, Co Dublin, who died on 6 January 2022. Would any person having knowledge of the whereabouts of any will executed by the above-named deceased please contact Jennifer Morrow, Gartlan Furey Solicitors, 20 Fitzwilliam Square, Dublin 2; tel: 01 799 8000, email: jennifer.morrow@gartlanfurey.ie

Faulkner, Ann (deceased), late of 78 Pembroke Cottages, Donnybrook, Dublin 4, who died on 14 February 1988. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Rory Casey, John Casey & Company, Solicitors, Bindon House, Bindon Street, Ennis, Co Clare; tel: 065 682 8159, fax: 065 682 0519, email: rory.casey@caseylaw.biz

Loane, Elizabeth (otherwise Lily) (deceased), late of 162 Philipsburgh Avenue, Fairview, Dublin 3, who died on 22 August 2019. Would any person having knowledge of a will made by the above-named deceased please contact Sighle Duffy, Murray Flynn LLP, Solicitors, 12-16 Fairview Strand, Fairview, Dublin 3; tel: 01 836 3551, email: sduffy@murrayflynn.ie

McDermott, Francis (deceased), late of Breanloughaun/Briarhill, Castlegar, Co Galway, who died on 23 January 1997. Would any solicitor or person having knowledge and details of a will made by the above-named deceased please contact Emer Lyons, Lyons Skelly Solicitors, Suite 19 Lakeview Point, Claregalway Corporate Park, Claregalway, Galway; tel: 091 341 069, email: info@lyons-skelly.com

MacDermott, Gerard (otherwise McDermott) (deceased), late of Breanloughaun/Briarhill, Castlegar, Co Galway, who died on 9 February 2012. Would any solicitor or person having knowledge and details of a will made by the above-named deceased please contact Emer Lyons, Lyons Skelly Solicitors, Suite 19 Lakeview Point, Claregalway Corporate Park, Claregalway, Galway; tel: 091 341 069, email: info@lyons-skelly.com

McEneaney, Michael (deceased), late of Corleanamaddy, Doohamlet, Castleblayney, Co

Monaghan, who died on 13 May 2022. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Aoife Connolly, Coyle Kennedy Smyth LLP, Thomas Street, Castleblayney, Co Monaghan; tel: 042 974 0010, email: aconnolly@ckslaw.ie

McGreevy, Michael (deceased), late of Cathedral Street or Chapel Street, Ballaghaderreen, Co Roscommon, who died on 8 January 2022. Would any person having knowledge of the whereabouts of any will executed by the above-named deceased please contact Egan Daughter & Co, Solicitors, Castlebar, Co Mayo; tel: 094 902 1375, email: law@egansolicitors.com

McSweeney, John Charles (deceased), late of Ranaleen, Currow, Killarney, Co Kerry, who died on 2 June 2022. Would any person having knowledge of any will made by the above-named deceased please contact Mary Brady, Regan McEntee & Partners, Solicitors, High Street, Trim, Co Meath; DX 92002 Trim; tel: 046 943 1202

Peters, Janet (deceased), late of The Arches, Belfarsad, Achill, Co Mayo, who died on 20 April 2022. Would any person having knowledge of the existence of any will made by the above-named deceased please contact Tracey Murray, solicitor, Chambers House, Ellison Street, Castlebar, Co Mayo; tel: 094 902 3789, email: mail@traceymurray.ie

Ryan, Muriel (deceased), late of Apartment 37, Clearstream Court, McKee Avenue, Finglas, Dublin 11, and formerly of 7 St Francis Terrace, Bow Street, Dublin 7, who died on 27 May 2022. Would any person having knowledge of the whereabouts of any will made or purported to have been made by the above-named deceased, or if any firm is holding same, please contact McEneaney Tighe Solicitors, 73 Lower Leeson Street, Dublin 2; tel: 01 662 5233, email: law@mceneaneytighe.ie

Trimm, Bridget Philomena (deceased), late of The Lodge, Oakbridge Drive, Buckshaw Retirement Village, Chorley, UK, and formerly of 15 Keane's Road, Kilrush, Co Clare, who died on 1 April 2022. Would any person having knowledge of any will made by the above-named deceased please contact Halpin & Co Solicitors, email: info@halpinsolicitors.ie

Walsh, Kathleen (deceased), late of Shannagh Bay Nursing Home, Strand Road, Bray, Co Wicklow, and formerly of 48 Derrynane Gardens, Sandymount, Dublin 4. Take notice that any person(s) having a claim against the estate or any person having knowledge of any will made by the above-named deceased please contact Tom Collins, Tom Collins & Company, Solicitors LLP, 132 Terenure Road North, Terenure, Dublin 6W; tel: 01 490 0121, email: info@tomcollins.ie

Yeche, Laurent Pierre Thomas (deceased), late of 111 Wolfe Tone Street, Cork, who died on 17 June 2022. Would any person having knowledge of any will made by the above-named deceased please contact Halpin & Co, Solicitors, email: info@halpinsolicitors.ie

TITLE DEEDS

McGrath, Georgina (deceased), property at 4 Glandore Park, Lower Mounttown Road, Dun Laoghaire, Co Dublin

Would any person, company or firm having knowledge of the whereabouts of the title deeds of the lands described in the schedule below or of the following original document – indenture of conveyance dated 10 March 1970 between Stradbrook Holdings Limited on the one part and Moran Homes Limited of the other part – please contact Collier Law, Solicitors, 326 Clontarf Road, Clontarf, Dublin 3; tel: 01 833 8147, email: anthony@collierlaw.ie.

Schedule: (1) 4 Glandore Park, Lower Mounttown Road, Dun Laoghaire, Co Dublin; (2) lands of Glandore, Lower Mounttown Road, Dun Laoghaire, Co Dublin

In the matter of the *Landlord and Tenant (Ground Rents) 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 the Commissioners of Public Works in Ireland and in the matter of the property known as Clonaslee Garda Station, Co Laois

Take notice that any person having any interest in the freehold estate and any intermediate interests in the property known as Clonaslee Garda Station, Co Laois, held under a lease dated 21 April 1934 between Alice Maud Cottingham and Kathleen Plunkett Dunne (as lessors) of the first part, the North British and Mercantile Insurance Company Limited (as mortgagees), and the Commissioners of Public Works in Ireland, and described therein as "all that and those that part of the lands of Clonaslee containing Ir 16pp statute measure or thereabouts with the ruins of the former RIC Barracks and its out offices thereon, which premises are situate in the parish of Kilmannan, barony of Tinnahinch, Co Laois", delineated and edged red on the map annexed to the lease for a term of 99 years from 1 January 1934 at a rent of £6 per annum, subject to the covenants and conditions therein contained.

Take notice that Commissioners of Public Works in Ireland (the applicant), being the person entitled to the interest of the lessee under the lease, intends to apply to the county registrar for the county of Laois 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 (or any of them) are hereupon called upon to furnish evidence of their title to same to the below named within 21 days from the date of this notice.

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

Date: 7 October 2022
Signed: Chief State Solicitor's Office (solicitors for the applicants), Jonathan Swift Street, Trim, Co Meath, C15 NX36

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*

Take notice that any person having any superior interest (whether by way of freehold estate or otherwise) in all that and those 4 Lombard Street East, Dublin 2, being portion of premises held under a lease dated 25 May 1837 between John Barton of the one part and Edward Duff of the other part for 900 years from 25 March 1837 at a rent of £16 per annum, subsequently abated to £9 per annum, the premises the subject of the lease being therein described as all that and those a lot or piece of ground situate on the east side of Lombard Street, being part of a lot of ground demised to John Barton by James Corry Esquire with the measurements and bounded as described therein and more particularly described on a map on the margin of the lease.

Take notice that Kahala Capital Partners Limited, as tenant of the said property under the lease, intends to submit an application to the county registrar for the county of Dublin for acquisition of the freehold and any intermediate interests in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid premises (or any of them) are called upon to furnish evidence of their title to the aforementioned premises to the below named within 21 days from the date of this notice.

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

Date: 7 October 2022
Signed: Clark Hill (solicitors for the applicant), 4th Floor, 8-34 Percy Place, Dublin 4

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*, sections 9 and 10, and in the matter of 1B East Wall Road, East Wall, Dublin 3, and in the matter of an application by Joseph McNamee and Company Limited

Any person having an interest in the freehold or any superior estate in 1B East Wall Road, East Wall, Dublin 3 (the premises): take notice that Joseph McNamee and Company Limited, as holder of the premises pursuant to a lease dated 30 July 1936 between the Dublin Port and Docks Board of the one part and Patrick Gerard O'Rourke and Taaffe and O'Rourke Limited of the other part, intends to submit an application to the county registrar for the county and city of Dublin for acquisition of the freehold interest in the premises, and any party asserting that they hold a superior interest in the premises is called upon to furnish evidence of their title to the premises to the below named within 21 days hereof.

In default of such evidence being received, the above-named applicant intends to proceed with the application before the county registrar for the county and city of Dublin at the end of 21 days from the date of this notice and will apply to the said 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 premises are unknown or unascertained.

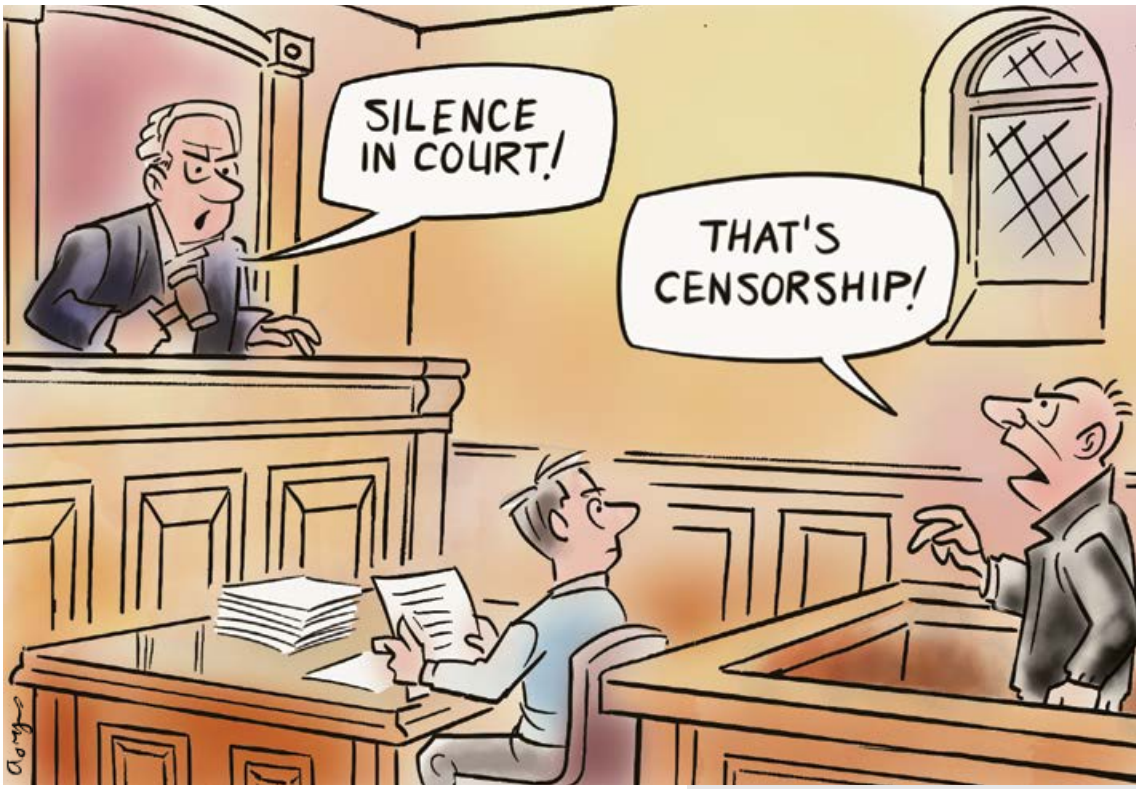
Date: 7 October 2022
Signed: Barry Lyons Solicitors (solicitors for the applicant), Crescent Hall, Mount Street Crescent, Dublin 2

PRO BONOBO

Texas hold 'em up to scrutiny

● A federal court has allowed Texas to enforce a law that bans large social-media companies from restricting posts based on the viewpoint of the speaker, the *ABA Journal* reports. The court rejected arguments that the law interfered with the companies' First Amendment rights to exercise editorial discretion.

"The platforms argue that buried somewhere in the person's enumerated right to free speech lies a corporation's unenumerated right to muzzle speech," the Fifth Circuit said on 16 September. "The implications of the argument are staggering. On the platforms' view, email providers, mobile phone companies, and banks could cancel the accounts of anyone who sends an email, makes a phone call, or spends money in support of a disfavoured political party, candidate or business."



Only fools and horses

● The caretaker of a stately home threw away a carved Tudor panel worth £5 million because he thought it was rotten, an employment tribunal has heard.

The Guardian reports that Brian Wilson took the 450-year-old overmantel from Seighford Hall in Staffordshire and tossed it on a pile of firewood, before giving it to an antiques dealer who later tried to sell it. Wilson was dismissed for gross misconduct, but the tribunal ruled the sacking had been "procedurally unfair", as Wilson had not been made aware of the decision to fire him.


"I got it in a fire sale."

Court slams slammer for intransigence

● A US court has ruled in favour of a Muslim inmate who claimed that his religious rights were violated by strip searches conducted in the presence of a transgender prison guard, the *ABA Journal* reports.

Rufus West argued that strip searches by prison guards who were female at birth conflicted with his religious faith, which bars him from exposing himself to a woman other than his wife.

The appeal court ruled that the prison violated West's rights under federal law and may have violated his rights to be free of unreasonable searches under the Fourth Amendment, saying that West had been "substantially burdened" because the prison "has told West in no uncertain terms that he must submit to future strip searches" by the transgender guard or face discipline.

Cat scan or lab report?

● A cat could be making legal history – if she feels like it – if her human succeeds in his lawsuit against Sainsbury's for denying the feline entry to one of its stores, Sky News reports.

Ian Fenn, who is autistic and has trained Chloe the cat to be a support for him, says that she prevents sensory overload and should be treated like a guide dog. His lawyer said: "There are plenty of cases about guide dogs being refused access to places or services, but there hasn't really been any judicial exploration of what constitutes an assistance animal if it's not a dog." g

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