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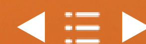
LAW SOCIETY

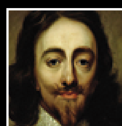


LAW SOCIETY OF IRELAND

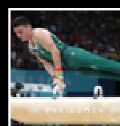
ARE YOU A LONE RANGER?

New partner structures for lawyers

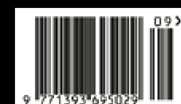
LADY OF THE LAKES
The *Gazette* talks to solicitor Maria Lakes about access to the profession



WORLD, UPSIDE DOWN
The continuing impact of unrepealed 17th century law in modern Ireland



KINGDOM FOR A HORSE
Let me compare thee to an Olympic athlete… no, really, it's an analogy!



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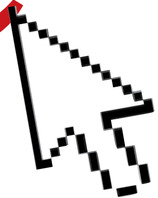

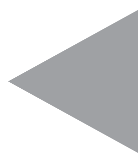

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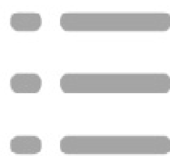

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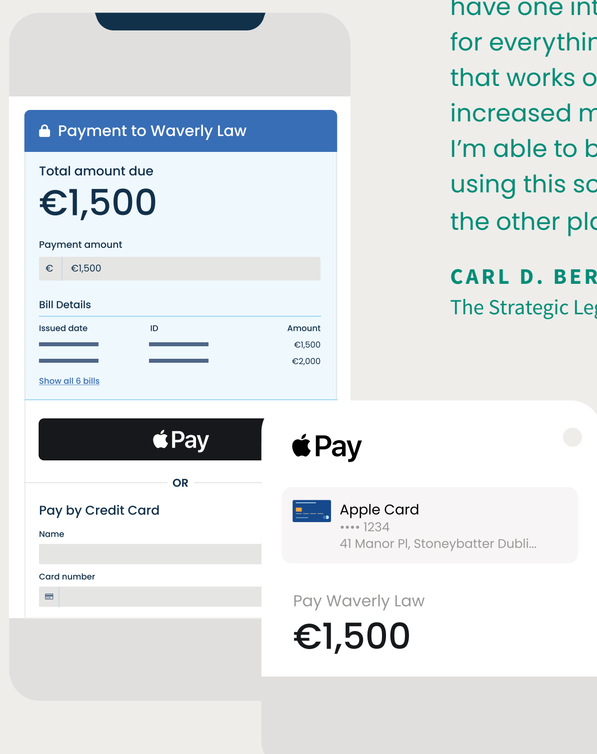

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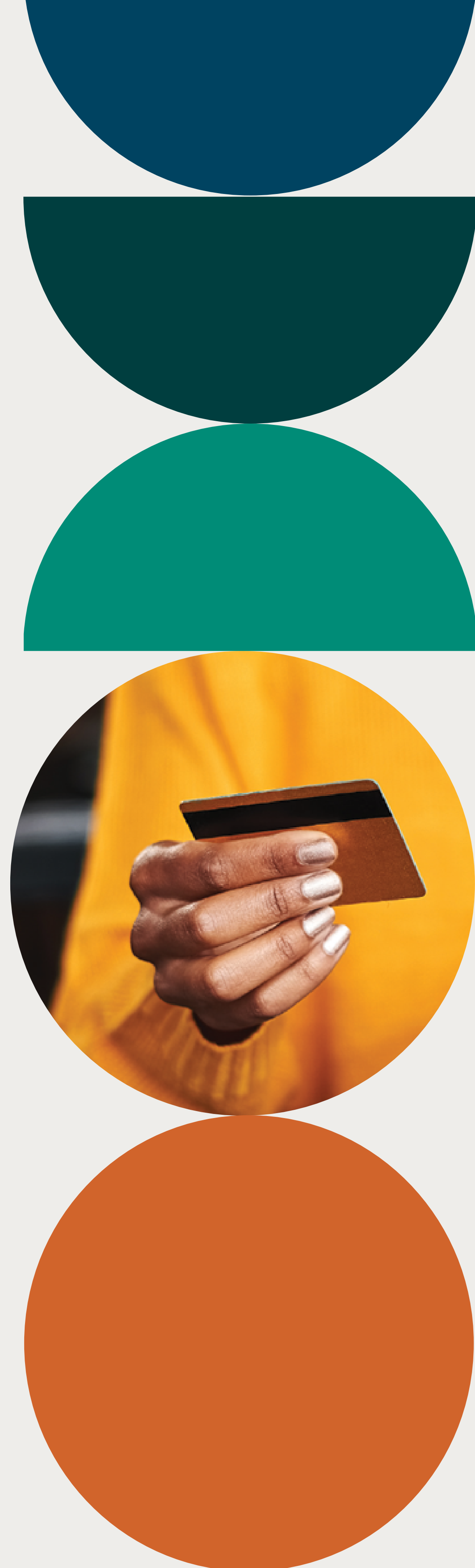

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Continuing our advocacy

Hopefully, you have had the opportunity to take or plan a well-deserved break to recharge your batteries as we head into the last few months of 2024.

The first week of September is an important one for the Law Society, as a new group of over 400 trainee solicitors start their Professional Practice Course and what we hope will be a long and positive relationship with the law and Law Society services. This week also marks the second year for the Law Society's Culture First festival, 'Well Within the Law', where solicitors come together to explore and celebrate what makes us and our workplaces stronger and more connected.

Since my last message, the Law Society has continued to advocate for resolutions on topics of major concern for practitioners, such as enduring powers of attorney and conveyancing reform.

You may have seen recent media coverage on our efforts to bring about much-needed changes to the process for creating an enduring power of attorney. We have highlighted the unjustifiable obstacles that have been placed in front of users at the point of seeking to create an account on the Decision Support Service (DSS) platform and the need for a solicitors' portal to be added to the platform. We are concerned that, with every passing day that these fundamental challenges go unaddressed, more vulnerable and elderly people are, in a very practical sense, being denied access to a public service that they need. We continue to engage with the minister and the DSS to resolve these issues.

Following the Law Society's contribution to the 'Housing for All' Expert Group on Conveyancing and Probate and our attendance at the Joint Committee on Justice, we welcome the publication of the final report of the expert group, which contains a series of recommendations that focus on achieving more efficient and consumer-friendly processes to reduce delays and associated costs.

One of the recommendations relates to better preparing buyers and sellers for the conveyancing process. The Law Society, together with the Society of Chartered Surveyors Ireland, have recently launched a new consumer guide – *Speed Up Your Property Sale: A Guide to Avoiding the Most Common Delays* – that sets out in detail the steps anyone selling a property needs to take, the questions to ask, who to contact, as well as how long the process usually takes and related costs. You can download this guide from the Law Society website, and please encourage your clients to access it too.

Artificial intelligence

There's no doubt that use of AI is rapidly becoming integrated into our daily and professional lives. As demonstrated by the hundreds of attendees at a recent Law Society webinar on the topic, AI is an issue of increasing interest and concern to many in the profession. It is important that the Law Society plays a leading role in the national conversation, and we made a submission in July in response to a Department of Enterprise public consultation on the implementation of the *EU AI Act* in Ireland.

While broadly optimistic about the future of AI in the Irish economy and society, including its potential for improving access to justice, the submission acknowledged that the use of AI tools carries risks. The Law Society will continue to engage with policymakers on AI regulation.

If interested in learning more, a seminar on AI and GDPR, hosted by the European Law Institute, is taking place at the Law Society on 9 October. I hope to see you there.

Rule of law

You may have read reports of threats and intimidation against our colleague Imran Khurshid, a solicitor practising in Dublin. The Law Society will continue to support solicitors and legal professionals and will work with the gardaí to ensure that legal professionals can operate in an environment that recognises the important role that they play in our justice system, and ensure that they are not hampered by threats of violence or intimidation. We will not tolerate any attempt to undermine the legal system or the rights of individuals to access legal representation.

"WE WILL NOT TOLERATE ATTEMPTS TO UNDERMINE THE LEGAL SYSTEM OR THE RIGHTS OF INDIVIDUALS TO ACCESS REPRESENTATION

BARRY MacCARTHY,
PRESIDENT

THE BIG PICTURE

CAN'T GET YOU OUT OF MY HEAD

Gazette favourite Kylie Minogue came into our world for the Electric Picnic this month, closing the show with what critics described as a 'fierce set' that had them spinning around. Hand on heart, it's no secret that this isn't the top news of the month but, on a night like this, we wouldn't change a thing

PIC: KAMILLA PATERA / ALAMY

Justice Media Awards held in June

PICS: JASON CLARKE

Evelyn O'Rourke (*Today with Claire Byrne* – RTÉ Radio 1) receives a Justice Media Award from Law Society President Barry MacCarthy and director general Mark Garrett at Blackhall Place on Thursday 20 June

Pictured at the Justice Media Awards were prize-winners from *The Journal*

Conor Pope and Mary Carolan (*Irish Times*) at the Justice Media Awards

Catherine Sanz and Killian Woods (*Business Post*)

Ann Murphy (*Irish Examiner*)

Shane Phelan, Mary Carroll, Fionnán Sheahan, Tabitha Monahan and Mark Tighe (*Irish Independent*)

Advanced Diploma in Legal Practice

More than 300 trainee solicitors were awarded an Advanced Diploma in Legal Practice at an awards ceremony on Wednesday 26 June. The trainees successfully completed four or more advanced electives as part of their overall training and are the first trainees to receive this award. Pictured are Lauren Dolan, Brian McGlone and Anna McEvoy

PICS: JASON CLARKE

Sean Cullen, Ciara Woulfe, Aoife Keenan, Róisín Casey, Jamie Mac Uiginn, Emily Sugrue, Laoise Kelleher, Ian Galvin and Aoife Garvey

Dermot Gallagher

Claire Mulholland, Sasha Hearns, Erica Russell, Katie Dempsey and Nikki McAleese

Younger Members meet the president

At a meeting of the Younger Members Committee with the Law Society president were (*back, from left*): Hannah Shaw, President Barry MacCarthy, Sarah McNulty, Fiona McNulty, and Tara O'Donoghue; (*front, from left*): Michelle Cross, James McEvoy, committee chair Maeve Delargy, Genevieve Lynch, and Siobhán Masterson (secretary to the committee)

PICS: CIAN REDMOND

Michelle Cross and Genevieve Lynch

Climb every mountain

Eight trainee solicitors have reached the summit of Africa's highest mountain – Kilimanjaro. In August, they battled through the night for seven hours, after five days of hiking, facing a wind chill of -16 and altitude sickness, to raise €10,542 for the Ballymun Community Law Centre

PICS: CIAN REDMOND

Best in class

At a conferral ceremony at the Law Society in March, Dr Muiris Ó Céidigh was awarded the Leeds Law School Prize for Best Overall Performance on the LLM Advanced Legal Practice programme (pictured with programme supervisor Michael O'Mahony, course coordinator Judith Tedders, and Claire O'Mahony, head of the Diploma Centre)

Somber commemoration

Law Society President Barry MacCarthy attended the Royal British Legion's Annual Ceremony of Remembrance at the National War Memorial Gardens in Islandbridge on 13 July (see news, p15)

Summer parchment recipients

PICS: JASON CLARKE

Elizabeth Ann McElwaine, Dermot McElwaine, Mark McElwaine and Rachel McElwaine

Canice Walsh, Deirdre Walsh and Sadhbh Walsh

Ellen Wrynn, Tracey Brady, Niall Gallagher, Niamh Grant and Jason Laverty

Stephen Geary and Aideen Farrelly

Nicole Irwin

Jade Bakare

Liam, Tara, Finbar and Pauline Strain

Environmental law networking event

The launch of the Environmental and Planning Law Committee

● Are you interested in starting a career or expanding your practice in environmental, planning, or climate law?

The Law Society's Environmental and Planning Law Committee and the Younger Members Committee are holding a networking event at the Law Society from 5:30pm on Thursday 12 September. Join them for a reception and fireside chat and learn how Ireland's top environmental and planning law solicitors have carved a successful career in this area.

The event is a unique networking opportunity for legal practitioners and trainee solicitors to learn about this growing area of law. For more information and to register, see lawsociety.ie/EPLnetworking.

Do you believe in life after law?

● The Law Society's Younger Members Committee is holding its annual conference – 'Life after law: lessons learnt to help a legal career' – at the Law Society, Blackhall Place, Dublin 7, from 4-6pm on Thursday 3 October.

The event will bring together former solicitors who have pursued other careers in areas such as wellbeing, recruitment, the judiciary, and journalism, will offer younger solicitors invaluable insights into the key skills, tools and experiences that have shaped these speakers' careers, and will assist younger solicitors to progress in their own legal careers.

This is a unique networking opportunity for solicitors in the earlier stages of their career, trainees approaching qualification, and solicitors managing or mentoring junior lawyers. The event is free and offers two CPD points for management and professional development.

For more information and to register, see lawsociety.ie/education--cpd.

Artificial intelligence and GDPR

● The European Law Institute (ELI) will host a conference on artificial intelligence and GDPR at the Law Society, Blackhall Place, from 5-7.30pm on Wednesday 9 October.

Emma Redmond (Open AI)

The conference aims to expose lawyers and businesses operating in Ireland to the latest and most expert thinking where challenges of great complexity are arising. It will highlight the importance of privacy law to Irish and multinational companies that carry on business in Ireland and discuss the importance of considering, at the highest level, the impact on privacy concerns of the inevitable development of AI.

The conference will be addressed by leading experts, including Prof Pascal Pichonnaz (ELI president), Geoffrey Vos (Master of the Rolls and ELI vice-president), Jeremy Godfrey, (chairperson of Comisiún na Meán), and Emma Redmond (assistant general counsel for privacy and data protection at Open AI).

Tickets are €215. To book, visit lawsociety.ie/ELIconference.

Guide highlights 'seven deadly delays' for property sellers

The Law Society has teamed up with the Society of Chartered Surveyors (SCSI) to produce a new guide aimed at helping to speed up property sales.

Speed Up Your Property Sale: A Guide to Avoiding the Most Common Delays is mainly aimed at sellers, but will also be of interest to buyers.

It sets out in detail the steps anyone selling a property needs to take, the questions they need to ask, and who they need to contact – as well as how long it usually takes and costs.

The Law Society's director general, Mark Garrett, says that buying or selling a house is the biggest transaction most people will be involved in. "However, the process they have to deal with is antiquated, overly complex, and can involve up to 15 interdependent parties, as well as dozens of documents. A delay at any point can have a knock-on effect on the process and lead to significant delays, which can in turn negatively impact the Irish housing market," he states.

Shirley Coulter (chief executive of the SCSI) says that, while the average timeframe to complete is over four months for a significant number of sales, there can be considerable delays. She adds that many people do not realise

Mark Garrett: 'Delay at any point can have a knock-on effect on the process'

the volume of documentation needed to complete a property sale – including the property's title deeds, copies of marriage or civil-partnership certificates, and land-registry and mapping documents.

"Additional information and documentation may be required if third parties have rights over a property, such as a right of residence or right of way, or if there have been boundary issues or disputes with a neighbour," Coulter states.

The new guide outlines the 'seven deadly sins' that can lead to delays:

- Documentation and team – if you are the seller, you have to start the process by gathering the appropriate documentation and instructing your team (solicitor and estate agent),
- Deeds – getting the title deeds for the property (usually the bank has them),
- Roads – confirming who has responsibility for maintaining the roads, lanes, and services (water and sewage) for the property,
- Planning – ensuring compliance with all planning permissions (back to 1964),
- Taxes – there is an increasing number of charges that have been attached to property and must be collected before a sale (including local property tax, household charge, residential-zoned land tax, and the Fair Deal Scheme),
- Probate – if the property is being sold following death of the owner, then the sale could be conditional or 'subject to' probate, causing very significant delays,
- Money – having the finance in place to complete the sale (buyer) or having the final redemption figure from their bank to settle the existing mortgage (seller).

The guide's publication came as an expert group made recommendations aimed at speeding up the conveyancing process, setting a target turnaround time of eight weeks. The Government has pledged to set up an implementation body to bring into effect the suggestions, which include the introduction of e-conveyancing by the end of 2027.

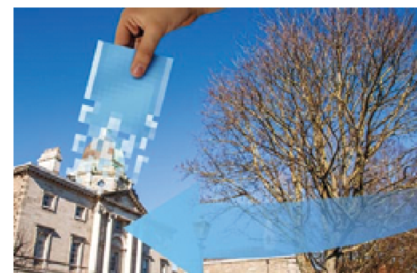
To view and print the guide for you or your clients, visit lawsociety.ie/sellersguide or contact solicitorservices@lawsociety.ie with any queries.

Law Directory print edition

Due to a publishing issue, the print edition of the 2024 *Law Directory* is unfortunately not available to purchase, download as a PDF, or to view online as a PDF.

The issue only relates to the print edition and does not affect the online digital version, which is still searchable at lawsociety.ie/member-services/information-services/law-directory.

Council elections 2024



Nominations for election to the Law Society Council close on 10 September at 5pm.

The closing date for sending in canvassing profiles is 26 September. Voting opens online on 4 October.

ENDANGERED LAWYERS

IMRAN KHURSHID, IRELAND

Imran Khurshid

Of Pakistani origin, Imran Khurshid qualified as a barrister in 2012 and requalified as a solicitor in 2016, when he set up in practice. In 2021, his firm merged with Gary Daly & Co to make Daly Khurshid Solicitors LLP, established in central Dublin. Mr Khurshid is also a member of the Punjab Bar in Pakistan and is secretary of the Fianna Fáil Migrants' Network Committee. Areas of his practice include immigration law and human rights law.

On 2 August, *The Irish Times* carried a report titled 'Immigration lawyer feels unsafe in Dublin'. This arose from a series of emails, online threats, and X/Twitter posts threatening him and his practice. It started with an X account posting a photograph and stating that his firm "specialises in getting foreigners into Ireland and helping foreigners remain here". According to *The Irish Times*, Mr Khurshid said he never received threats before he ran in local elections in 2019. Even then, he said they amounted to "just some racism" rather than anything more sinister. He reported the matter to the gardaí, who took a statement. He says he now takes more care with his personal safety, no longer walks around the city centre, and drives in and out to work.

The same day, Law Society President Barry McCarthy issued a strong statement in his support, which is published on the Law Society website.

British website Legalfutures.co.uk addressed the same issue on 6 August under the title 'Alarm over threats to law firms by anti-immigration protesters'. A post by Neil Rose stated that details of 39 addresses across the UK were shared with the exhortation "They won't stop coming until you tell them", along with the encouragement to "mask up" for 8pm that evening, with flame emojis.

In light of this, the Asylum Link Merseyside decided to temporarily close its building and work remotely. Smart Immigration Solutions in Peterborough, also on the list, reportedly said on Facebook that the police informed them that measures were in place if needed. England & Wales Law Society President Nick Emmerson issued a statement and said he had written to the prime minister, lord chancellor, and home secretary to ask that the threats be treated seriously. Statements of support were issued by a range of organisations, with many calls and emails in support also reported. There was a fear that the riots following the stabbing of children in Southport could escalate.

Alma Clissmann was a longtime member of the Human Rights Committee.

Complex tort cases – redressing the balance?

The new EU *Product Liability Directive*, which will have a two-year implementation period, includes presumptions reversing the conventional burden of proof on plaintiffs to prove defect or causation in cases where plaintiffs with a plausible case face exceptional difficulties of proof due to technical or scientific complexity – such as in medical devices, pharmaceuticals, or vaccines cases.

A conference on Thursday 26 September at 5.15pm in the Distillery Building, Church Street, Dublin 7, will examine the likely effects of the new directive and discuss issues of litigation funding and what type of procedure for multiparty actions might suit Ireland in light of experience in England and the Netherlands. In 2020, the report of the Review of the Administration of Civil Justice, chaired by Mr Justice Peter Kelly, concluded that there is an objective need to legislate for a comprehensive multiparty action procedure in this country.

Mr Justice Maurice Collins of the Supreme Court and Prof Geraint Howells of University of Galway will chair the sessions, and Michael Cush SC, Eileen Barrington SC, Roddy Bourke (solicitor), Sarah Moore (Leigh Day, London), David Kidman (Simmon & Simmons, London), and Ianika Tzankova (Tilburg University, the Netherlands) are the panellists. There is no admission charge, and a reception will follow the meeting.

To register, email eventsregistration@BIICL.ORG.

The meeting is convened by the Product Liability Forum of the British Institute of International and Comparative Law, an independent research body based in London.

Mr Justice Maurice Collins will chair the event

Solicitor aims to be first woman NUI chancellor

Solicitor Linda O'Shea Farren

Solicitor Linda O'Shea Farren is running to become the first woman NUI chancellor in its 116-year history.

O'Shea Farren is serving her fifth term elected to the NUI Senate. Practising in the New York and London offices of Debevoise & Plimpton for many years, Linda founded the Irish American Bar Association of New York and successfully opposed an application to the New York Court of Appeals by the New York Bar Association to require Irish and other common law undergraduates to have an American LLM for eligibility to sit the New York Bar Exams.

Graduates of any eligible NUI institution living anywhere in the world can request their voting papers via online form (www.nui.ie) or by emailing the requisite information to elections@nui.ie. The deadline to request voting papers is 9 October, with completed ballots to be received by NUI by 17 October. See also www.lindaosheafarren.com.

'Excluded and left behind'

Distinguished human rights lawyer Caoilfhionn Gallagher KC will launch Mercy Law Resource Centre's latest policy report, *Excluded and Left Behind: The Lived Experience of Long-Term Family Homelessness on Minority Ethnic Families and the Effects on their Children*. The event will take place on 10 September from 9:30am to 1pm. A panel of experts will discuss the report's findings and provide insights.

Caoilfhionn Gallagher KC

MLRC will also be running online training in the fundamentals of housing law via Zoom on 24 September from 10am-12.30pm. The training costs €95 per person and offers 2.5 CPD points. Email events@mercylaw.ie to register or for more information.

IRLI IN AFRICA

ACCESS TO JUSTICE IN ZAMBIA

Members of the Zambian National Prosecution Authority Gender-Based Crimes Department outside the Criminal Courts of Justice in Dublin in June 2024: Cynthia Simwatachela, Chali Hambayi, and Monde Muyoba

Irish Rule of Law International (IRLI) is a collaborative effort of the law societies and bars of Ireland and Northern Ireland, with significant support from Irish Aid. We operate across several partner countries, including Malawi, Tanzania, and Zambia, and have projects in Ethiopia, Somalia, and South Africa.

Our work advances the rule of law and human rights, harnessing the skills and knowledge of justice sector actors and institutions across the island of Ireland.

IRLI's 'Access to Justice in Zambia' programme operates across several areas, including prison decongestion and supporting institutional responses to economic and financial crimes and corruption. Through our work, we aim to be responsive to the needs of our counterparts and to provide technical advice and assistance that reflects the realities of the justice system on the ground.

Accordingly, over the past months, IRLI has also been working on supporting the Gender-Based Crimes Department (GBCD) of the National Prosecution Authority in their efforts to reorganise and improve their operations.

A milestone in our cooperation was a visit to Ireland in June by the head of the GBCD, Chali Himbayi, and two of her staff. This visit afforded Chali and her team the opportunity to see, first hand, the organisations and practices that we had been discussing, and which provide examples for the GBCD to adopt and adapt, as appropriate, for the Zambian context.

At the Criminal Courts of Justice in Dublin, the delegation met staff from the Office of the Director of Public Prosecutions, An Garda Síochána's National Protective Services Bureau, and Victim Support at Court. In Belfast, they spent a full day with the Public Prosecution Service of Northern Ireland and saw the newly opened Remote Evidence Centre, observed court proceedings at the Laganside Court complex, and met with members of the judiciary; they finished their visit at the impressive Rowan Sexual Assault Referral Centre.

A key piece of learning from the visit was that Ireland's adoption of victim-centred processes has taken time and determination over many years. IRLI stands ready to support our Zambian counterparts in their efforts towards this important and laudable goal.

Sean McHale is director of programmes at Irish Rule of Law International.

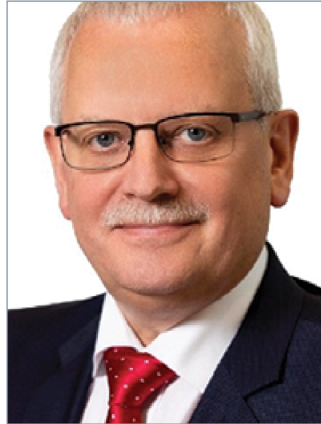
17 misconduct findings against solicitors

The Legal Practitioners Disciplinary Tribunal (LPDT) made determinations in 19 cases of alleged misconduct against legal practitioners last year, according to its inaugural report. All 19 cases concerned solicitors.

It made determinations of misconduct in 17 cases, while in two cases it found that there was no misconduct.

The report covers the period from the establishment of the tribunal in 2020 to its first year of holding inquiry hearings (2023). The tribunal is an independent statutory body under the *Legal Services Regulation Act 2015*. Its role is to consider complaints of misconduct against solicitors and barristers referred to it from the Legal Services Regulatory Authority (LSRA) Complaints Committee or the Law Society.

The LPDT began receiving applications from both the Law Society and the LSRA in 2022. Its report shows that it received 29 applications in 2022 and 22 last year, with almost 80% coming from the Law Society. It considered 26 cases on 17 different hearing dates last year.


Tribunal chair Tom Coughlan

Strike-off

In cases of misconduct, the tribunal either makes an order on the sanction to be imposed under section 82(1) of the 2015 act or makes a recommendation to the High Court on the sanction it believes to be appropriate under section 82(2) of the act. The report shows that it made 14 orders regarding sanctions against solicitors, as well as three recommendations to the High Court.

Most of the tribunal's 14 orders involved a mixture of censure, fines, and costs. In one case, it recommended to the High Court that a practitioner be struck off the Roll of Solicitors, while another recommendation involved suspension from practice. In a third case, it recommended that a practitioner was not a fit person to be on the Roll of Solicitors.

Writing in the report, LPDT chair Tom Coughlan said that he anticipated an increase in the tribunal's workload and number of inquiry hearings in 2024.

KEY STATS

- There were 29 applications received by the tribunal in 2022 and 22 applications received in 2023,
- There were 26 cases considered on 17 different hearing dates,
- There were 19 determinations made regarding misconduct,
- There were 14 orders made by the tribunal regarding sanction and three referrals/recommendations made to the High Court.

These figures are set out in more detail on pp10-12 of the report, which is available at gov.ie/en/campaigns/64443-legal-practitioners-disciplinary-tribunal.

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President attends Islandbridge commemoration

Law Society President Barry MacCarthy attended the Royal British Legion's Annual Ceremony of Remembrance at the Lutyens-designed National War Memorial Gardens in Islandbridge on 13 July.

The event commemorates all those who lost their lives at the Battle of the Somme in 1916, in the two World Wars, and particularly the Irish men and women who served and died in those conflicts.

Wreaths were laid by representatives of all traditions across the island, led by senior State and civic society office-holders from both jurisdictions – including the King's Inns, Bar Council, and the Garda Commissioner, as well as members of the diplomatic corps and veterans' organisations from Ireland, Britain, and the Commonwealth.

The Law Society's wreath was in memory of the 20 solicitors and 18 apprentices killed in action – 155 solicitors and 83 apprentices enlisted in the Great War.

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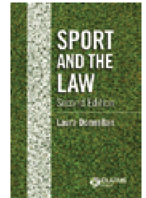

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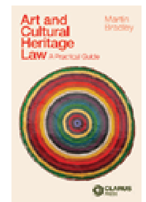

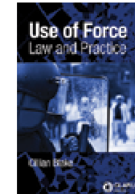

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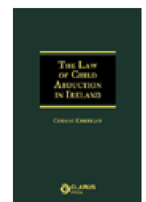

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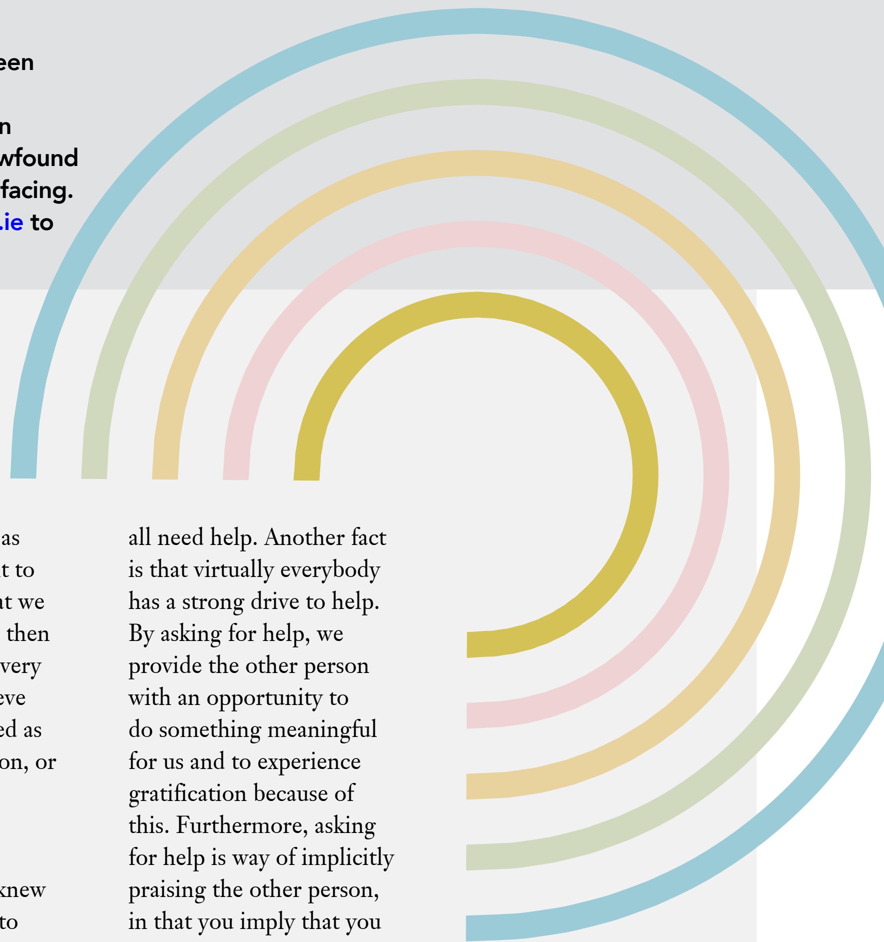
PROFESSIONAL LIVES

Sharing personal and professional stories has long been a powerful way to create a sense of connection and belonging. It creates a space for vulnerability that can provide the listener with inspiration and hope, or newfound insight to a challenge or difficulty they too might be facing. We welcome you to get in touch with ps@lawsociety.ie to share a story for this 'Professional Lives' column.



The value of asking for help

On a recent workshop with a group of solicitors, we were exploring our values. I dropped in the value of 'asking for help'. No one considered this a value, yet it is a very important one, often vital for our self-care and wellbeing, both personally and professionally.

In asking the group to consider this value for themselves, I shared what came up for me when I had done so, and how this value had saved me as a sole practitioner solicitor.

As I was growing up, I learned early on that asking for help was not really an option. In fact, I would be seen as weak if I did. The maxim 'what doesn't kill you makes you stronger' was the norm. The adults around me seemed to be anxious, but they never spoke about how they felt or asked for help from anyone. In fact, they often refused it when help was offered. They just 'got on with it' as best as they could, and we were encouraged to 'keep ourselves to ourselves' and 'not to wash our dirty laundry in public'.

When, as a child, it is not a good idea to ask those around us for help, it becomes very difficult as an adolescent and adult to do so. If we believe that we need to be self-reliant, then asking for help can be very difficult. We may believe that we might be judged as weak, looked down upon, or even ridiculed.

Taking the risk

Luckily, as an adult, I knew in my gut that talking to another about a problem I was having and asking for help was a wise thing to do, even if I perceived that I might be judged. This was particularly true in my chosen career as a sole practitioner solicitor. Working in the legal system, which is by nature an adversarial one, it was never an easy place to ask for help. For sure, it was a risk – but somehow, I knew I had to, especially when my anxiety levels were through the roof. So, when I needed help, I carefully chose who I would ask and I picked up the phone.

I invariably got the help that I needed from my colleagues and, when I did, I got empathy and understanding too. The fact is that we all struggle when suffering from fear and anxiety, and at times we all need help. Another fact is that virtually everybody has a strong drive to help. By asking for help, we provide the other person with an opportunity to do something meaningful for us and to experience gratification because of this. Furthermore, asking for help is way of implicitly praising the other person, in that you imply that you trust the other person and view him or her as able to help you and therefore as a competent person. This is reciprocity. I definitely experienced this reciprocity when I asked for help and, in some cases, strong collegial bonds followed – and, at other times, collegial friendships began. I am immensely grateful to all my colleagues who helped me over the years.

As we explored this value in the group, we also discussed vulnerability and courage. Many were reminded of the fact that asking for help is essential. It is vulnerability at its best. It takes courage to be vulnerable. It is not a weakness. In fact, it is what makes us stronger. ■

Maggie Mulpeter is a retired solicitor, now working as a relationship and parent mentor providing courses and workshops to solicitors at CPD events and in-house on various aspects of self-care and wellbeing in the law (see maggiemulpeter.com; email: margaretmulpetermentor@gmail.com). *Confidential, independent, and subsidised support is available through LegalMind for legal professionals. All enquiries to LegalMind are fully confidential to Clanwilliam Institute (the Law Society's partner providers). All therapy sessions are conducted by highly trained professionals in a confidential forum. Email: reception@clanwilliam.ie; tel: 01 205 5010 (9am to 5pm, Monday to Friday); web: lawsociety.ie/legalmind.*

Bad news for privacy rights

The *Smyth/McAreavey* case has important implications for how we think about privacy rights – and indeed rights more broadly in this jurisdiction – and what repercussions should flow from breaches of these rights, writes Claire Hamilton

> THOSE IN AUTHORITY WHO WIELD A STEADILY GROWING ARRAY OF POWERS HAVE TO BE ACCOUNTABLE FOR THE WAY THAT THEY USE THEM, INCLUDING FOLLOWING THE RULES SET DOWN BY THE PEOPLE IN THE CONSTITUTION AND IN THE *EUROPEAN CHARTER*

The Supreme Court's decision in the case of *People (DPP) v Smyth/McAreavey* ([2024] IESC 22) in June has been predominantly read as a significant setback for Graham Dwyer in his murder conviction appeal. This is because one of the main issues in the case – the admissibility of traffic and location data related to mobile phones in evidence – is also at the centre of Dwyer's appeal. In the *Dwyer* case, it was used to link Dwyer's work phone to another mobile phone the prosecution claims Dwyer acquired and used to contact his victim, Ms O'Hara.

These predictions have turned out to be true, with the recent Supreme Court decision in *Dwyer* applying the court's findings in the *Smyth/McAreavey* cases on the admissibility issue. The Supreme Court followed *Smyth/McAreavey* in finding that the metadata was rightfully admitted into evidence at Dwyer's trial. The key finding here is that the gardaí were entitled to rely on phone-call data evidence even after the *Communications (Retention of Data) Act 2011* was struck down by the European Court of Justice in April 2014. In a previous (non-criminal) Supreme Court case in 2022, Graham Dwyer's legal team had successfully argued that his rights, including his right to privacy under the *EU Charter*, had been breached through the use of this evidence

Broader implications

Beyond this, however, the *Smyth/McAreavey* case has important implications for how we think about privacy rights – and indeed rights more broadly in this jurisdiction – and what repercussions should flow from breaches of these rights.

Smyth/McAreavey interprets and applies a legal rule from a 2015 decision called *DPP v JC* ([2015 IESC 31), which has been variously described as "the most astounding judgment ever handed down by an Irish court" and "a revolution in principle". The case effectively overhauled the law on unconstitutionally obtained evidence in Ireland, allowing gardaí (and other State agents) to breach our rights – and then to retrospectively argue that they made a mistake. Writing in *The Irish Times* at the time, Fintan O'Toole described the decision as "bad for democracy" and "a terrible day's work for accountability in Irish public life". The *Smyth/McAreavey* decision shows that he was right.

This is primarily because the recent ruling by the Supreme Court sets such a high bar for State recklessness or gross negligence. In *JC*, the Supreme Court majority was keen to emphasise the limits of the new rule, including the fact that evidence obtained as a result of gross negligence or recklessness will not be admitted, and that scrutiny by the court extends beyond the individual who actually gathered the evidence to senior officials involved in high level decision-making. The theory is that *JC* should not be used as a fig leaf for patently unconstitutional policies and practices to become embedded in the system. Indeed, referencing the 'Gardagate' revelations at the time about unauthorised recordings in garda stations, some academic commentators wrote that *JC* gives the State "little comfort". Yet this type of systematic abuse is exactly the situation that presented itself in *Smyth/McAreavey* and which was upheld by the court, relying on *JC*.

Institutional failings

The institutional failings in question are best explained by Judge Hogan in his dissenting judgment in *Smyth/McAreavey*, using the analogy of a burning building. As he writes, by the time of the European Court decision in *Digital Rights Ireland* in April 2014, the "lights were

already flashing red". Two subsequent decisions followed from the European Court in 2015 and 2016 such that, by the time the gardaí were seeking the mobile phone data in the *Smyth/McAreavey* case (June 2017), "no one could … have said that … they had good reason to believe that the continued use of the 2011 act was 'perfectly legal'". Judge Hogan's conclusion is supported by the April 2017 report of former Chief Justice John Murray on communications data, which was similarly 'unsparing' in its description of an illegal system of 'mass surveillance'. All of this leads to the inevitable conclusion that the continued reliance on the 2011 act in June 2017 was reckless or grossly negligent, again recognising that the test requires looking beyond the individual gardaí concerned to broader institutional decision-making.

The fact that this was not the conclusion of the majority in *Smyth/McAreavey* does not augur well for the future of privacy rights in this jurisdiction. At what point do we call out glaring legal deficiencies as institutional recklessness? Or have our rights become, to quote Judge Hardiman in *JC*, "mere words on a page"? It is worth recalling here that this doesn't seem to be the first occasion in which the *JC* rule has come to the rescue of glaring flaws in legislation. In research that I carried out with the Irish Council of Civil Liberties, many practitioners told me about *JC* being invoked to remedy serious deficiencies in the data retention regime relating to audio surveillance. As one of my interviewees, a senior criminal law practitioner, said at the time: "It has been plain as a pikestaff that the minister hasn't made regulations for years … and then *JC* is used by the court to say it's actually okay, when you might have thought that this is clearly a case for saying, 'Hang on a second. This couldn't be inadvertence anymore'."

In a democracy, those in authority who wield a steadily growing array of powers have to be accountable for the way that they use them, including following the rules set down by the people in the Constitution and in the *European Charter*. The breach of rights in question here is far from a 'mere technicality' but rather one that was described by the European Court as a "particularly serious" interference with the fundamental rights of practically the entire European population. In effect, mass surveillance through tracking of phone and internet use for every citizen in Ireland (and across the EU).

The decision in *Smyth/McAreavey* should alarm every one of those same Irish citizens. g

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Claire Hamilton is head of the School of Law and Criminology at Maynooth University.

Access to justice in Ireland

It is of the utmost importance that the term 'access to justice' is not just a buzzword, but is something of substance, argues Matthew Mulrooney

THE WORK OF COMMUNITY LAW CENTRES IS OF THE UTMOST IMPORTANCE – NOT JUST FOR THE WORK THEY DO, BUT ALSO FOR THE RELATIONSHIP OF TRUST THEY CREATE BETWEEN THE PROFESSION AND THE COMMUNITIES THAT THEY SERVE, OVERCOMING MANY OF THE AFOREMENTIONED BARRIERS TO JUSTICE

Access to justice can be seen as a fundamental human right, including knowledge and access to the legal system in order to rectify a wrong or to put effect to a right afforded under law. It has been further described as a pillar of the rule of law through making legal services and the justice system accessible for all. This is a cornerstone of the legal professions.

Arguably, the recent move towards digitisation and the increased use of legal technology in national legal systems has had the (apparent) benefit of increasing transparency in those systems, and assisting to decrease court backlogs. It has also been argued that such digitisation has assisted individuals to better understand the complexity of law.

No silver bullet

However, former Chief Justice Frank Clarke has said that there is no "single solution or silver bullet" to solve barriers to accessing justice in Ireland. Social barriers to justice, in particular, encompass a lack of legal knowledge, lack of trust in the system, and/or poverty. For example, a common misconception is that legal professionals are of a different social class and therefore cannot represent or understand those from less privileged backgrounds. Simply put, it is believed that the law, and by extension justice, is not for them. This belief prevents some people from even considering legal recourse as an option in the first place.

While it is largely accepted that digitisation can overcome issues surrounding costs and socio-psychological barriers to justice (including its complexity), there still remains a problem in the lack of consultation between citizen and law-maker when looking to implement these resources – and when there is such consultation, it is often retrospective.

This presents problems, such as the misconception that the only people who are affected negatively by the introduction of such technology are those who are internet deprived, or are unwilling to use it. This is not the case: the most vulnerable of people have numerous issues far removed from an unwillingness to use technology. Examples can include homelessness, poverty, illiteracy, or mental health problems. These problems demonstrate the continued need for community law centres, which aid in matters that fall outside of the legal aid services.

Public perception

Recently, a discussion among colleagues arose following public comments underneath Law Society posts on social media. Such comments were reflective of the socio-economic barriers discussed above. These barriers are further exacerbated by a lack of understanding of the role of the legal practitioner.

As a trainee solicitor, I am privileged to be employed by a relatively large corporate law firm. This stage in my career represents four years of undergraduate studies, one year of professional examinations, two years of office experience and, at the time of writing, I am coming to the end of the Professional Practice Course. In essence, I am in my fifth year as a member of the legal community – and I still struggle to understand the precise nature of our role in society. This is because our role as practitioner is ever-evolving and adapting to a changing society and the needs of that society. The modern practitioner can wear multiple hats, jumping from advisor and advocate to therapist and confidant in an instant.

A further divide between the profession and the public arises due to the reactive nature of law, as opposed to it being pre-emptive. For those in the profession, we realise that that this is because it is hard to pre-empt issues when you cannot see how those issues present in practice. However, for others, this presents as 'the law' being

PIC: SHUTTERSTOCK.AI

outdated, archaic, and even uncaring. This is compounded by the often slow-moving nature of law when it does react.

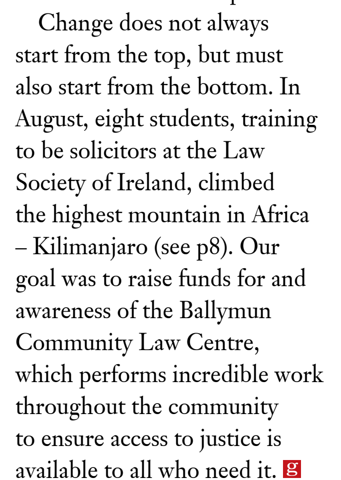
Although not universal, it is arguable that this issue is reflective of our dealings with lay litigants. This is not necessarily due to a disdain for the non-legal community but, rather, is more generally reflective of an increased workload. As solicitors, we practise how we were taught. We expect our correspondence in particular language, our affidavits in a certain style, and our proceedings served in a particular manner – in effect, everything a lay litigant does not know how to do, duly frustrating judges, solicitors, barristers, and lowly trainees.

However, it was as an intern, on a Monday morning motions court, that I began to empathise with the lay litigant. The court was a sea of black robes; then, as a matter was called, one elderly gentleman presented himself to the judge, in opposition to an immaculate, articulate barrister. Reflecting on this encounter, which lasted no more than three minutes, I empathised with the gentleman, recognising the fear – even intimidation – he must have felt in that courtroom, how inferior he must have felt at that time, and still (when some of us still struggle to find the courage to order a takeaway) stood up and addressed the court.

Effecting change

This discussion serves only to illustrate why these barriers to access to justice exist. Considering this, can we really blame people for falling into a belief that 'law is not for them', because, when they do utilise the system, they can find themselves in intimidating situations facing metaphorical giants, thus feeling isolated and alone?

To really effect change, it is of the utmost importance that the term 'access to justice' is not just a buzz word, but is something of substance. For this reason, the work of community law centres is also of the utmost importance – not just for what they do, but also for the relationship of trust they create between the profession and the communities that they serve, overcoming many of the aforementioned barriers to justice. However, due to the sensitive nature of the work undertaken, and again because they fall outside the scope of legal aid, these centres often find it hard to raise funds. It was this that inspired a number of trainees to do their part.



Change does not always start from the top, but must also start from the bottom. In August, eight students, training to be solicitors at the Law Society of Ireland, climbed the highest mountain in Africa – Kilimanjaro (see p8). Our goal was to raise funds for and awareness of the Ballymun Community Law Centre, which performs incredible work throughout the community to ensure access to justice is available to all who need it.

Matthew Mulrooney is a trainee solicitor at RDJ LLP. *He wishes to thank Dr Rónán Kennedy of the University of Galway for reviewing this article.*

THE
SEACHERS

PIC: SHUTTERSTOCK

The introduction of a new business structure for legal services providers this autumn means that solicitors will now also be able to go into partnership with barristers. Dr Brian Doherty is quick on the draw

PIC: ALAMY

Irish solicitors are already very familiar with the partnership model of delivering legal services. To date, this tried and tested business arrangement has been limited to solicitors entering partnerships with other solicitors.

However, the introduction by the Legal Services Regulatory Authority of a new business structure for legal services providers, due this autumn, means solicitors will now also be able to go into partnership with barristers.

Legal partnerships are an innovation introduced in the *Legal Services Regulation Act 2015*, with the aim of modernising and enhancing the delivery of legal services by allowing more flexible business arrangements among legal practitioners.

Section 2(1) of the act defines a legal partnership as "a partnership formed under the law of the State by written agreement, by two or more legal practitioners, at least one of whom is a practising barrister, for the purpose of providing legal services".

The act therefore permits two new types of alternative business structures: solicitor/barrister partnerships, and barrister-only partnerships. Legal partnerships will be able to employ both barristers and solicitors, and there is no limit to the number of partners in a legal partnership.

While legal partnerships are provided for in the 2015 act, their introduction required a legislative amendment to section 1. This amendment was included in the *Courts and Civil Law (Miscellaneous Provisions) Act 2023*, which has paved the way for the introduction of legal partnerships in the coming months.

The magnificent seven

Over the past several years, the LSRA has undertaken extensive preparatory work, including consulting with stakeholders on the mechanics of introducing legal partnerships, all with a view to establishing how best to regulate this new business model.

The underlying objective has been to ensure that legal partnerships offer something new to the legal services market, while meeting the regulatory objectives of the act – including in advancing the public interest, promoting competition, protecting the interests of consumers, and encouraging an independent, strong and effective legal profession.

Of particular interest to the LSRA have been the implications of a partnership comprising two different types of legal practitioner – solicitors and barristers – each with different professional duties and obligations.

We conducted our most recent consultation on legal partnerships in the spring of this year, when we invited feedback on a draft regulatory framework for legal partnerships.

As always, we are grateful for the input and insights from our stakeholders, including the Law Society, the Bar, and the King's Inns, as well as insurance companies and State bodies. Their feedback has helped us to put the final shape on the enabling architecture for legal partnerships.

The wild bunch

In introducing this new regulatory framework, our aim has been to strike the right balance between facilitating more flexibility in the legal services market, as required by the act, while at the same time protecting consumers.

This has meant preserving some of the most significant aspects of the respective statutory obligations of solicitors and barristers in a legal partnership. For example, in a legal partnership, solicitors will be able to hold clients' money, while barristers will not. This arrangement reflects the current legal position.

Similarly, the introduction of legal partnerships does not mean that there will be changes to the operation of the solicitors' Compensation Fund, which compensates clients who suffer financial loss caused by their solicitor's dishonesty. The fund will continue to be paid for only by solicitors.

A legal partnership will be obliged to confirm to a client in writing – either upon, or as soon as practicable after, accepting instructions – certain information, including:

- That a legal partnership is subject to the 2015 act (and in particular section 45(1), which provides that a legal practitioner shall not hold moneys of clients unless that legal practitioner is a solicitor),
- That barristers in a legal partnership shall not, by any act or omission, interfere with the obligations of a practising solicitor in the legal partnership under the *Solicitors Acts* and any regulations made thereunder, and
- That the Law Society's obligations to reimburse losses caused by the dishonesty of practising solicitors from the Compensation Fund does not extend to practising barristers in a legal partnership.

The legal partnership regulations will provide rules in relation to the naming, operation, and management of legal partnerships. These will be published in due course.

In the accompanying article, my colleague Padraig Langan provides further details on the process for notifying the LSRA that a legal partnership:

- Intends to provide legal services,
- Intends to cease/has ceased providing legal services,
- Has altered its membership, as well as
- Rules on naming legal partnerships and
- How the online Register of Legal Partnerships will operate.

A fistful of dollars

So what could this new business structure mean for you and your practice?

From the business point of view, the sharing of resources between solicitors and barristers may of course create efficiencies, which should result in

THE ACT PERMITS TWO NEW TYPES OF ALTERNATIVE BUSINESS STRUCTURES: SOLICITOR/BARRISTER PARTNERSHIPS, AND BARRISTER-ONLY PARTNERSHIPS. LEGAL PARTNERSHIPS WILL BE ABLE TO EMPLOY BOTH BARRISTERS AND SOLICITORS, AND THERE IS NO LIMIT TO THE NUMBER OF PARTNERS

cost savings. For clients, legal partnerships involving solicitors and barristers may be attractive on the basis that what will be on offer is a bundled or integrated service from a single business entity, in effect a 'one stop shop' for legal services.

Another appeal for partners in a legal partnership is that they will be able to apply to the LSRA for limited liability partnership (LLP) status. What this means is that the partners will not generally be personally liable for the debts, obligations, or liabilities of the LLP itself or any partner or employee or the LLP.

As a new business structure in the Irish legal services market, legal partnerships will operate alongside the existing models of business used by legal practitioners, including sole-practitioner solicitors' firms, partnerships of solicitors, barristers who practise as members of the Law Library, and barristers who practise outside of the Law Library.

The LSRA is satisfied that it has created a low-cost and effective regulatory framework that allows the required flexibility for different types of legal practitioners to work together with the potential to provide competitively priced legal services to consumers.

As the legal landscape evolves with this new innovation, the LSRA will continue to provide updates to legal professionals to facilitate your understanding of legal partnerships and what they could mean for you and your clients. The LSRA will also periodically report to the minister on the regulation, monitoring, and operation of legal partnerships. g

Dr Brian Doherty is the CEO of the Legal Services Regulatory Authority.

TRUE GRIT

The LSRA is responsible for making regulations in relation to the operation and management of legal partnerships, which are a new business structure for legal services providers, *writes Padraig Langan*. The *Legal Services Regulation Act 2015 (Legal Partnerships) Regulations 2024* are expected in autumn 2024.

I manage the team that, once the regulations are made, will be processing commencement notifications from barristers and solicitors who intend to provide legal services as a legal partnership, membership alteration notifications, and cessation notifications. We will also establish and maintain a new online Register of Legal Partnerships.

How the west was won

In this piece, I will focus on the process to be followed to notify the LSRA you are a legal partnership.

The first thing to note is that this is not an application process, but rather that the legal partnership is notifying the LSRA of its intention to provide legal services – the basis of a legal partnership is a written agreement formed under the law of the State by two or more partners, at least one of whom must be a practising barrister.

Once formed, the legal partnership must notify the LSRA of its intention to provide legal services via a prescribed form and the payment of a €575 fee. A legal partnership shall not provide legal services until it has notified the LSRA.

The commencement notification form for legal partnerships will be available on the LSRA website. The details to be completed on the form are:

- Name of the partnership (more on this below),
- Principal address, telephone number, and email address,
- The intended date of commencement,
- The names of all the partners and their practising barrister or practising solicitor reference number(s).

You must also confirm that the legal partnership has, or will have from the date of the provision of legal services, appropriate professional indemnity insurance cover in place, and supply the LSRA with the policy number(s) and the name(s) of your insurer(s) and broker(s), if applicable.

It is a good idea for potential partners to check the situation in relation to professional indemnity insurance cover as, dependent on how the partnership is made up, professional indemnity insurance obligations may arise under Law Society regulations, made under section 26 of the *Solicitors Act 1994*, or under the LSRA's regulations, made under section 47 of the *Legal Services Regulation Act 2015*, or both. (Revised LSRA PII regulations will also be made at the time the legal partnership regulations will be made.)

Once we receive your correctly completed commencement notification form and the full fee, the LSRA will check the details supplied and then either:

- Issue a response confirming that your legal partnership has been added to the Register of Legal Partnerships, or
- Request clarification regarding the details on the form.

Butch Cassidy and the Sundance Kid

It is important to note that that there are certain rules around the name you may give to your legal partnership. These rules are in place to protect consumers as well as the reputation of the legal profession. This means that:

PIC: SHUTTERSTOCK AI

- If the partnership name consists of the names of some or all of the partners or former partners of the legal partnership, no prior approval is needed from the LSRA,
- If you wish to use some other type of name, then it must be approved by the LSRA in advance of sending us your commencement notification.

Your request for name approval must be made in writing to the LSRA at least 28 days (or such other time as the LSRA may allow) before you submit the commencement notification form.

To begin the name approval process, you just need to write to the LSRA with your proposed name, and we will consider your application in accordance with criteria set out in the regulations. For example, in considering an application for approval of the name of a legal partnership, one of the criteria to be considered by the LSRA is whether the name has a meaning likely to bring the legal profession into disrepute, or that is in bad taste, or that reflects unfavourably on other legal practitioners.

Destry rides again

Much like the existing Register of LLPs, the new Register of Legal Partnerships will be publicly available on the LSRA's website, and will be routinely updated.

If the particulars recorded on the register are inaccurate, the legal partnership must notify the LSRA as soon as practicable.

> IT IS A GOOD IDEA FOR POTENTIAL PARTNERS TO CHECK THE SITUATION IN RELATION TO PROFESSIONAL INDEMNITY INSURANCE COVER, AS PII OBLIGATIONS MAY ARISE UNDER LAW SOCIETY REGULATIONS OR UNDER THE LSRA'S REGULATIONS

The LSRA, on becoming aware that any particular entered on the register is incorrect or has ceased to be correct, will make such alterations as it considers necessary.

Currently, only partnerships of solicitors may become limited liability partnerships (LLPs). However, with the advent of legal partnerships, these new business structures may also seek authorisation from the LSRA to become LLPs.

If a legal partnership is authorised by the LSRA to become a LLP, subject to exceptions, the partners will not be personally liable for the debts, obligations, or liabilities of the LLP itself or any partner or employee.

LLPs were introduced by the LSRA in October 2019 and have proven very successful – there are currently some 464 LLPs on the Register of LLPs.

This is a brief overview of the mechanics of becoming a legal partnership. As this new business structure is a novel development in the Irish legal services market, you are advised to familiarise yourself with the new regulations when they are available.
For further details please, see the LSRA's website section on legal partnerships, which will be updated from time to time.

Padraig Langan is head of registration in the LSRA's Levy and Fees Unit.

LEVELLING THE LAND

Personal injury specialist and partner at Tracey Solicitors, Maria Lakes has always had a strong sense of justice and a drive to right wrongs, she tells Mary Hallissey

For Maria Lakes, it was a mock trial in transition year at secondary school that sparked her interest in law and justice. However, no one she knew had ever studied law – and becoming a solicitor seemed like a goal that was out of reach.

While she was considering instead a career as a mechanic or an accountant, she found out that the Trinity Access Programmes (TAP) offered an alternative route to law.

"While I worked very hard academically at Mercy Secondary School, Goldenbridge," says Maria, "I didn't think I would be able to get the CAO points required for law, and I couldn't imagine a pathway that led to Trinity College. I didn't have access to the type of educational support needed for that level of points. But TAP, in their goal of widening access and participation at third-level for under-represented groups, gave me that pathway."

TAP offers alternative avenues into third-level education for those in low-progression areas, and also provides support and financial assistance to students.

One way

Maria realised that getting accepted to a Trinity College law degree was an enormous opportunity, which had to be seized: "This was perhaps the greatest opportunity ever bestowed on me," she reflects. "But not taking the standard route also gave me the greatest chip on my shoulder.

"In my early years at Trinity, I felt like I didn't belong there. But, looking back, this also gave me a relentless ambition to prove myself among my peers and succeed," she adds.

Maria worked extremely hard at Trinity and was very driven to prove herself. She says she enjoyed her studies and started working in a solicitors' firm in her second year of college to get some practical experience.

"Throughout my law degree, and subsequently at Blackhall, I worked diligently and, year after year, received higher marks," she recalled.

"I was also fortunate enough to enter the Law Society via their Access Programme, which meant my training solicitor's firm did not have to cover any costs for my professional practice course."

The road

By the time Maria went to the Law Society, she felt she deserved her place.

"I continued to work hard and was delighted when I got an award for highest marks in PPC1; that helped to put my imposter syndrome feelings to bed!" she laughs.

For a long time, Maria didn't share the story of her journey into law because of this imposter syndrome.

"It wasn't until I read the story of another TAP law student in the newspaper that I realised: we should be shouting these stories from the rooftops!"

Maria feels that both Trinity and the Law Society's access programmes are vital tools in fostering diversity in the legal profession.

"Society still isn't always fair, and there's a long way to go," she says. "But the profession needs more diversity, and these pathways via access programmes are key to this. They are a way of widening access to law, and they foster diversity in the profession. This in turn has a positive impact on clients, who naturally are from a diverse range of backgrounds themselves."

Giving her clients access to the law and justice has now become her day-to-day job, and it's what keeps Maria so passionate about the law after 20 years.

"I'm really driven to help victims of accidents, particularly people who otherwise couldn't avail of legal services because of financial reasons," she explains.

PICS: CIAN REDMOND

SOCIETY STILL ISN'T ALWAYS FAIR, AND THERE'S A LONG WAY TO GO. BUT THE PROFESSION NEEDS MORE DIVERSITY, AND THESE PATHWAYS VIA ACCESS PROGRAMMES ARE KEY TO THIS

Tracey Solicitors LLP, the long-established personal injury law firm that Maria is a partner in, has a motto of 'making law accessible' for all, regardless of clients' background.

Liberty song

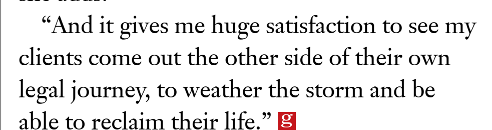
Maria believes that a large portion of society could be locked out of the justice system if they don't have the means or ability to access legal services.

"The reality is that our civil legal aid system does not provide services in our arena. Further to this, taxpayers should not be funding the legal costs of victims who suffer at the hands of defendants. We must ensure people are able to obtain a legal remedy.

"What we do every day is, we level the playing field to help get justice for our clients. If there is no access to legal services, there is no access to justice. Just in the same way that I wouldn't have been able to become a solicitor without the programmes that gave me a foot in the door," she says.

"I got into law because the access programmes levelled that playing field for me and made my career in law possible. Now I feel privileged to use my legal skills to make the law accessible to people who have suffered a personal injury that has impacted their life," she adds.

"And it gives me huge satisfaction to see my clients come out the other side of their own legal journey, to weather the storm and be able to reclaim their life."



Mary Hallissey is a journalist at the Law Society Gazette.

AUTOMATIC *for the* PEOPLE

The introduction of the auto-enrolment pension system will be a major regulatory shift. But is it the end of the world as we know it, ask Orla Ormsby and Jane Barrett

Proposals to introduce mandatory pension saving in Ireland have been mooted by various governments over the last two decades or so. Those proposals never quite reached the stage of draft legislation. So, the *Automatic Enrolment Retirement Savings System Act 2024* was major regulatory shift in the pensions landscape.

The government has expressed the intention for the first auto-enrolments of employees into the system to begin in January 2025. However, that timeline is not mandated in the act and, as such, is open to change. Admittedly, previous target start dates for the automatic enrolment (AE) system proposed by Minister for Social Protection Heather Humphreys have been missed. However, the swift progression of the legislation from bill to act, from April to July 2024, shows the commitment of the present Government to introducing these landmark reforms. Although the act was signed into law on 9 July, action is still required by the minister to bring various provisions of the legislation into force.

Finest worksong

The act sets out the framework for the establishment of a new state body – An tÚdarás Náisiúnta um uathrollú Coigiltis Scoir (National Automatic Enrolment Retirement Savings Authority). The AE Authority is tasked with establishing, maintaining, and

administering auto-enrolment in Ireland. The act requires the authority to appoint investment managers who will provide the investment funds for AE at selected risk levels. The act does not specify what charges will be levied in AE funds or whether a cap will apply (a maximum annual management charge of 0.5% was envisaged in the March 2022 design principles for the system).

The AE system is designed to operate based on matching mandatory employer and employee contributions, with an additional State contribution. The rates of contribution are to be phased in over a ten-year period, as set out in the table.

Year	Employee contribution	Employer contribution	State contribution	Total
1-3	1.5%	1.5%	0.5%	3.5%
4-6	3%	3%	1%	7%
7-9	4.5%	4.5%	1.5%	10.5%
10+	6%	6%	2%	14%

The contributions are to be calculated based on the gross pay of the employee, subject to a maximum earnings threshold of €80,000 per annum. The deduction of employee contributions will be from net salary. The act does not facilitate the payment of additional voluntary contributions (AVCs).

Shiny happy people

'Employee' for AE purposes is quite broadly defined as a person in receipt of 'emoluments' (as defined in tax legislation). We expect this will include employees under contracts of employment, but also potentially extend to individuals such as non-executive directors or persons in receipt of a pension or annuity where payroll taxes are being operated on payments to them. Employees will be automatically enrolled into the AE system if they fulfil three conditions:

- Are aged between 23 and 60,
- Have a total gross pay from all employments of €20,000 or more, and
- Are not in 'exempt employment'.

Crucially, 'exempt employment' is defined in the act as an employment that can satisfy one of the following two tests:

- *The employee contributions test* – employee contributions are being deducted via payroll to a 'qualifying' pension scheme, trust RAC, personal retirement savings account (PRSA), or a pan-European pension product (PEPP), or
- *The employer contributions test* – employer contributions are being deducted via payroll to a pension scheme, trust RAC, PRSA or PEPP.

As only one of the two tests needs to be satisfied, it means that if an employee is contributing to a personal pension (PRSA/trust RAC/PEPP) via payroll (without any matching contribution from the employer), they will not be included in the AE system. This is a softening of approach compared to the general scheme of the *Automatic Enrolment Retirement Savings System Bill 2022*, which had proposed that both employer and employee contributions to a pension scheme would be required.

Good advices

The act foresees minimum standards being drawn up by the AE Authority related to levels of contributions (and possibly other matters that the AE Authority, in consultation with the Pensions Authority, considers appropriate) to define what will be considered a 'qualifying' pension scheme, trust RAC, or PRSA.

These standards must be drawn up by no later than the seventh year of auto-enrolment (when the employer/employee mandatory contribution will be 4.5%). The aim is to ensure that standards for employees in a 'qualifying' pension scheme, trust RAC, PRSA, or PEPP are at least as favourable as AE. Therefore, in due course, pension schemes and PRSAs will have to meet minimum contribution thresholds for employees to continue to be regarded as being in 'exempt employment' and outside the scope of the AE system. Until then, any level of contribution will satisfy the respective tests.

It is noteworthy that, after initial publication of the bill, a PEPP was added to the employee and employer contributions test in technical Government updates. However, overseas pension schemes (such as overseas IORPs with a home country in another EU member state) were not specifically included.

What's the frequency, Kenneth?

The act empowers the sharing of information between Revenue and the AE Authority. Consistent with this, the employee and employer contributions tests are framed by reference to contributions or deductions from salary having been subject to mandatory reporting to the Revenue Commissioners. The AE Authority will examine information available via Revenue returns to determine what employees should be auto-enrolled.

The act requires the AE Authority to set the following actions in train for in-scope employees:

- Notices of determination (with enrolment dates) will issue to the employer informing them of employees in scope of AE (details of which must be passed to the relevant employees), and
- Payroll notifications will issue to the employer with information on the contributions payable and deductions to be made in respect of employees.

An employer is then required to make the necessary contributions and deduct the correct employee contributions for the pay reference period. Failure to do so will be a statutory offence and, upon conviction, a daily interest rate will be levied on unpaid contributions, for repayment to the AE Authority.

Life and how to live it

As with any mandatory pension system, it is designed with employee inertia in mind. The act requires an employee, once enrolled as a participant in the AE system, to remain in the system for a minimum period of six months after their enrolment. A window of opportunity to opt-out will arise in months seven and eight after enrolment, or after a phased increase in contribution levels. An employee who opts out is entitled to a refund of their own contributions paid. The employer and State contributions remain invested in the participant's account. Opt-outs will be re-enrolled by the AE Authority

two years after opting out (provided they still satisfy the conditions).

As an alternative to opting out, a cash-strapped employee can suspend contributions. The opportunity to suspend contributions arises once the first six months has passed (or once six months has passed since an earlier suspension of contributions) and no return of employee contributions arises on a suspension. Suspension is for a maximum of two years.

Certain employees that are not automatically enrolled can decide to 'opt in' to the AE system. This opt-in right arises only for employees that are not in 'exempt employment' who are aged between 18 and 66. The AE Authority will determine upon application to them whether a right to opt-in arises.

Finally, the act allows participants take their pension at State pension age – that is, age 66 and no earlier (unless in an exceptional case of ill-health). The act is only designed to facilitate taking benefits as a lump sum, with secondary legislation expected to introduce alternatives (such as purchase of annuity/pension) in due course. Significantly, the tax treatment of the lump sum on drawdown is not dealt with in the act. This uncertainty is not ideal.

Everybody hurts

An employee may request a review of certain determinations of the AE Authority under the terms of the act, including (for example) that a person satisfies or does not satisfy the conditions for enrolment or opting-in. The act provides a process for review and appeal of such determinations, with a participant (if unsatisfied) having recourse to the Financial Services and Pensions Ombudsman.

The act also introduces two new offences to protect employees:

- Penalisation of an employee by an employer for attempting to exercise their entitlement to participate in the AE system, and
- A person 'hindering' or attempting to 'hinder' an employee from participating in AE.

The act provides that employees have recourse to the Workplace Relations Commission where they complain of penalisation or being 'hindered'. The WRC may direct an employer to facilitate AE for the employee and make the necessary contributions within a prescribed period. The act provides that a maximum of four weeks' remuneration may also be awarded in the circumstances.

Stand

The introduction of AE in Ireland will likely introduce additional business costs for employers. To prepare for its introduction, employers will need to assess how many of their employees, if any, will fall within the scope of the AE system and budget accordingly.

The considerations and choices for employees will differ depending on their business and any retirement-savings vehicles already offered. Workers on a standard tax rate may well gain more benefit from AE versus those on a marginal

> THE AE SYSTEM IS DESIGNED TO OPERATE BASED ON MATCHING MANDATORY EMPLOYER AND EMPLOYEE CONTRIBUTIONS, WITH AN ADDITIONAL STATE CONTRIBUTION

tax rate through the tax relief offering in a pension scheme or PRSA.

For workplaces that operate a voluntary defined-contribution scheme, there is a risk of a two-tier system evolving in the same workplace if some employees are members of a defined-contribution (DC) scheme and others are in AE. From an administrative perspective, this may be challenging for payroll – calculations based on basic pay (common in DC) versus gross pay (AE system) and deductions from gross pay (DC) versus net pay (AE). Furthermore, depending on the structure of the workplace DC scheme, the AE system might be seen as the poorer alternative (for example, no risk benefits, no opportunity for financial advice, inability to make AVCs, no transfer permitted to other arrangements, and limited early retirement in the AE system). This may risk possible employee relations issues.

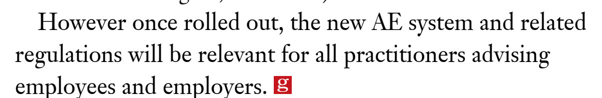
As such, employers already operating pension schemes may wish to consider amending the rules of their pension scheme and possibly also the terms and conditions of employees to position all employees as being in 'exempt employment' when AE is rolled out. Employment law considerations will clearly arise here, but a detailed consideration of employment law issues is beyond the scope of this article.

Man on the moon

Throughout the act, there are references to an intention for secondary legislation to further regulate various aspects of the AE framework, so we can expect more laws to follow.

The government has signalled an intention for the AE system to commence in January 2025. This is ambitious, given the scale of work to be completed to get the system off the ground (establishing the AE Authority and appointing investment managers, for a start).

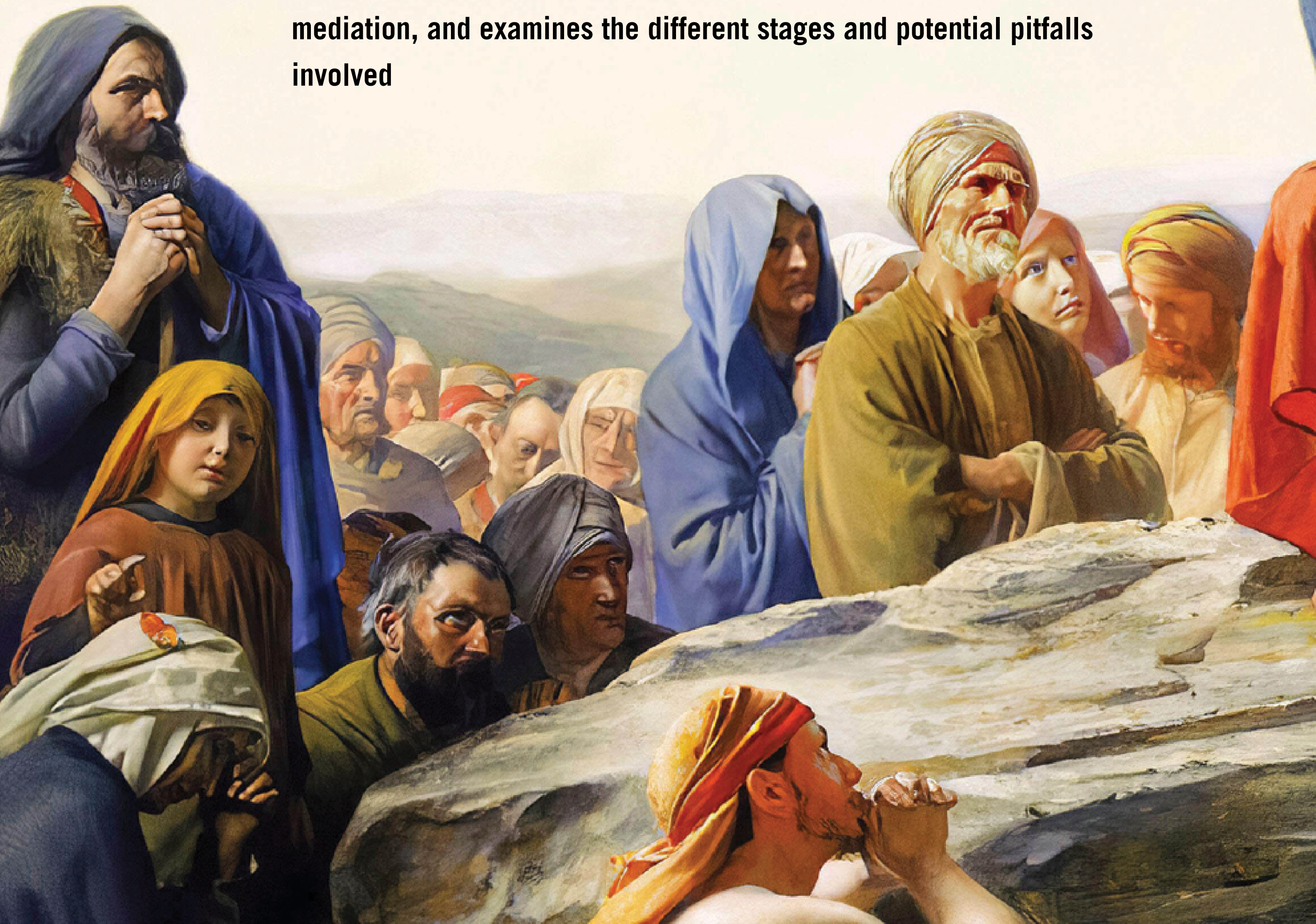
However once rolled out, the new AE system and related regulations will be relevant for all practitioners advising employees and employers.



Jane Barrett is a senior associate on the pensions team in William Fry and a member of the Employment and Equality Law Committee Pensions Subcommittee; Orla Ormsby is head of legal (intermediary division) and pensions counsel at Irish Life and chair of the Employment and Equality Law Committee Pensions Subcommittee.

Blessed are the Peacemakers

Mediation is an essential accessory in the toolkit of every litigation solicitor. Liam Guidera provides a practical perspective for solicitors who are engaged as advisors on behalf of parties involved in mediation, and examines the different stages and potential pitfalls involved



PIC: SHUTTERSTOCK

In the March *Gazette* (p20), our colleague Michael Peart, former judge of the High Court and Court of Appeal, wrote on the obligations of solicitors under section 14 of the *Mediation Act* and set out very cogently the many advantages of mediation. A recent article in a British law journal opined that the term 'ADR' was now largely redundant – in that mediation is no longer an 'alternative' form of dispute resolution, but rather is a key element.

Mediation is defined in the *Mediation Act 2017* as meaning "a confidential, facilitative, and voluntary process in which parties to a dispute, with the assistance of a mediator, attempt to reach a mutually acceptable agreement to resolve the dispute".

Given the significant obligations imposed by section 14 on all solicitors prior to the institution of proceedings, the prospect of mediation will therefore be in the minds of parties and their lawyers from the very early stages of any dispute. It is a given nowadays that any significant legal dispute will be referred to mediation at some point, and the party who refuses to partake will need to have very good reasons for doing so if they are to avoid the risk of an adverse costs order (section 21).

Hunger and thirst for justice

There has been a recent significant decision of the High Court where the judge, on becoming aware at hearing that the plaintiffs had not been advised of the advantages of mediation as required by section 14, adjourned the proceedings to allow such advice be given. On the conclusion of the case, he disallowed the plaintiffs a small portion of their costs because of such non-compliance. However, he indicated that, in future cases, the court might not be so lenient (see 'Speak to me', July *Gazette*, p26).

Such an approach is also reflected in a practice direction (HC127) that recently came into effect concerning the setting down of matters for hearing in the non-jury list of the High Court. A new trial summary form requires that confirmation be provided as to when parties complied with their obligations under section 14 and whether there have been any attempts to settle or mediate the dispute.

A key question then is: when should the mediation process be engaged?

Timing is key to the successful resolution of any mediation, and there is generally a 'sweet spot' in the course of all proceedings when it may be best engaged. The initiative may come from the court, and most judges will encourage or perhaps even direct the parties at early case-management hearings to engage in mediation.

Most experienced practitioners believe that, generally, the optimum time for mediation occurs once the pleadings have closed and before the discovery process begins. This provides the parties with the benefit of

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Peacemaker

having learnt quite a considerable amount about their opponent's case, but before incurring the sometimes crippling costs of discovery. Conversely, at times, a party will want to complete the discovery process so that they may understand fully the true strength of an opponent's case before engaging in any settlement discussions. In terms of costs savings, clearly the earlier a mediation occurs the better.

Pure in heart

Having crossed the Rubicon and decided to mediate, the next practical issue facing the parties will be to agree on a mediator.

I have found that the practice of writing to an opponent suggesting a number of possible mediators and receiving further nominations in return is rarely productive. It is far better to engage directly with a colleague and to seek to agree on the mediator.

There are many choices of mediator available. A mediator's skills are not necessarily exclusive to lawyers, although in legal disputes it is usually preferable to engage a lawyer mediator. Apart from many colleagues, solicitors and barristers, there are now several retired judges offering their services as mediators. You should also bear in mind the option of engaging foreign mediators. I have worked with both UK and US mediators, who can bring the advantage of great experience, complete impartiality, and a different approach to certain types of cases. US mediators tend to be more directive and proactive, which may suit a particular type of corporate client. Practitioners, I think, make the mistake of trying to seek out a mediator with an expertise in the particular legal issue(s) involved. However, an ability to empathise and to communicate well with the parties is a more important attribute than any specialist knowledge.

Once a suitable mediator is appointed, the real work of the legal advisor begins, in assisting the mediator to prepare for the mediation. In most cases, this will involve a kick-off process meeting between the mediator and the various legal advisers involved. The mediator will decide with the advisors the form the mediation should take, whether position papers are required to be exchanged, and the preparation of a booklet of relevant documentation to be agreed between the parties. An experienced mediator will sense very quickly the optimum form of mediation that is required. It is important that a comprehensive mediation agreement be signed at the outset, so that all parties to the process understand the various obligations involved, particularly confidentiality. The agreement will serve as a useful guide through which you can explain the process to your client. In my firm, we also have a detailed memo, which we provide to the client at the outset.

They shall be satisfied

Nowadays, most mediators do not follow the traditional convention of a formal one-day live mediation, beginning with a plenary session and then moving on through a series of break-out meetings through a long day, often ending in the small hours of the following morning.

In my experience, it is essential that at least one detailed preliminary meeting take place between the mediator and each of the parties involved some days prior to the mediation, and sometimes further meetings will be required. This helps to ensure that the actual mediation is much more efficient and productive on the day. It may well be that the preliminary meetings can be held remotely, and sometimes the mediation itself can be run remotely or in a hybrid format if the parties/advisors are abroad, are elderly or infirm, or relations between the opposing sides are such that direct engagement would not be productive.

On the day of the mediation, it is critical that the decision-makers on both sides be present, so that a

> BOTH SOLICITORS AND COUNSEL NEED TO UNDERSTAND THAT THEIR ROLE AT THE MEDIATION SHOULD BE SUPPORTIVE, RATHER THAN TREATING IT AS SOME FORM OF HEARING OR CONTEST

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24 October	**Connaught Solicitors Symposium 2024**	Breaffy House Resort, Castlebar, Co. Mayo		€160
14 November	**Practitioner Update Cork 2024**	The Kingsley Hotel, Cork		€160
21 November	**General Practice Update Kilkenny 2024**	Hotel Kilkenny, Kilkenny		€160
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18 September	**Regulation Matters: AML in Practice**	Zoom webinar | 1 client care and professional standards (accounting & AML compliance) (by eLearning)	€80	€65
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03 October	**Younger Members Annual Conference 2024**	Law Society of Ireland | 2 general (by group study)	Complimentary	
09 October	**Regulation Matters: Cybercrime - recent trends in cyberattacks and how to mitigate risk**	Zoom webinar | 1 client care and professional standards (by eLearning)	€80	€65
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15 October	**Law Society Skillnet Wellbeing Summit 2024**	Zoom webinar | 2.5 professional development and solicitor wellbeing (by eLearning)	Complimentary	
15 October	**Time Management for Lawyers Cork**	The Kingsley Hotel, Cork | 3 professional development & solicitor wellbeing (by group study)	€185	€160
16 October	**Regulation Matters: Preparing for an Inspection**	Zoom webinar | 1 hour client care and professional standards (accounting & AML compliance) (by eLearning)	€80	€65
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PRACTITIONERS MAY TRY TO SEEK OUT A MEDIATOR WITH AN EXPERTISE IN THE PARTICULAR LEGAL ISSUES INVOLVED. HOWEVER, AN ABILITY TO EMPATHISE AND TO COMMUNICATE WELL WITH THE PARTIES IS A MORE IMPORTANT ATTRIBUTE THAN ANY SPECIALIST KNOWLEDGE

binding settlement agreement may be concluded. Any necessary expert advice, typically financial or tax, should also be readily available.

Mediators now tend to be more flexible about the benefits of exchanging formal position papers. If they are exchanged, then there is a lot to be said for keeping them as limited and succinct as possible, rather than mirroring pleadings. Likewise, the booklet containing all of the relevant documents should be kept to a manageable size, in deference to the mediator, and typically should not exceed one or two lever-arch files.

A city on a hill

By the day of the mediation, a rapport should have been established between the parties, their legal advisers, and the mediator. Solicitors are often uncertain as to whether counsel should be involved in the mediation. Generally speaking, I would ask counsel to come along if it is envisaged that advice may be required from them throughout the day and their assistance required in drafting a settlement agreement if the mediation is successful. Both solicitors and counsel need to understand that their role at the mediation should be supportive, rather than treating it as some form of hearing or contest. Plenary sessions have fallen out of fashion for this reason.

The more open the parties are with an experienced mediator, the better the chance of success. Clients can often struggle to understand the true role of the mediator and believe that they somehow need to convince him/her of the virtues of their case and to be in a position to prove various assertions or points. It is best, if there are a number of clients and/or advisers, that one or two persons are appointed as spokespersons, so that the mediator is not faced with a chorus of voices. A tactical strategy should be worked out with the client in advance as to what offers are to be made and when. The mediator's advice can be sought during the mediation as to when or how to best frame an offer.

They shall be comforted

It is a simple but important detail that the mediation should take place at a comfortable, neutral venue. The parties should be free to move about during the day and be suitably removed from each other, so that the chances of any accidental encounter are minimised.

It is important for the parties to take regular breaks, get some fresh air, and adequate refreshment to maintain energy levels through what is a long and demanding day. The duty of the legal adviser is to ensure that their client does not become exhausted by the process and completely understands the negotiations, and that they are under no pressure whatever to arrive at any agreement until all issues have been resolved to their satisfaction.

During the course of the day, it is important to record in a detailed attendance the various offers and counter-offers made, and to time these together with details of whatever information the mediator has imparted to your room and what they have been authorised to take back to the other room. Mediations are long days, where points of detail can very easily be overlooked. Most mediators will try to conclude a mediation on the day rather than reconvening. It can be the case that some disputes do require more time, perhaps a second or even a third day in complex disputes. Many cases do not resolve on the day, but ultimately settle in the weeks following the mediation, as both sides will have learned a lot about each other's case and may reassess their own position.

Inherit the earth

The final key event then, assuming that the mediation has been successful, is to sign a comprehensive settlement agreement. This drafting is an art in itself and most mediators will not want to get involved, although I have seen a US mediator take on full responsibility to great effect. In a recent judgment of the Court of Appeal (*Carthy and Others v Boylan and anor* [2022] IECA 145), the court confirmed the importance of a well-drafted settlement agreement, and it is clear that, as a matter of policy, the courts will enforce such agreements in all respects.

While no two mediations are the same, I firmly believe that by working with an experienced mediator and trying to engage wholeheartedly in the process from the outset as described above, the parties to practically any dispute have a unique opportunity to settle even the most complex and acrimonious disputes. g

Liam Guidera is vice-chair of the ADR Committee of the Law Society, an accredited mediator, and a partner in the dispute resolution group at Mason Hayes & Curran.

THE PRINCIPAL PRINCIPLES

The *State Litigation Principles* mark the first official statement of the standards that are to be followed by the State and its lawyers in the conduct of legal proceedings. Sinéad Finnegan explains

The ***State Litigation Principles*** (approved by the Government in June 2023) require the State to act in the public interest in pursuing litigation and to consider the public interest before taking certain procedural steps in litigation.

The principles do not, however, radically change existing practice or policy already applied by the Government and its lawyers on a daily basis when managing litigation on the State's behalf. Rather, the principles may best be described as a public, authoritative statement of existing best practice.

The principles apply only to bodies that are directly answerable to the Government. However, it is clear that, by articulating the very high standards that the Government seeks to uphold in litigation, the principles demonstrate best practice and set a strong example to other organisations, both in the public and private sector, which such organisations may choose to follow.

Practical implementation

There is to be a greater emphasis on earlier engagement to try to avoid unnecessary litigation. This focus on earlier engagement is not unique to the principles. It is also a theme of recent case law.

Recent *dicta* from the High Court in *Sere Holdings Ltd v HSE* noted the expensive and

PIC: SHUTTERSTOCK

time-consuming nature of litigation for all involved and concluded that a State agency should, at least, consider mediation in every dispute in which it is involved. Twomey J noted that litigation should be the last resort for the resolution of disputes in all cases, and that this was particularly the case in disputes involving the State, given that the taxpayer would ultimately pay the legal costs in the event of a loss (and in some cases, even in the event that the State is successful).

The need to avoid unnecessary litigation will therefore be particularly apparent in the event of a dispute between State bodies, and this is recognised by the principles. However, that is not to say that there will never be litigation of this type, given that there are many independent agencies and authorities that conduct litigation independently of central government.

In *Commissioner of Valuation v Valuation Tribunal*, Simons J observed that, while a State body is perfectly entitled to fully contest litigation with other State bodies, "it is in the public interest that State bodies should, where possible, seek to resolve their differences without the need for hard-fought litigation. If and insofar as the normal costs rule, that is, that costs follow the event, might provide even a small incentive to State bodies to adopt a reasonable approach in deciding whether to pursue or defend litigation, then it should not be displaced."

15 PRINCIPLES

The State shall endeavour to conduct litigation in accordance with the following principles:

1) Avoid legal proceedings where possible,
2) Deal with claims promptly,
3) Deal with litigation efficiently,
4) Identify lead cases when there are multiple sets of proceedings on the same legal issue,
5) Minimise legal costs for all parties,
6) Make settlement offers, tenders, or lodgements,
7) Act honestly,
8) Make discovery in compliance with best practice,
9) Be consistent across claims,
10) Not take advantage of the less well-resourced litigant,
11) Defend proceedings in accordance with the interests of justice,
12) Not appeal unless there is a reasonable prospect of success or in the public interest,
13) Avoid bringing proceedings against another State department or State body,
14) Seek to agree claimant's costs without the requirement for formal adjudication, and
15) Apologise where the State has acted unlawfully.

PIC: SHUTTERSTOCK

The principles acknowledge that, in seeking to avoid expensive litigation and limit the scope of any such litigation, alternative dispute resolution (ADR) mechanisms will often be a valuable tool. This is consistent with the objectives underlying existing legal instruments such as the *Mediation Act 2017* and order 56A of the *Rules of the Superior Courts*. Section 14 of the *Mediation Act* obliges a practising solicitor to advise their client to consider mediation as a means of attempting to resolve a dispute that is to be the subject of any proposed litigation. Under order 56A, the court may invite the parties to use mediation or "another ADR process" to settle or determine the proceedings or issue. Section 169(1)(g) of the *Legal Services Regulation Act 2015* also supports these objectives by permitting a court, in determining costs, to consider any unreasonable refusal by a party to engage in mediation or settlement talks. Section 21 of the *Mediation Act* is broadly to the same effect, but is specific to mediation.

As well as ADR mechanisms, the State and its lawyers proactively engage in early intervention strategies, with a particular focus on ensuring that baseless or unmeritorious claims and vexatious proceedings are disposed of early and efficiently, in line with order 19, rule 28 of the *Rules of the Superior Courts*. In addition to order 19, rule 28, the court also enjoys an inherent jurisdiction to strike out pleadings or proceedings in some circumstances. Further, it is clear from the 1981 decision of Costello J in *Barry v Buckley* that "the court is not limited to the pleadings of the parties, but is free to hear evidence on affidavit relating to the issues in the case".

The principles also give guidance on how the State must deal with circumstances where multiple sets of proceedings arise from similar legal issues. In general, the State should seek to identify appropriate lead cases with a view to facilitating the efficient and effective administration of justice (Principle 4). In dealing with multiple claims, the State should also act in order to ensure consistency across different claims (Principle 9). The State must also take account of the difficulties faced by less well-resourced litigants in managing mass litigation as fairly and expeditiously as possible in the interests of all (Principle 10). Indeed, the principles also emphasise the importance of the State conducting litigation efficiently, with a view to reducing the costs of all parties involved.

Dealing with litigation efficiently

Under the principles, the State will endeavour to conduct litigation efficiently. In practice, this requires the State to endeavour to:

- Make an early assessment of the State's prospects of success/liability in legal proceedings that may be taken against it,
- Pay legitimate claims without litigation on the basis of a liability assessment, or make partial settlements of claims or interim payments, where it is clear that liability is at least as much as the amount to be paid (Principles 1 and 2),
- Make discovery in compliance with best practice (Principle 8),

- Be consistent across similar claims (Principle 9),
- Carefully monitor legal milestones and, where appropriate, seek to resolve the proceedings, including by way of settlement offers, Calderbank offers, lodgements, tenders, or via recourse to ADR mechanisms (Principle 6).

If it is not possible to resolve proceedings, the State will endeavour to act as a 'model litigant' throughout the litigation. The State will endeavour to conduct litigation efficiently, with an emphasis on narrowing the issues truly in controversy between the parties. This will entail refraining from requiring unnecessary proofs or evidence and will see the State seek to support case-management procedures to assist with the efficient progress of litigation (Principles 5 and 3).

The principles are also consistent with the favourable comment made in respect of the State's conduct in *McManus v Minister for Justice*. In this case, the High Court commended the following behaviour of the State:

- The State limited the scope of the legal proceedings (Principle 3),
- The State kept the costs of the litigation to a minimum (in circumstances where, arguably, it was not possible to avoid the litigation, since the State would not be expected to concede that legislation is unconstitutional) (Principle 5), and
- The State did not require the other party to prove a matter that the State knew to be true (Principle 3).

The High Court stated that the focused approach of the State to the litigation led to a 50% saving on court resources, in that the case took a half day of court time, rather than the estimated one day, thereby minimising the costs for all involved.

The interests of justice

Following the principles, the State shall consider the interests of justice in determining how to defend litigation and in considering the different defences that may be available to the State (Principle 11). This means that, in some cases, the State may consider that it is not appropriate to plead a particular defence, notwithstanding that it is available to the State as a matter of law. For example, the State should not rely upon a defence that:

- Is not central to the State's defence of the case, and which would only serve to prolong the litigation, or
- Would require evidence to be adduced by the other party that is already available to or within the procurement of the State.

However, it is important to note that many defences available to the State, in the same way as they are available to any other litigant, support important policies relating to the rule of law, the administration of justice, and the timely resolution of disputes. It will therefore very often be the case that reliance upon such defences will serve the public interest.

The principles also acknowledge the responsibility of State parties to apologise in appropriate cases but, in particular, where:

- The court has found that the State has acted unlawfully, or
- Prior to any such judicial finding, it has emerged in the course of litigation that the State has acted unlawfully (Principle 15).

Duty to act honestly

It is presumed that all parties to litigation will act with honesty. Nonetheless, it is expressly stated in the principles that the State will act honestly, seeking to assist the court by providing full and accurate explanations of all relevant matters of which the court requires to be aware on affidavit, in witness statements, and in oral evidence, as appropriate, depending on the nature of the proceedings (Principle 7).

The principles represent a clear articulation of the standards that the State and its legal advisers endeavour to uphold in litigation. In that context, it is important to bear in mind that the principles are not legally binding, and therefore they are not justiciable before the courts. In those circumstances, an argument by an opposing party grounded upon a perceived lack of adherence by the State to the principles cannot in and of itself defeat a claim or defence advanced by the State in any legal proceedings.

The principles therefore acknowledge that they cannot preclude the State from contesting litigation, appealing a decision, settling proceedings (with or without admission of liability), relying upon legal professional privilege, or applying for recovery of the State's legal costs in an appropriate case. However, the principles nevertheless represent an important statement of the State's approach to legal proceedings and articulate clear guidelines that will assist the State and the lawyers who act on its behalf in maintaining high standards of ethics and integrity in the conduct of litigation. g

Sinéad Finnegan is principal solicitor in the European Law Section, Constitutional and State Litigation Division, Chief State Solicitors' Office.

LOOK IT UP

CASES:

- *Barry v Buckley* [1981] IR 306, 308
- *Commissioner of Valuation v Valuation Tribunal* [2019] IEHC 170
- *McManus v Minister for Justice and Equality, Ireland and the Attorney General* [2021] IEHC 385
- *Sere Holdings Ltd v HSE* [2023] IEHC 63

LEGISLATION:

- *Legal Services Regulation Act 2015*
- *Mediation Act 2017*
- *Rules of the Superior Courts*, order 56A and order 19, rule 28

Van Dyck's *Charles I in Three Positions* (1636): statistics show that two out of three Charleses prefer civil war

WHAT HAS KING CHARLES EVER DONE FOR US?

A recent Court of Appeal decision reveals the influence of the *Maintenance and Embracery Act 1634* on the free movement of European judgments into Ireland in 2024. Tadgh Kelly sharpens the axe

Ireland for Law, established by the Minister for Justice in 2019 as a proactive response to Brexit, aims to promote Irish law and legal services to the international business community. It presents Ireland as a jurisdiction of choice for contracts and international dispute resolution, leveraging its legal traditions and language advantage to attract global business.

However, Ireland's legal history can sometimes complicate this modern appeal. The recent case of *Scully v Coucal Limited* serves as a stark reminder that, even in the 21st century, businesses considering litigation in Ireland or choosing Irish law to decide contractual disputes must contend with laws dating back to the era of King Charles I, which can pose unforeseen challenges, potentially undermining the perceived benefits of Ireland's legal system in the post-Brexit landscape.

Fire in the bush

In *Coucal*, an Irish developer appealed a High Court decision to enforce a €6.3 million judgment obtained in Poland by 57 Irish investors in a shopping centre project. The investors alleged that Scully had defrauded them, inducing them to sell their investments on unfavourable terms.

In 2015, the majority of investors entered into individual assignment agreements with Coucal Limited, transferring their rights to future debt

due from Mr Scully to enable Coucal Limited to initiate proceedings against Scully in Poland on their behalf, with Coucal Limited as a special purpose vehicle (SPV) for that purpose.

Under normal circumstances, an applicant seeking to enforce a judgment in another EU member state may rely on Regulation (EU) No 1215/2012 (now commonly known as the *Brussels I (Recast) Regulation*). This regulation aims to streamline and simplify the recognition and enforcement of judgments in civil and commercial matters across member states, enhancing judicial cooperation and the functioning of the internal market.

However, article 45(1)(a) of *Brussels I Recast* also allows for the refusal of recognition of a judgment if it is manifestly contrary to the public policy of the member state where the judgment is sought to be enforced.

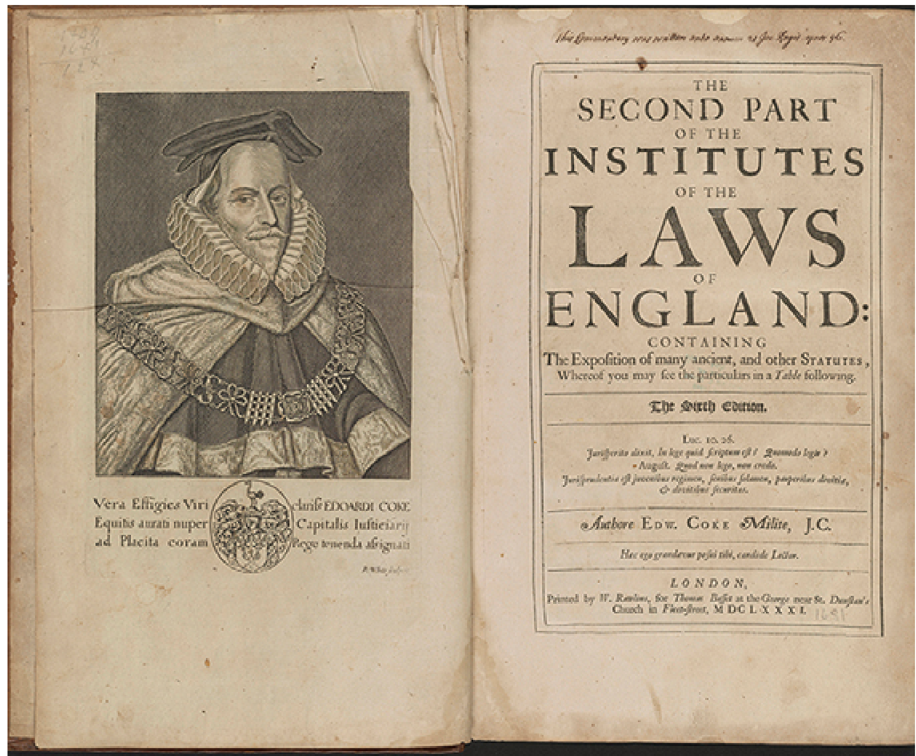
Mr Scully contended that the judgment obtained against him in Poland violated Irish public policy. He argued, among other things, that the transfer of rights to the SPV to take action against him and the retention of a right to assign the claim to an unrelated third party was essentially a transfer of a bare cause of action, which is impermissible under Irish law due to the prohibition in the *Maintenance and Embracery Act 1634*.

The new law of righteousness

'Maintenance' involves a person improperly supporting litigation without just cause, while 'champerty', an aggravated form, involves funding litigation in return for a share of the proceeds. These doctrines were historically designed to prevent abuses of the legal system and to protect the integrity of judicial processes.

In many common law jurisdictions, the rules against maintenance and champerty have been abolished or significantly eroded. In England, for example, maintenance and champerty ceased to be crimes or torts following the passing of the *Criminal Law Act 1967*.

In contrast, these doctrines remain criminal offences and civil wrongs in Ireland, as per the retention of the 1634 act in schedule 1 of the *Statute Law Revision Act 2007*, which aimed to tidy up and modernise the Irish statute book by repealing old and redundant prerogative-derived crown statutes.



True Levellers' standard

In *Coucal*, the Court of Appeal (COA) recognised the high bar for the non-recognition of EU judgments on public policy grounds, as provided by article 45(1)(a) of *Brussels I Recast* and as elaborated by Murray J in *Brompton Gwyn-Jones v McDonald*, who summarised the general principles as follows:

- "The circumstances in which the receiving court will refuse to recognise and enforce a judgment to which the *Recast Regulation* applies will, by definition, be exceptional…
- "The court asked to recognise or enforce a judgment to which the *Recast Regulation* applies may not review the accuracy of the findings of law or fact made by the court of the state of origin…" and
- "The onus is on the party seeking to avoid recognition and enforcement to establish the facts and circumstances which require the application of one or other of these exceptions."

The COA also referenced decisions of the European Court of Justice such as *Diageo Brands BV v Simiramida*, which emphasised that the infringement must constitute a manifest breach of a rule of law regarded as essential in the legal order of the state in which recognition is sought, or of a right recognised as fundamental within that legal order.

Truth lifting up its head

The Coucal assignment explicitly stated that "the right to sell the debt to the third party has not been excluded." The court found this reservation of the right to further assign the cause of action to a third party to be highly significant.

In *SPV Osus Ltd v HSBC Institutional Trust Services (Ireland) Ltd*, the Supreme Court directly addressed whether a 'right to litigate' could be assigned, holding that an assignment of a cause of action is unenforceable unless the assignee had a genuine commercial interest in the assignment, which interest must exist prior to or independently of the assignment or the transaction of which it formed part.

The Supreme Court thus drew a distinction between those assignments where the original wronged parties remain (directly or indirectly) the parties pursuing the litigation, and those where the cause of action is sold to a third party with no genuine interest in the action, who then pursues it for their own benefit – which runs contrary to public policy and savours of champerty.

Following *SPV Osus*, the COA concluded that the Coucal assignment clearly

THE LEGACY OF LAWS LIKE THE 1634 ACT REQUIRES CAREFUL CONSIDERATION AND NAVIGATION WHEN VIEWED IN A EUROPEAN AND GLOBAL CONTEXT

contemplated and expressly permitted the assignment of the shareholders' action to third parties without a genuine interest, which would allow those third parties to potentially profit from the assignment of the bare cause, and it was on this champertous rock that the assignment floundered.

Affidavit evidence was furnished to demonstrate that the Coucal shareholders had no intention of ever assigning the action to an unrelated third party. The COA placed no store in such affidavit evidence, instead positing that the intention of the investors must be assessed by what they have actually agreed, and not by some type of parole evidence as to what the parties say they meant.

Consequently, the applicant succeeded in its application for the non-enforcement of the Polish judgment, notwithstanding that the Coucal assignment merely reserved a right to an onward sale of the debt to a third party, which had in fact never occurred.

Leviathan

What may demand a degree of explanation to our European partners is Ireland's seemingly 'twin-track' approach to the prohibition on maintenance and champerty.

Take, for example, section 5A(5)(b) of the *Arbitration Act 2010* which, upon commencement, will have the effect of disapplying the offences and torts of maintenance and champerty in dispute resolution proceedings. For this purpose, 'dispute resolution proceedings' means international commercial arbitration, court proceedings arising out of an international commercial arbitration, and mediation and conciliation proceedings arising out those court proceedings or an international commercial arbitration.

Furthermore, it expressly permits a third-party funder to fund the costs of a party to those proceedings in return for a share in any proceeds that party receives, which shall not be treated contrary to public policy or otherwise illegal or void.

It is not unforeseeable, therefore, that in two adjacent courts of the High Court, orders are being made allowing for the non-enforcement of fellow member states' court judgments pursuant to article 45(1)(a) of *Brussels I Recast*, based on public policy champerty-affront grounds, while in the court next door, third-party funded proceedings arising out of an international commercial arbitration proceed, causing no such affront.

Law of freedom in a platform

Ireland's legal system offers many advantages, including a highly developed legal services sector and an English-speaking common law jurisdiction within the EU. However, the legacy of laws like the 1634 act requires careful consideration and navigation when viewed in a European and global context.

One wonders, however, if our European partners may tire of our arguably duplicitous statutory public-policy-affront grounds as a distortion of the smooth functioning of the internal market and the free movement of their judgments into this jurisdiction.

Perhaps the Law Reform Commission's anticipated report on third-party litigation funding might chart a course to ease such concerns. However, if the commission requires sight of the original copy of the 1634 act, it might take note that it in all likelihood went up in flames in the Four Courts in 1922.

Gone, perhaps, but not forgotten. g

Tadgh Kelly is a solicitor and director of underwriting (Ireland/EU) with Temple Legal Protection Ireland ATE Insurers.

LOOK IT UP

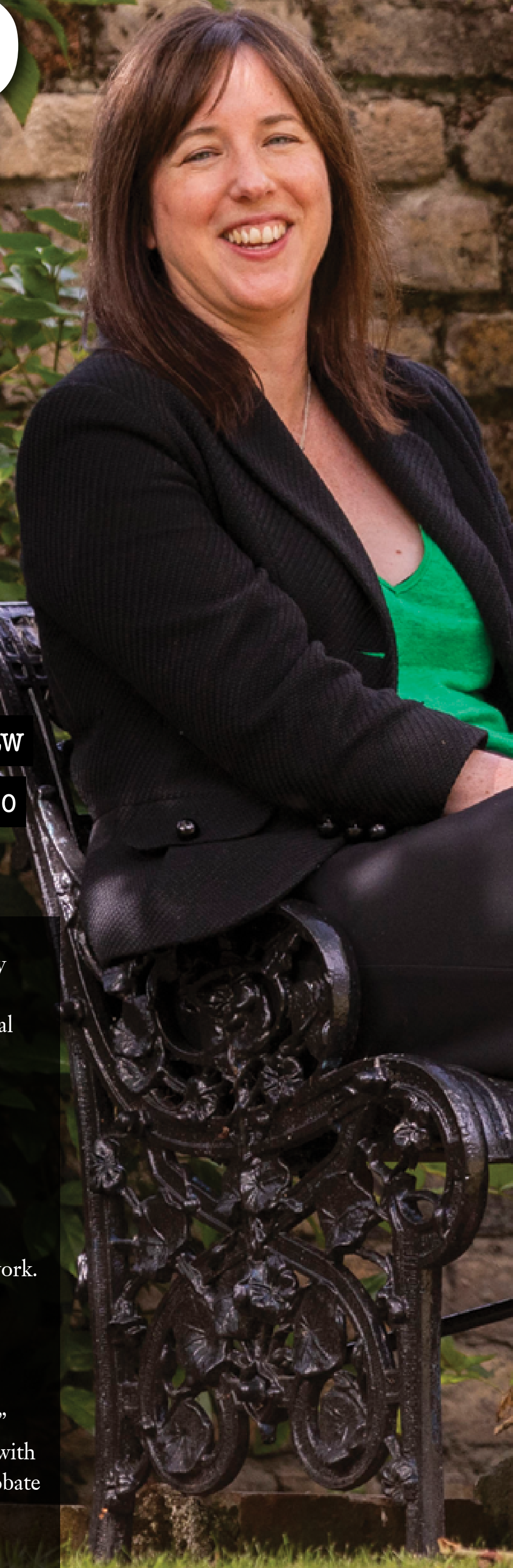
CASES:

- *Brompton Gwyn-Jones v McDonald* [2021] IECA 206
- *Diageo Brands BV v Simiramida* [2015] ECLI: EU: C: 2015:471
- *Scully v Coucal Limited* [2024] IECA 146
- *SPV Osus Ltd v HSBC Institutional Trust Services (Ireland) Ltd* [2018] IESC 44

LEGISLATION:

- *Arbitration Act 2010*
- *Maintenance and Embracery Act 1634*, 10 Chas 1 Sess 3 c 15
- Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast)
- *Statute Law Revision Act 2007*, schedule 1

ESTATES OF THE NATION



Mayo-based solicitor Catherine Bourke, chair of the very busy Law Society Probate, Administration and Trusts Committee, speaks to the *Gazette* about the work of the committee

The Probate, Administration and Trusts Committee has many tasks, but is particularly focused on:

- Enduring powers of attorney (EPAs) under the new 'digital first' regime,
- Tax clearance in estate cases and the requirement for tax advisor identity numbers (TAIN), and
- Probate Office delays.

Committee members work closely with colleagues on the Mental Health (Capacity) Task Force and on the Taxation Committee to come up with an agreed approach on estate work.

Practitioner queries

The most important part of committee work is dealing with queries from practitioners, which run to four or five every month, Catherine says, and will generally be on the "trickier" end of the probate spectrum. Queries can range from issues with wills and EPAs, to dealing with financial institutions, the Probate Office, or the Department of Social Protection.

PICS: CIAN REDMOND

Catherine with committee secretary Padraic Courtney

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"We always want to hear about practitioner problems," she says, "because there is always more to be done on their behalf. When a colleague writes in with a query, we put our heads together to help.

"An important part of our agenda is to try to make the process of the administration of estates smoother for colleagues, and that means lobbying the various stakeholders involved in the probate process. I'm a big believer that it's always easier to meet in person when dealing with State agencies."

The committee also often makes submissions on draft legislation.

Continuous engagement

The committee engages continuously with the Probate Office, has welcomed the user-friendly information on the Courts Service website, and is also enthusiastic about the introduction of e-probate.

This will lead to a speedier application process for the benefit of clients, the committee believes, since delays, despite reductions from 18 to 14 weeks, are causing anxiety and hardship, particularly where a sale of property requires a grant of representation.

Catherine and the committee secretary, Padraic Courtney, attended the recent 'Housing for All' sessions in the Department of the Taoiseach and recommended changes, among others, to the credit union legislation to remove unnecessary probate applications from the system.

"We gave a presentation to the working group and we looked for the Seat Office to be reopened and for staffing levels to be increased," says Catherine. "We asked for flexibility on probate queries and an expedited scheme to be introduced where properties are being sold and contracts are already in existence 'subject to probate'."

The committee also recently met with representatives from the Irish League of Credit Unions. "We are lobbying for the legislation to be amended to allow for the small-accounts procedure to apply to the amount left over after nomination. At the moment, credit unions cannot release funds after death to pay a funeral bill in the same way that a bank of building society can. We believe that this should be changed, as it will ultimately benefit the public, who sometimes are required to apply for probates for small sums of money."

Probate Office

The committee has an ongoing dialogue with the Probate Office to discuss ways to streamline the probate process together. The Probate Office has highlighted common errors on the applications returned to practitioners. "Our job is to keep the conversation going with the Probate Office," she says. Queries are now dealt with by email, which is speedier and, while delays are still significant, they have reduced slightly.

The committee has also asked to be invited to test and give feedback on e-probate software, as they were when the Revenue introduced the SA2. "The rollout of the Revenue SA2 statement of affairs form was very smooth," Catherine says.

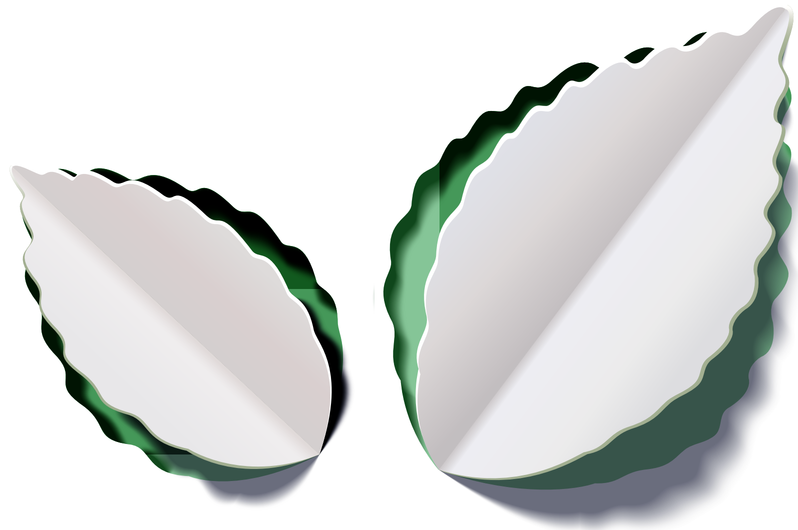
Not all queries raised by the Probate Office relate to errors. For example, in cases where dementia is a cause of death, the Probate Office may require the deceased's doctor to confirm that the deceased had mental capacity at the time they made their will, and an affidavit will be required.

Similarly, if the will is damaged or if the testator's signature is weak, an affidavit of attesting witness may be necessary.

The situation is complicated further with contentious estates, where there may a section 117 claim by a child of the deceased against an estate.

"We may be dealing with a bereaved person who can't grieve until probate delays are resolved, and a house can't be sold. They may be waiting for money they are relying upon," Catherine notes.

If all a couple's assets are held in joint names, in most cases there will be no need to apply for probate after the first death, she



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points out. "It certainly makes things easier for spouses if assets are in joint names." A couple's affairs can thus be structured in such a way that there is only the cost of one probate after they die.

State benefits

The committee recently met with the Department of Social Protection (DSP) to provide clarity and an agreed approach in cases where the deceased was in receipt of social welfare assistance. While this does not arise in all estates, it does cause significant concern when it does, Catherine Bourke points out.

Personal representatives are obliged under section 339 of the *Social Welfare (Consolidation) Act 2005* to provide a schedule of assets of the deceased to the DSP where the deceased was in receipt of social welfare assistance. "This can be a lengthy, complicated, and difficult process, so we have opened the channels of communication with the DSP for that reason," Catherine says.

"The reason we met them was to try and firstly provide get clarity as to how these cases are approached by the DSP, to gain an understanding. It was a very helpful exercise, because they have agreed to provide us with flow charts and information on how the repayments are calculated, which we will share with practitioners."

For example, those in receipt of a non-contributory State pension will have made a statement of means at the point of application for assistance. When they die, if their capital exceeds a certain threshold, a refund may be due to the DSP. Accumulated savings of pensions can also attract such refunds. If an estate is notified of a claim, distribution of the estate should not be made until the claim has been dealt with and clearance has been given by the DSP. Appealing these cases is slow and complex.

Catherine believes that many clients save for their care or for their funeral or for their family, and don't live extravagantly. Many of them are not aware that such claims may be made against their estates after they die.

Valuable expertise

Catherine points to the 20 "very valuable" committee members who have wide-ranging expertise on taxation and probate, and the crossover between those spheres.

"I'm in awe of the people on the committee and the depth of their knowledge," she says. "We are also very lucky to have Padraic Courtney as the secretary of the committee. He lectures in probate and has also co-written and edited the Law Society manual on wills, probates and estates. It's great to have such a wealth of experience, and the geographic spread on the committee is so important as well."

The committee meets mostly online since the pandemic and tries to meet in person at least once a year.

Catherine herself has long service on the committee, halted temporarily by a five-year stint working as a lawyer specialising in estates in England.

> 'WE ARE OBLIGED TO GET TAX CLEARANCE IN ALL ESTATES. THAT SYSTEM IS BECOMING QUITE DIFFICULT. EVEN WHERE VERY LITTLE INCOME IS INVOLVED, THE REQUIREMENTS ARE QUITE STRINGENT'

Essential resources

The essential resources for committee work include the updated Probate Office website, Law Society *eZines*, and the Law Society probate manual.

"No one should do probate without it," Catherine said.

Probate has become increasingly complicated, as it now requires clearance from Revenue for income tax, inheritance tax, and capital gains tax, where applicable. "It's quite a tricky area," Catherine says, with ever-increasing levels of administration. "We are obliged to get tax clearance in all estates. That system is becoming quite difficult. Even where very little income is involved, the requirements are quite stringent."

One of the aims of the committee is to try to work with the Revenue Commissioners to make the process of applying for tax clearance for estates as simple as possible for practitioners.

"The work involved in the administration of estates is increasing exponentially," says Catherine.

Shellshocked

Clients who initially seek probate may often be shellshocked after a death.

"The first consultation is often difficult. The solicitor must be careful to take a delicate approach, as they guide and reassure the client. This is not an everyday occurrence for a client, and they mustn't feel that they are on a conveyer belt," Catherine stresses.

Dealing with an estate is a huge undertaking, with lots of administration and possibly many beneficiaries. The solicitor must manage expectations. "It's very important to explain the process to clients," says Catherine. "Very often we assume that clients understand what we're doing, the work involved, and the time it takes – and they don't."

In the past, the committee has written brochures for the public to explain the process of the administration of estates.

With a digitisation project underway, processes for probate should become simpler, Catherine notes. "We also look forward to a future when e-probate exists and the Government probate fee can be paid electronically. We believe that this will make the process much simpler for practitioners and for the public," she concludes.

The expert group on conveyancing and probate has recently announced a goal of an eight-week probate turnaround time. The committee welcomes this announcement and looks forward to implementation of the government recommendations in this area.

For more information on the work of the Law Society's committees, see lawsociety.ie/committees.

Mary Hallissey is a journalist with the Law Society Gazette.

Playing to win?

Are games to be played or to be won? While the drive to win and achieve high status is not inherently negative, it must be balanced with a dedication to the essence of the profession, writes Adam Dehaty

INTRINSIC MOTIVATION – THE INNER DRIVE TO ENGAGE IN ACTIVITIES FOR THEIR INHERENT SATISFACTION – IS CENTRAL TO MASTERY ORIENTATION. FOR SOLICITORS, THIS TRANSLATES INTO DERIVING JOY AND FULFILMENT FROM THE PRACTICE OF LAW ITSELF, RATHER THAN SOLELY FROM EXTERNAL REWARDS

As the Paris 2024 Olympic Games come to a triumphant close, the world collectively marvels at the breathtaking athletic displays, relentless determination, and incredible sportsmanship. Among the myriad reflections and celebrations, a Nike commercial that aired prior to the games particularly stood out, casting a contemplative shadow throughout the event: *Winning Isn't for Everyone*. The polarising slogan challenges us to reevaluate our understanding of competition and success. Are games meant to be played purely for the love and passion of the sport, or to be won at all costs?

This question transcends the realm of sports, echoing deeply within the legal profession, where solicitors often find themselves in a high-stakes environment. By examining the contrasting concepts of ego and mastery goal orientation, we can unveil new perspectives and recognise the complexity of what it means to be a high-performing solicitor, reimagining success in a way that prioritises growth and intrinsic fulfilment.

Motivational climate

Before extending these Olympic insights to the practice of law, let's grasp the essence of motivational climate and the difference between an ego and a mastery goal orientation. Ego orientation revolves around demonstrating superiority and proving one's competence relative to others. Success is viewed externally through the lens of winning, outshining colleagues, and collecting accolades.

In stark contrast, mastery orientation focuses on personal development, skill enhancement, and finding intrinsic satisfaction in the journey. It emphasises self-improvement and seeing challenges as opportunities to learn and grow, rather than mere hurdles to leap over.

'Motivational climate' refers to the aggregate orientation of a group and is a frequently observed and studied aspect in high-performance sport. The Olympics is intentionally designed to get the most from participants. It achieves this by pitching individuals and countries against each other and offering precious metals and plenty of status for the winners. While that makes for terrific competitions, it is worth also wondering what happens when the gravity of this ego-heavy climate interferes with mastery.

Olympic insights

The Paris 2024 Olympics displayed examples of both orientations from the very start. Some athletes came with a laser focus on dominating their sport, amassing gold medals, and securing their legacies. However, examples of those who pushed boundaries too far in the pursuit of winning might include Britain's Charlotte Dujardin, who exited the games before they began following the release of training footage of her excessively whipping a horse. And Bev Priestman, the Canadian women's soccer coach, who was also left apologising to her teammates and home country for being caught using a drone to surveil another team's training.

There is an equally powerful narrative of athletes who embraced a mastery orientation, striving for personal bests, celebrating progress, and treasuring the journey as much as the outcome. Simone Biles, the US gymnast who was celebrated for stepping out of the 2020 Tokyo Olympics in pursuit, not of medals, but of her own mental wellbeing, only to then return to the highest level of competition in Paris and excel with another gold medal. Daniel Wiffen, who proudly took gold for Ireland, in his post-race interview offered a glimpse of his goal orientation, replying when asked if winning were as good as he imagined: "I thought the time could have been better."

Rewards offer a mechanism that influences motivational climate. Are we intrinsically or extrinsically rewarded for our efforts? Adam Peaty of Team GB, having won silver in the 100m freestyle, said in an interview: "I gave my absolute all there. I executed it as well as I could. It's not about the end goal, it's about the process, and it doesn't matter what the time says on the scoreboard, because in my heart I have already won." He refers to giving his all and performing in front of his children as success, which exemplifies his intrinsic

Irish gold-medallist Rhys McClenaghan: answering the age-old question 'who's taking the horse to France?'

PIC: SHUTTERSTOCK

drivers, despite winning many gold medals in the past. This demonstrates the complexity of desire and the delicate balance between internal and external drivers. The over-justification effect can hamper performance, rendering us less intrinsically motivated to partake in an activity that we used to enjoy when offered an external incentive such as money or status.

But what has this got to do with the legal profession?

For solicitors, the legal arena is often synonymous with high pressure and stiff competition. However, drawing inspiration from the Olympics and the ethos of mastery orientation, there's an opportunity for awareness and thoughtful shaping of the motivational climate through reimagining notions of success and performance in the legal field.

Continuous learning

Much like athletes who commit to continuous training and skill refinement, solicitors can benefit from a similar approach. Ongoing education – through advanced courses, mentorship, or self-directed learning – enables legal professionals to stay ahead in a constantly evolving landscape.

Reframing setbacks

In the highly competitive world of law, setbacks are par for the course. Instead of viewing these as personal failures, solicitors can perceive them as valuable learning experiences. This mindset fosters resilience and adaptability, mirroring athletes who analyse their defeats to refine their performance. A solicitor who extracts lessons from a lost case or a less than successful transaction, and applies that learning to future endeavours, embodies the spirit of mastery.

Cultivating the intrinsic

Intrinsic motivation – the inner drive to engage in activities for their inherent satisfaction – is central to mastery orientation. For solicitors, this translates into deriving joy and fulfilment from the practice of law itself, rather than solely from external rewards. When legal professionals find intrinsic satisfaction in assisting clients, crafting compelling arguments, or mastering complex legal principles, their engagement and overall wellbeing levels will soar.

Balance beam

While the legal profession is inherently competitive, solicitors can learn from the Olympic spirit of camaraderie. Despite the intense competition, the Olympics also celebrate teamwork, mutual respect, and collaboration. Solicitors, too, can balance competition with collaboration, fostering an enriching and productive work environment. Embracing teamwork, sharing knowledge, and supporting colleagues enhances collective efficacy and client outcomes, creating a positive workplace culture.

Redefining high performance

High performance in the legal profession can be redefined by awareness of the perfect blend between ego and mastery orientations. While the drive to win remains significant, it can only be complemented by a mastery approach that prioritises personal growth, continuous learning, and intrinsic motivation. Integrating these orientations enables solicitors to excel, while finding greater satisfaction and pride in their efforts as well as the outcomes.

The Olympics are a unique environment, intentionally designed to harness the pinnacle of human performance. The subtle relationship between an individual's orientation and the motivational climate they are exposed to could be the difference between pushing their own limits for excellence, or pushing ethical or moral limits in the pursuit of gold. In sports and in law, the tension between mastery and ego is palpable. While the drive to win and achieve high status is not inherently negative, it must be balanced with a dedication to the essence of the profession. Olympic athletes and lawyers alike can find fulfilment and success by embracing a mastery orientation, where the journey and pursuit of excellence within their own individual values and limits hold as much value as the accolades themselves.

Game theory

Returning now to the question posed by Nike – are games to be played or won? – we might see that it invites us to be content with leaving this unanswered, ensuring instead that participation is analysed more deeply and the complex human difference between the two seemingly unbridgeable polarities is recognised for what it is.

The pursuit of joy, growth, and fulfilment does not have to be sacrificed in order to achieve success. The law is not a zero-sum game – and sometimes it can be even more satisfying to have 'lost' with great courage and companionship than to win at all costs.

Law Society Psychological Services is committed to broadening the lens of what it means to be a successful professional and if you would like to know more, please contact us on ps@lawsociety.ie or visit our web pages on lawsociety.ie.

Adam Debaty is Psychological Services executive in the Law Society.

New power generation

A CJEU judgment contains important lessons for businesses seeking to agree promotions with potential rivals. Cormac Little plugs us in

ALL BUSINESSES SHOULD, FOR OBVIOUS REASONS, BE VERY WARY OF ANY NON-COMPETE PROVISIONS, AS IT IS LIKELY TO BE AN UPHILL STRUGGLE TO ENFORCE THEM UNDER EU/NATIONAL COMPETITION RULES

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

In a decision dated 26 October last, the Court of Justice of the EU (CJEU) found that a non-compete provision in a promotional arrangement between two Portuguese entities – the energy company EDP Energias and the supermarket chain Modelo Continente – should be regarded as a breach of competition rules.

Notably, the judgment in Case C-331/21 *EDP* contains important lessons for the enforcement of competition rules in the EU, while also reaffirming key guidelines for national courts when referring questions to the CJEU for preliminary ruling.

Electricity and supermarkets

Both Energias de Portugal SA and EDP Commercial – Comercializaçáo de Energia SA are part of a large business that is active in the generation and supply of both electricity and natural gas in the Iberian Peninsula and elsewhere (this group is referred to as EDP).

Each of MC Retail SGPS SA and Modelo Continente Hipermercados SA (Modelo Continente) are members of a corporate group active in various business sectors including retail grocery, telecommunications, and energy (this conglomerate is referred to as the Sonae Group). Modelo Continente operates various supermarket chains in Portugal, trading under brands such as Continente and Continente Bom Dia.

EDP/Continente scheme

In early 2012, EDP and Modelo Continente agreed a promotional scheme aimed at attracting customers and boosting sales. At the time this association agreement was agreed, the parties were not actual competitors in the Portuguese markets for, on the one hand, the supply of electricity/natural gas or, on the other hand, for the retail sale of groceries. The scheme offered customers a 10% discount on their EDP electricity bills provided they held a loyalty card issued by Modelo Continente. This reduction was provided in the form of vouchers to be used in Modelo Continente's network of stores. Ultimately, the cost of these discounts was shared between both parties.

Non-compete

As part of the association agreement, Modelo Continente agreed for its duration, plus for 12 months post-termination, not to supply electricity or natural gas in mainland Portugal. This provision also applied to the rest of the Sonae Group. In return, EDP entered a similar commitment regarding the retail sale of groceries in the same geographic area. The scheme overlapped with the final phase of the liberalisation of the Portuguese electricity sector. EDP was therefore hopeful that the scheme would enlarge its customer base at a time of potential churn.

Crucially, the scheme was not the first time the Sonae Group had cooperated with an electricity supplier. Between 2002 and 2008, this conglomerate was involved in a joint venture with Endesa, the Spanish incumbent, for the supply of electricity in Portugal. This business succeeded in attracting some of EDP's customers. Separately, the Sonae Group has since 2009 been active in the supply of electricity generated from solar panels.

Restrictive arrangements

Article 101 of the *Treaty on the Functioning of the EU* (TFEU) prohibits arrangements between undertakings, decisions by associations of undertakings, and concerted practices that have the object or effect of restricting competition with an effect on trade between EU member states. Price-fixing, market-sharing and other forms of cartel behaviour are viewed as 'hard-core' infringements of article 101. The national competition laws of all EU member states each contain provisions that apply article 101, by analogy, to antitrust infringements whose effect is limited to a single country (or part thereof) – for example, the Irish equivalent is contained in section 4 of the *Competition Act 2002* (as amended), whereas its Portuguese equivalent may be found in article 9(1) of *Law No 19/2012*.

PICS: SHUTTERSTOCK AI

Appeal of the ADC's fine

The scheme came to the attention of the Portuguese competition enforcer, the Autoridade da Concorrência (ADC) which, in May 2017, fined EDP and the Sonae Group €28.7 million and €9.6 million respectively for breaching article 9(1). The ADC found that the scheme had the object of market-sharing on the Portuguese markets for the supply of electricity, the supply of natural gas, and the retail distribution of food. In addition, the ADC held that the relevant association agreement was not a 'genuine' agency arrangement.

Both EDP and the Sonae Group appealed the ADC's decision to a specialist tribunal, the Portuguese Competition, Regulation and Supervision Court (CRC) which, in September 2020, upheld the finding of infringement but reduced the fines by 10%. This discount was applied because the CRC found the scheme provided some consumer benefit during the aftermath of the financial crisis. All three parties appealed this decision to the Lisbon Court of Appeal.

Having expressed doubts both whether the scheme was an object breach, since certain consumers benefited, or whether it had anti-competitive effects, since EDP and the Sonae Group were not actual competitors, the Lisbon court, in April 2021, referred 11 lengthy and complex questions to the CJEU for preliminary ruling under article 267 TFEU.

Jurisdiction and admissibility

In considering the admissibility of the questions referred by the Lisbon court, the CJEU noted that these enjoy a presumption of relevance. However, it is open to the CJEU to decline jurisdiction in certain circumstances, including where, given the lack of the necessary factual or legal background, the court is unable to give a useful response to the questions raised. Indeed, the CJEU stipulated that the context of the relevant dispute is particularly

THE COURT FOUND THAT A SUPERMARKET CHAIN MAY BE CONSIDERED A POTENTIAL COMPETITOR OF AN ELECTRICITY SUPPLIER WHERE, BASED ON THE STRUCTURE OF THE MARKET, ALLIED TO THE PREVAILING ECONOMIC AND LEGAL CONTEXT, THERE ARE REAL AND CONCRETE POSSIBILITIES FOR THE FORMER TO ENTER THE LATTER'S MARKET

PICS: SHUTTERSTOCK

important in competition law cases. The CJEU thus criticised the Lisbon court for its failure both to set out succinctly its own understanding of the issues involved and, also, for not amending the questions proposed by the parties

Accordingly, the court ruled that three questions of the Lisbon court were not admissible, given that they were based on either unproven or incorrect factual assumptions. The CJEU, thus, reformulated the remaining eight questions into four separate issues.

Potential competition

The CJEU was asked to consider whether a supermarket chain was a potential competitor of an energy supplier in the circumstances where both have agreed a promotional arrangement (namely, the scheme). To be viewed as a potential competitor in a particular market, the court held that there must be a real and concrete possibility of entry. This does not mean that entry is certain, but it does mean that entry is more than a hypothetical possibility. Therefore, the CJEU found that the potential competition must be substantiated by a series of consistent facts based on the structure of the relevant market, allied to the prevailing economic and legal context. The court also noted that the standard of proof will depend on the markets involved. Regulated markets with high barriers to entry cannot be compared to liberalised markets with low barriers to entry.

Noting that it is for the Lisbon court to assess the evidence before deciding whether there is a real and concrete possibility of entry, the CJEU found that this must be supported by the robust facts. While subjective evidence is not, on its own, determinative, the perception of an existing market player is crucial. Therefore, the fact that such an entity concludes a non-compete arrangement with another undertaking is strongly suggestive that the latter has real and concrete possibilities of entering the market.

The CJEU also noted that, while any activities post-agreement of a non-compete provisions are not relevant in this regard, prior activities of the wider group potentially demonstrate a relevant economic strategy. Relevant factors include previous joint ventures in related markets and/or relevant prior business initiatives.

The court therefore found that a supermarket chain may be considered a potential competitor of an electricity supplier where, based on the structure of the market, allied to the prevailing economic and legal context, there are real and concrete possibilities for the former to enter the latter's market.

'Genuine' arrangement?

EDP and the Sonae Group both argued that the scheme should be regarded as a pair of cross-agency contracts, with each of the parties being responsible for promoting the sales of the other. However, under the relevant European Commission guidelines, the key factor underlying a 'genuine' agency arrangement is that the financial risk is primarily borne by the principal/supplier. However, the CJEU noted that the scheme does not satisfy this test, since the relevant costs are to be defrayed by both EDP and the Sonae Group.

Ancillary restraints

Under the EU doctrine of ancillary restraints, a restriction on the business freedom of one or more of the participants to a pro-competitive or competitively neutral activity falls outside article 101 TFEU, provided it is both objectively necessary to that activity and proportionate. In other words, the CJEU stipulated that a business restraint does not constitute a breach of article 101 where, in its absence, an underlying activity that does not breach competition law is impossible. The mere fact that such an initiative is more difficult or less profitable is insufficient to satisfy the 'objectively necessary' criterion. The court expressed doubts regarding EDP/the Sonae Group's arguments that the non-compete clause was ancillary, given that it was due to last for an additional year after the expiry of the scheme. Indeed, the CJEU also noted that this non-compete included a ban on the supply of electricity to industrial clients by the Sonae Group, whereas the scheme itself was limited to low voltage/smaller customers.

Object or effect

As mentioned above, article 101 TFEU (and its relevant national equivalents) prohibits anti-competitive arrangements by either object or effect

The former only applies to conduct sufficiently harmful to competition, in terms of its content/objective, allied to the relevant context, that there is no need to examine its actual impact. The CJEU noted that market-exclusion arrangements that seek to eliminate potential competition constitute, given their very nature, object infringements of article 101. The court found that, although any pro-competitive impact of the relevant provisions must be considered, the existence of such effects is not sufficient to exclude a finding of an object infringement. The CJEU stated that it is for the Lisbon court to assess whether the scheme's non-compete provision is lawful against the temporal context of the final steps in the liberalisation of supply of electricity in Portugal.

Broader consequences

An immediate consequence of the CJEU's judgment was that, in February 2024, the Lisbon Court of Appeal upheld the infringement finding of the ADC, while also endorsing the 10% reduction in the fine imposed by the CRC. More broadly, this decision contains important lessons for businesses seeking to agree promotions with potential rivals. While such arrangements are not unlawful, the parties need to carefully consider whether article 101 (and/or its equivalent national provisions) are engaged.

In addition, businesses need to be aware that it is much easier to be viewed as a potential competitor in sectors with low barriers to entry. Indeed, companies should also, on the basis of the CJEU's judgment, consider the scope of any previous joint ventures with other businesses, given that prior participation in a particular sector will be particularly relevant in terms of establishing potential competition.

Finally, all businesses should, for obvious reasons, be very wary of any non-compete provisions, as it is likely to be an uphill struggle to enforce them under EU/national competition rules. g

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Cormac Little SC is a partner and head of the Competition and Regulation Team at William Fry LLP.

COUNCIL REPORT

LAW SOCIETY COUNCIL MEETING – 17 MAY 2024

● At its meeting on 17 May, the Law Society Council approved the *Solicitors Acts 1954-2015 (Awards of Merit and Honorary Membership) Regulations 2024*. It was noted that the regulations require the approval of the Minister for Justice before coming into force.

Council also approved the dates for close of nominations and date of poll for the elections to Council, as required under byelaw 6.6a. Close of nominations will be 10 September and close of poll will be 17 October 2024.

Council also approved appointments to the Human Rights and Equality Committee, the Curriculum Development Unit, and the Environmental and Planning Law Committee, and the appointment of an alternate representative on the Irish Takeover Panel, as well as the establishment of an e-conveyancing subcommittee of the Conveyancing Committee and appointments to that subcommittee.

Council heard details of the Law Society's engagement, through the Family and Child Law Committee, with a coalition of interested parties committed to proposing changes to the *Family Law Bill*, including the proposal to expand the jurisdiction of the District Court in respect of judicial separation and divorce cases.

Council also heard details of the creation of a property sellers' guide – the Law Society and the Society of Chartered Surveyors in Ireland have come together to create a consumer-focused guide to selling a property.

The chair of the Finance Committee presented the 2023 draft annual financial statements. The Council noted the approval of the financial statements for 2023 by the Finance Committee.

There was a further update on the engagement between Council members and the executive of the Law Society with the Decision Support Service. Many Council members contributed to a discussion around the challenges to solicitors and clients posed by current and proposed arrangements. Representatives of the Law Society met with Minister Anne Rabbitte in May and provided examples of difficulties being experienced by clients. The Law Society will continue to engage in relation to this issue.

Council, on behalf of the Law Society, extended its sympathies to former president Michael O'Mahony on the death of his sister Mary Banotti.

Council members from Donegal made a presentation to Michelle Ní Longáin to mark her being the first female president of the Law Society from Donegal, and only the third president from Donegal, and in recognition of her contribution. g

RATES

PROFESSIONAL NOTICE RATES

RATES IN THE PROFESSIONAL NOTICES SECTION ARE AS FOLLOWS:

- **Wills** – €163 (incl VAT at 23%)
- **Title deeds** – €325 per deed (incl VAT at 23%)
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ALL NOTICES MUST BE PAID FOR PRIOR TO PUBLICATION. ALL NOTICES MUST BE EMAILED TO catherine.kearney@lawsociety.ie and PAYMENT MADE BY ELECTRONIC FUNDS TRANSFER (EFT). The Law Society's EFT details will be supplied following receipt of your email. **Deadline for October 2024 *Gazette*: Monday 16 September 2024.**

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*.

WILLS

Brady, Michael (deceased), late of 1 St Brendan's Crescent, Greenhills, Walkinstown, Dublin 12, who died on 2 July 2024. Would any person having knowledge of any will made by the above-named deceased, or if any firm is holding any will or documents, please contact Robert McClelland, 32 Emmet Crescent, Inchicore, Dublin 8; tel: 085 288 9298, email: robert.mcclelland@hotmail.co.uk

Brierton, Hazel (deceased), late of 5 Ledwidge Crescent, Bray, Co Wicklow. Would any person having knowledge of the whereabouts of any will made by the above-named deceased, who died on 11 June 2024, please contact Benville Robinson LLP, 24A Florence Road, Bray, Co Wicklow; tel: 01 276 1330, email: gillian@benvillerobinson.ie

Brown, Stephen (deceased), late of 84 Granitefield, Rochestown Avenue, Dun Laoghaire, Co Dublin, who died on 9 February 2024. Would any person having knowledge of the last will made by the above-named deceased, or its whereabouts, please contact Montgomery Legal, 56 Mulgrave Street, Dun Laoghaire; tel: 01 280 9955, email: iain@montgomery.legal.ie

Burns, Denis (otherwise Denis Francis) (deceased), late of 55 Upper Rathmines Road, Rathmines, Dublin, and formerly of South Mall, Lismore, Co Waterford, who died on 18 May 2024. 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 Healy Crowley Company, Solicitors, West Street, Tallow, Co Waterford; tel: 058 56457, email: info@healycrowleysolrs.com

Clarke, John Laurence (deceased), late of 6 Radharc Na Mara, Easkey, Ballina, Co Mayo F26 H220. Take notice any person(s) having a claim against the estate or would any person having knowledge of any will made by the above-named deceased please contact Mark Collins, solicitor, Tom Collins & Co Solicitors LLP, 132 Terenure Road North, Terenure, Dublin 6W; tel: 01 490 0121, email: mark@tomcollins.ie

Delmege, Hugh Jocelyn (deceased), late of Green Farm, Fethard, in the county of Tipperary, who died on 31 May 1989. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Patrick J O'Meara Solicitors, Liberty Square, Thurles, Co Tipperary; tel: 0504 21333, email: reception@pjom.ie

Dolan, Elieen (deceased), late of 165 Oxmantown Road, off North Circular Road, Dublin 7. Would any person having knowledge of a will executed by the above-named deceased, who died on 16 June 2000, please contact McCartan & Burke Solicitors LLP, Orby Chambers, 7 Coke Lane, Smithfield, Dublin 7; DX 1026 Four Courts; tel: 01 872 5944, email: wgarvan@maccartanandburke.ie

Durnin, Anne (deceased), late of Hoathstown, Ardee, Co Louth, who died on 2 March 2009. Would any person having knowledge of the whereabouts of a will made by the above-named deceased please contact John C Kieran & Son, Solicitors, 16 Castle Street, Ardee, Co Louth; tel 041 685 3327, email: info@jckieran.com

Durnin, James (Seamus) Joseph (deceased), late of Hoathstown, Ardee, Co Louth, who died on 25 December 2022. Would any person having knowledge of the whereabouts of a will made by the above-named deceased please contact John C Kieran & Son, Solicitors, 16 Castle Street, Ardee, Co Louth; tel: 041 685 3327, email: info@jckieran.com

Gartland, Monica (deceased), late of 40 Elm Mount Park, Beaumont, Dublin 9. Would any person having knowledge of a will executed by the above-named deceased, who died on 14 February 2022, please contact Gaffney Halligan & Co, Solicitors, Artane Roundabout, Malahide Road, Artane, Dublin 5; tel: 01 831 2470, email: agreene@gaffneyhalligan.com

Hannon, John (deceased), late of Aghavoher, Ballyconnell, Co Cavan, formerly of 76 Collins Park, Beaumont, Dublin 9, and 3 Shanrath Road, Santry, Dublin 9. Would any person holding or having the knowledge of a will made by the above-named deceased please contact Michael J Kennedy and Co, Solicitors, Parochial House, Baldoyle, Dublin 13; tel: 01 832 0230, email: reception@mjksolicitors.com

Hanrahan, James (deceased), late of Grange Nine Mile House, Carrick-on-Suir, Co Tipperary, who passed away on 15 August 2022 at Lorica Hostel, Cashel, Co Tipperary. Would any person having knowledge of the whereabouts of a will of the above-named deceased please contact Justin Hughes, Justin Hughes Solicitors, 89 Phibsborough Road, Dublin 7; tel: 01 882 8583, 882 8628; email: info@justinhughes.ie

Hanrahan, Mary (deceased), late of Grange Nine Mile House, Carrick-on-Suir, Co Tipperary, who passed away on 25 April 2024 at Tinnypark Nursing Home, Co Kilkenny. Would any person having knowledge of the whereabouts of a will of the above-named deceased please contact Justin Hughes, Justin Hughes Solicitors, 89 Phibsborough Road, Dublin 7; tel: 01 882 8583, 882 8628, email: info@justinhughes.ie

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Morrison Chambers, 32 Nassau Street, Suite 30, Dublin 2, Ireland D02 P2N6
www.ustax.cpa info@ustax.cpa

Kelly, Charles (deceased), late of Ballymorefin, Ballinascorney, Dublin 24. Would any person having knowledge of the whereabouts of any will made by the above-named deceased, who died on 13 December 2017, please contact John L Mulvey & Co Solicitors, Main Street, Tallaght, Dublin 24; tel: 01 451 5055, email: info@jlms.ie

Keogh, Martin John (deceased), late of Corclough East, Belmullet, Co Mayo, who died on 10 January 2020. Would any person having knowledge of the whereabouts of any will made by the above-named deceased, or if any firm is holding same, please contact Patrick J Durcan and Co, Solicitors, James Street, Westport, Co Mayo; DX 53002 Westport; tel. 098 25100, email: admin@patrickjdurcan.ie

Lane, John Sean (deceased), late of Churchview, Main Street, Duleek, Co Meath, who died on 5 January 2023. Would any person having knowledge of the whereabouts of a will made by the above-named deceased please contact John Rogers, Rogers Law Solicitors, 48-49 North King Street, Dublin 7; tel: 01 539 0200, email: mary@rogerslaw.ie

Langan, Michael Joseph (deceased), late of Drumlongfield, Ballintra, Co Donegal, who died on 25 November 2023. Would any person having knowledge of any will made by the above-named deceased, or if any firm is holding any will or documents, please contact Carter Anhold & Co, Solicitors, 1 Wine Street, Sligo, Co Sligo; tel: 071 916 2211, email: info@carteranhold.ie

Lawless, Renée (Catherine) (deceased), late of 2 Louis Lane, Rathmines, Dublin 6, and formerly Kilcoole, Co Wicklow, who died on 22 June 2024. Would any person having knowledge of the whereabouts of a will made by the above-named deceased please contact Amber Craughwell, Freehill Craughwell Solicitors, 6 Wentworth Place, Wicklow Town, Co Wicklow; tel: 0404 64968, email: amber@frehillsolicitors.ie

McCabe, Joseph (deceased), late of Esker, Cloone, Co Leitrim, who died on 12 April 2022. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Siobhán Byrne Solicitors, Main Street, Carrick-on-Shannon, Co Leitrim; tel: 071 962 3358, email: info@carricksolicitors.ie

McCarthy, Mary (deceased), late of Fear More, Birmingham, Tuam, Co Galway H54 CX93, who died on 15 May 2024. Would any person having knowledge of the whereabouts of a will made by the above-named deceased please contact Thomas Carroll, MW Keller & Son Solicitors LLP, 8 Gladstone Street, Waterford; email: thomascarroll@mwkeller.ie

O'Neill, Eamon Thomas (deceased), late of 'Avila', Carrowmore, Knock, Co Mayo, and formerly of 8 Woodvale Avenue, Omagh, Co Tyrone, who died on 10 July 2024. Would any person having knowledge of the whereabouts of a will made by the above-named deceased please contact Kevin O'Neill, 4 Ternlee, Kilcoole, Co Wicklow; tel: 085 164 0233, email: kevrsp@gmail.com

Reilly, James (deceased), late of Cornacassa, Monaghan, Co Monaghan, who died on 9 December 2003. Would any person having knowledge of any will or codicil or notes, memos, or attendances in respect of any will or codicil ever made by the above-named deceased please contact Paul Boyce & Co, Solicitors, 4 Dublin Street, Monaghan, Co Monaghan; tel 047 77107, email: info@paulboyce.ie

Staginus-Molt, Ursula (deceased), late of Silverstream Lodge, Stamullen, Co Meath, who passed away on 16 April 2024. Would any person having knowledge of the whereabouts of a will of the above-named deceased please contact Justin Hughes, Justin Hughes Solicitors, 89 Phibsborough Road, Dublin 7; tel: 01 882 8583, 882 8628, email: info@justinhughes.ie

Tierney, Mary (May) (deceased), late of 93 Old County Road, Crumlin, Dublin 12. Would any person having knowledge of the whereabouts of any will made by the above-named deceased, who died on 27 February 1993, please contact Leo Buckley & Co, Solicitors, 78 Merrion Square, Dublin 2; tel: 01 678 5933, email: leo@leobuckleysolicitors.com

Thornton, Michael (deceased), late of 12 O'Donoghue Terrace, Galway, who died on 29 October 2023. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact MacSweeney & Co, Solicitors, 22 Eyre Square, Galway; tel: 091 532 532, email: info@macsweeneylaw.com

Tsang, On Ning (deceased), late of 23 Osprey Avenue, Templeogue, Dublin 6W, who died on 8 August 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, please contact Williams Solicitors LLP, 3 Dawson Street, Dublin 2; tel: 01 675 3000, email: info@williamssolicitors.ie

TITLE DEEDS

Burke, Lawrence (deceased), late of 6 Ballymun Road, Dublin 9, who died on 14 April 2023. Would any person having knowledge of the whereabouts of the title deeds of 6 Ballymun Road, Dublin 9, or if any firm is holding same, please contact Doyle Geraghty & Co, Solicitors, Pavilion House, 31/32 Fitzwilliam Square, Dublin 2; tel: 01 662 0499, email: ursula@doylegeraghty.ie

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 Trrumi Limited: notice of intention to acquire the fee simple pursuant to section 4 of the *Landlord and Tenant (Ground Rents) Act 1967*

Property at Hyde Park House, Middle Glanmire Road, in the city of Cork: any person having an interest in the freehold or any estate in the above property, take notice that Trrumi Limited intends to submit an application to the county registrar of the county of Cork for the acquisition of the freehold interest and all intermediate interests in the aforesaid property, and any person asserting that they hold a superior interest in the property are called upon to furnish evidence of title to the premises to the below named within 31 days from the date of this notice.

In particular, any person having an interest in the lessor's interest in a lease of 3 February 1791 between the Rev Arthur Hyde of the one part and Thomas Chatterton of the other part in respect of premises described therein as "all that and those the dwellinghouse, offices, out-houses, garden fields, and grounds then in the occupation of the said Arthur Hyde, commonly called and known by the name of Hyde Park or by whatever other name or names the same was theretofore called or known, situate in the parish of Saint Ann in the North Liberties of the city of Cork" for a term of 850 years from 25 March 1791, subject to the yearly rent of £130 sterling, should provide evidence of title to the below named.

In default of any such information being received by the applicant, Trrumi Limited intends to proceed with the application before the county registrar and will apply to the county registrar for the county of Cork for directions as may be appropriate on the basis that the person or persons entitled to the superior interest, including the freehold interest, in the said premises are unknown and unascertained.

Date: 6 September 2024

Signed: O'Connell & Co (solicitors for the applicants), Building 2500, Avenue 2000, Cork Airport Business Park, Cork

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 property at 21 Mount Vernon Terrace, St Luke's, Cork: an application by David Regan

Take notice any person having an interest in any estate in the above property that David Regan (the applicant) intends to submit an application to the county registrar of the county of Cork for the acquisition of the fee simple interest and all intermediate interest in the aforesaid property, and any person asserting that they hold a superior interest in the property are called upon to furnish evidence of title to the premises to the below named within 21 days from the date hereof. Any person having any interest in the property held under a lease of 18 May 1924, made between Edward McCarthy and Patrick O'Riordan, should provide evidence to the below named.

In default of such information being received, the applicant intends to proceed with the application before the county registrar and will apply to the county registrar for the county of Cork for directions as may be appropriate on the basis that the person or persons entitled to the superior interest including the freehold interest in the said premises are unknown and unascertained.

Date: 6 September 2024

Signed: Frank Joyce & Co (solicitors for the applicant), 'Manaton', 62 Model Farm Road, Cork

In the matter of the *Landlord and Tenant (Ground Rents) Acts 1967-2019:* notice requiring information from a lessor to Thomas Fuller, late of Castle Street, Dunmanway, Co Cork, his executors, administrators, successors or assigns

Description of the lands to which the notice refers: all that and those the land, hereditaments, and premises known as The Red House, Castle Street, Dunmanway, Co Cork, as described and coloured red in the map annexed to the deed of assignment dated 11 May 1976, agreed between Mary Eileen Noyes of the one part and James Carroll of the other part. Particulars of the lease or tenancy held under a lease for the term of 147 years agreed between Thomas Fuller as lessor and Daniel Lynch as lessee dated 4 November 1878 to run from 29 September 1878. Part of the lands excluded: none.

Take notice that Kathleen Carroll, as legal personal representative in the estate of James (otherwise Jimmy) Carroll, being the person entitled under the above mentioned acts, as amended, proposes to purchase the fee simple and all intermediate interest in the lands described in the foregoing paragraphs and requires you to give us within a period of one month after service of this notice on you, the following information: (a) nature and duration of your reversion in the land; (b) nature of any encumbrance on your reversion in the land; (c) name and address of the person entitled to the next superior interest in the land and the owner of any such encumbrance; (d) the owner of the fee simple interest in the land and any other intermediate interest or encumbrance.

Date: 6 September 2024

Signed: O'Brien Solicitors (solicitors for the applicant), Market Square, Dunmanway, Co Cork

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 property known as Crescent Villa, Gardiner's Hill, St Luke's, Cork: an application by Sheila McCarthy

Take notice any person having an interest in any estate in the above property that Tom Connolly, as legal personal representative in the estate of Sheila McCarthy (the applicant), intends to submit an application to the county registrar of the county of Cork for the acquisition of the fee simple interest and all intermediate interest in Crescent Villa, Gardiner's Hill, St Luke's, Cork, together with a right of way leading to and from the public road known as the Crescent, and any person

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asserting that they hold a superior interest in the property are called upon to furnish evidence of title to the premises to the below named within 21 days from the date hereof. Any person having any interest in the property held under a lease of 18 June 1914 between Cornelius Mullany as lessor of the first part, Walter Thornhill, solicitor, of the second part, and Cornelius McCarthy of the third part should provide evidence to the below named.

In default of such information being received by the applicant, the applicant intends to proceed with the application before the county registrar and will apply to the county registrar for the county of Cork for directions as may be appropriate on the basis that the person or persons entitled to the superior interest including the freehold interest in the said premises are unknown and unascertained.

Date: 6 September 2024
Signed: Galvin Donegan LLP (solicitors for the applicant), 91 South Mall, Cork

In the matter of the *Landlord and Tenant Acts 1967-2019* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of the premises known as 1A and 1B Taney Road, Goatstown, Dublin 14: an application by the trustees of the estate of Charles Meredith

Take notice any person having any interest in the freehold estate or any superior leasehold estate of the following property: all that and those part of the lands at Roebuck in the parish of Taney, barony of Rathdown, and county of Dublin, more commonly known as 1A and 1B Taney Road, Goatstown, in the city of Dublin, held under lease dated 30 October 1952 made between Philip Townsend Somerville-Large, Joyce Somerville-Large, Philip Collis Somerville-Large, and Brisbane Peter Somerville-Large of the one part, and Bernard Murray of the other part, and therein described as "all that part of the lands of Roebuck in the parish of Taney, barony of Rathdown and county of Dublin, which said demised premises are more particularly delineated and described on the map hereto annexed and thereon surrounded with red line" for the term of 99 years from 28 June 1952, subject to the yearly rent thereby reserved and to the covenants on the part of the lessee and conditions therein contained.

Take notice that the trustees of the estate of Charles Meredith intend to submit an application to the county registrar for the city of Dublin for acquisition of the freehold interest in the aforesaid properties, and any party asserting that they hold a superior interest in the aforesaid premises (or any of them) are called upon to furnish evidence of the title to the aforementioned premises to the below named within 21 days from the date of this notice.

In default of any such notice being received, the trustees of the estate of Charles Meredith intend to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the city of Dublin for directions as maybe appropriate on the basis that the persons beneficially entitled to the superior interest including the freehold reversion in each of the aforesaid premises are unknown or unascertained.

Date: 6 September 2024
Signed: Gartlan Furey (solicitors for the trustees of the estate of Charles Meredith), 20 Fitzwilliam Square, Dublin 2

In the matter of the *Landlord and Tenant (Ground Rents) Acts 1967-2019* and in the matter of part II of the *Landlord and Tenant (Ground Rents) (No 2) 1978* (as amended) and in the matter of property at Station Road, Ballincollig, in the city of Cork: an application by Cork Diocesan Trustees Public Unlimited Company

Take notice any person having an interest in any estate in the above property that Cork Diocesan Trustees Public Unlimited Company (the applicant) intends to submit an application to the county registrar of the county of Cork for the acquisition of the fee simple interest in the aforesaid property, and any person asserting that they hold a superior interest in the property are called upon to furnish evidence of title to the premises to the below named within 21 days from the date hereof.

Any person having any interest in the property, which is held by the applicant under the following indentures of fee farm grant, should provide evidence to the below named: deed of 7 December 1874 between William Wise and Charles William Wise as lessor of the one part and Rev William Delaney and others as lessee of the other part; deed of 1 November 1880 made between William Wise as lessor of the one part and Rev William Delaney and others as lessees of the other part.

In default of such information being received, the applicant intends to proceed with the application before the county registrar and will apply to the county registrar for the county of Cork for directions as may be appropriate on the basis that the person or persons entitled to the superior interest including the freehold interest in the said premises are unknown and unascertained.

Date: 6 September 2024
Signed: Ronan Enright Solicitors (solicitors for the applicants), 32 South Bank, Crosses Green, Cork

Circuit Court/An Chúirt Chuarda, South Eastern Circuit, County of Wexford, between Patrick Shannon and Anthony Shannon, suing in their capacity as executors in the estate of Mary Shannon (deceased) (plaintiffs)

To: County Registrar, Circuit Court Office, The Courthouse, Belvedere Road, Wexford, and to persons unknown being the successors, heirs, and assigns of Charles Tottenham, the lessor of a property known as 'Naomh Joseph' and situate at Henry Street, New Ross, in the county of Wexford (defendants): notice of application.

Take notice that on 15 October 2024 at 10.30am in the forenoon or at the first available opportunity thereafter, an application will be made by counsel appearing on behalf of the above-named plaintiffs to the Circuit Court judge sitting at the Courthouse, Belvedere Road, Wexford, for orders in the following terms: an order that the plaintiffs are entitled to be registered as the freehold owners of the property known as 'Naomh Joseph' and situate at Henry Street, New Ross, in the county of Wexford; a declaration that the interest of the lessors, their successors, heirs or assigns held under an indenture of lease dated 29 June 1886 between Charles Tottenham as lessor and Ms Ann Hennessey for a term of 99 years is extinguished pursuant to section 24 of the *Statute of Limitations Act 1957* (as amended); an order directing Taillte Éireann to register the plaintiffs as the freehold owners (absolute) of the property known as 'Naomh Joseph' and situate at Henry Street, New Ross, in the county of Wexford; such further or other order; costs; which said application shall be grounded upon this notice of motion, the affidavit of Patrick Shannon, the exhibits contained therein, proof of service of the foregoing, the proceedings already had herein when produced, the nature of the case, and the reasons to be offered by counsel.

Date: 6 September 2024
Signed: Paul A Rogers & Co (solicitors for the plaintiffs), 6 Charles Street, New Ross, Co Wexford

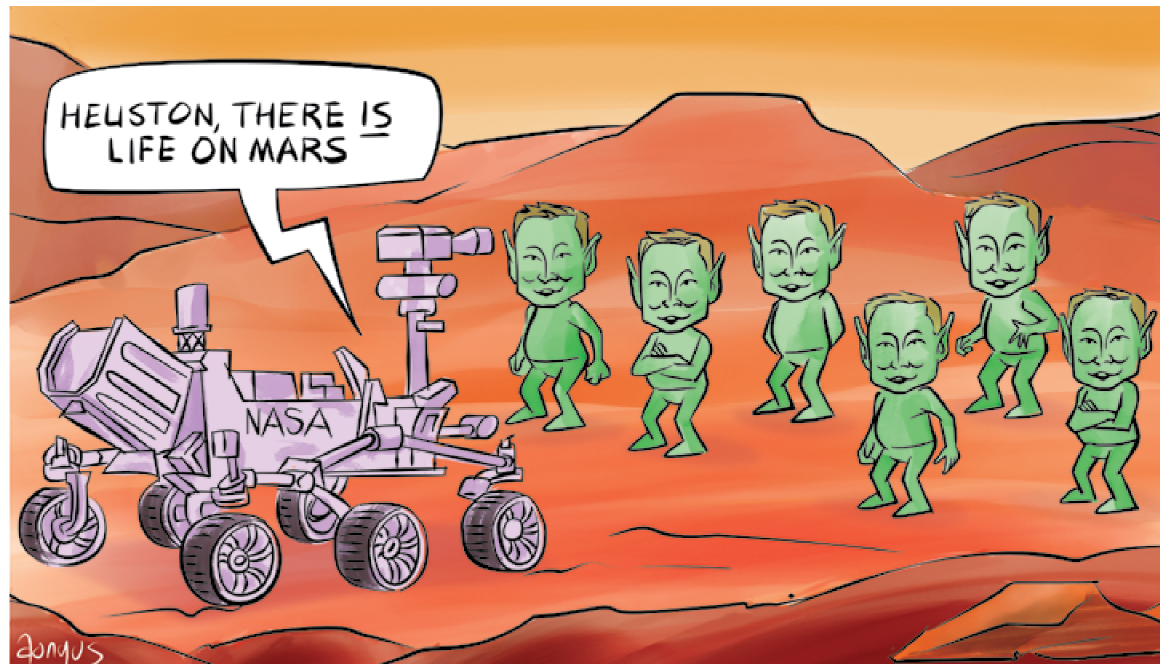
PRO BONOBO

Musky mutant menace from Mars!

● Elon Musk has offered to 'seed' Mars. Literally. With his own seed.

The New York Times reports that SpaceX employees are working on designs for a Martian city, including dome habitats and spacesuits, and researching whether humans can procreate off Earth.

In what is sure to become known as 'Elon Gate', if the *Gazette* has anything to do with it, the father of 12 has volunteered his own sperm to "seed a colony", saying: "There's high urgency to making life multi-planetary. We've got to do it while civilization is so strong." Musk apparently expects to settle a million colonists in the next 20 years, including numerous of his own offspring. And killer robots.



Apocalypse now only $79.99

● American retailer Costco – presumably in advance of the presidential election, just in case – is selling an 'apocalypse bucket', with food that lasts 25 years, *Salon* reports.

The 'Readywise Emergency Food Bucket' is available for $79.99 and boasts 150 freeze-dried and dehydrated meal servings. According to its official product description, the bucket is a "meticulously curated package" that "goes beyond just food – it's about readiness in the face of uncertainty."

Cookbook author Jeffrey Eisner said: "So you know when the world collapses and caves in, as long as you have your Readywise Emergency Food Supply, all is right in the world," adding: "I really want to sample this."

Tip-top tip trap

● A Pennsylvania restaurant is suing a customer who left a waitress a €3,000 tip, then changed his mind, according to entertainment website Unilad.

Wanting to make sure the money hadn't been left by accident, staff verified the figure and collected additional ID from Eric Smith, who had written 'Tips for Jesus' on the bill, explaining that he'd been inspired by a social media trend known, unsurprisingly, as 'Tips for Jesus'.

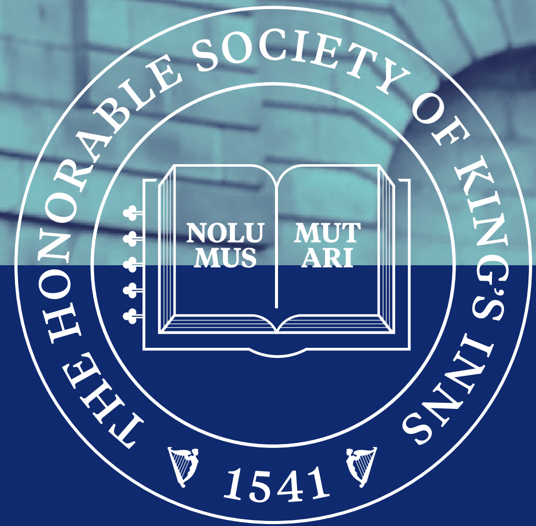
However, a few weeks later, the café received a letter to say Smith was disputing the charge for the tip. Since the café had already given the $3,000 to the server, they were forced to repay Smith out of their own pockets. Having failed to resolve the issue with Smith, the café ultimately decided to file a civil lawsuit against him.

That guitar is smokin'

● Staff at a guitar store in the US state of Georgia found thousands of dollars' worth of cocaine and methamphetamine stashed inside a guitar amplifier, *Guitar World* reports.

On 17 July, staff opened what they thought was just another delivery box, only to discover the stash. It's believed that the amp was mistakenly delivered to the store.

According to the Gwinnett County Police: "In this case, we have employees that did the exact right thing. It's extremely rare that this happens at any business." g



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