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LAW SOCIETY

OOH, MATRON!

Fair Deal Scheme check-up as new amendment commences

LOST IN THE WOODS
Court of Appeal case clarifies mandatory reporting obligations for professionals

BEAUTIFUL GAME
Sports lawyer Benoît Keane on his role in the 'Super League' battle

WEDNESDAY'S CHILD
Bill proposes innovative change to character-witness evidence in court

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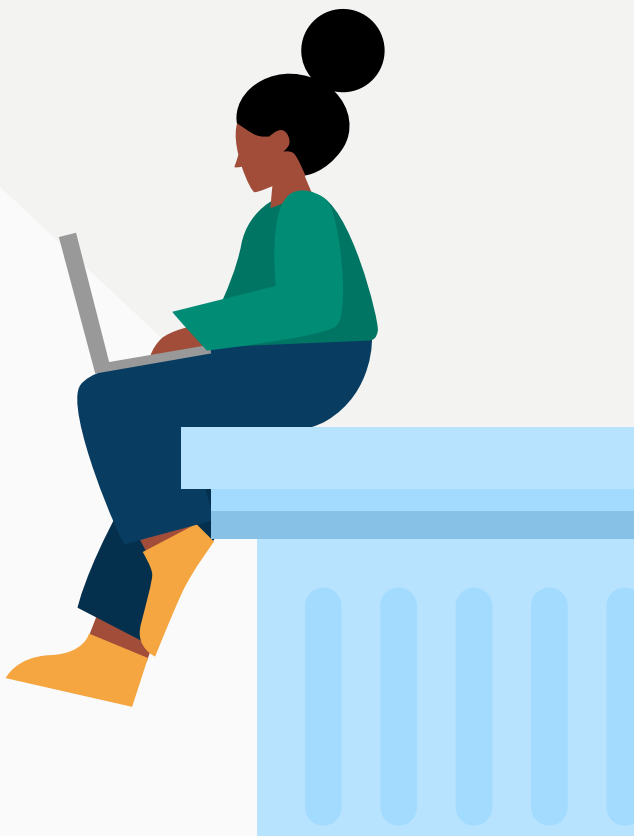

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Editor: Mark McDermott FIIC ● **Deputy editor:** Dr Garrett O'Boyle ● **Art director:** Nuala Redmond
Designer: Elizabeth McLoughlin ● **Editorial secretary:** Catherine Kearney ● **Advertising manager:** Seán Ó hOisín

Volume 118, number 01

Subscriptions: €65 (€95 overseas)

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

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

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Printing: Boylan Print Group, Drogheda

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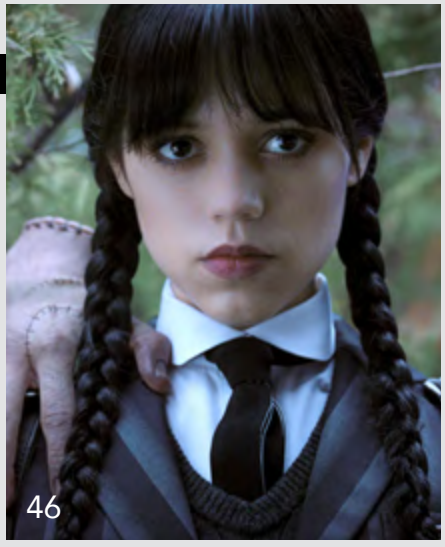
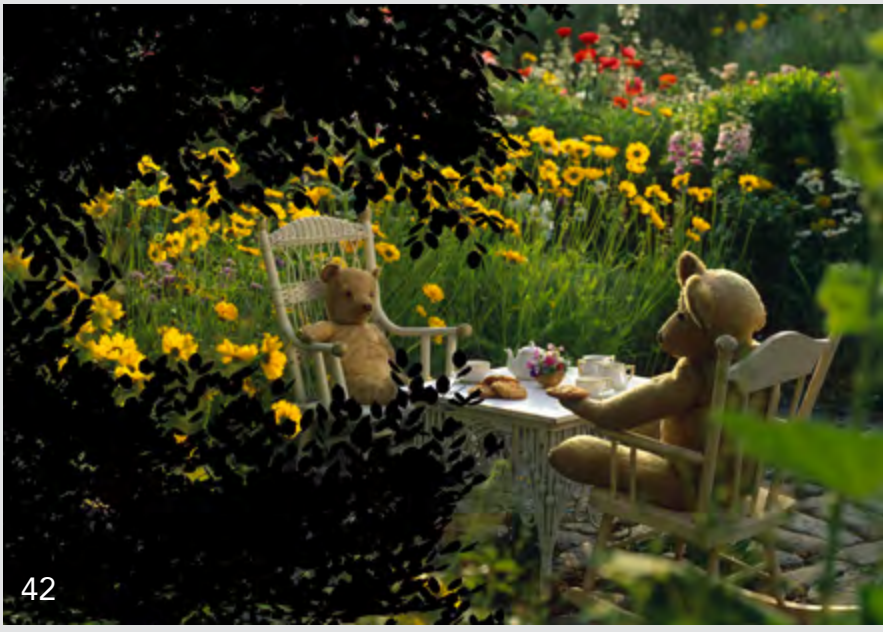
FEATURES

REGULARS





Being our optimal best

As I write this message, it's hard to believe that I am almost three months into my term as the 153rd President of the Law Society – we have started a new year that brings both opportunities and challenges for the legal profession.

Following many months of research and consultations, I'm glad to report that we are close to finalising the strategic objectives and priorities for the Law Society over the next five years. What has already become apparent from your collective feedback is that the future of the legal profession is positive, with demand for services provided by solicitors increasing in many areas.

However, it is also clear that the situation can be very different for an increasing number of solicitors, especially in smaller, community-based legal practices. As a sole practitioner in County Cork, I understand these unique challenges all too well. Tackling cybercrime and keeping up with technology also feature prominently in practitioners' concerns, as well as the increasing administrative burden. I look forward to continuing to work with the Law Society this year to help ensure that legal practice in Ireland is at the highest level and is supported in every community in the country.

PII premium reduction

Professional indemnity insurance (PII) renewal is always challenging and has not been helped by an increase in global premiums caused by global events. However, thanks to the ongoing efforts of the Law Society's PII Committee, all existing insurers remained in the market and a new insurer, Chubb Underwriting, joined the market with a focus on smaller firms. This seems to have helped with a reduction in premiums, which are at their lowest since 2020.

The good news is that the increase in competition in the market is expected to result in further advantages for smaller firms. One insurer was offering quotes for two years' insurance to smaller firms – providing stability and certainty for next year. The key, as always, is for firms to shop around to get the best quote. Discussions are ongoing with the participating insurers and the International Underwriting Association regarding the 2024/25 indemnity period.

PC renewal time

Of course, January for practitioners is synonymous with practising certificate renewal and ensuring that we submit our applications (and pay the fee) by 1 February. The Law Society has been continuing to introduce innovative improvements in the application process to make it more accessible for the profession and, this year, launched the 2024 online process on 1 December. This allowed more time to tick that important task off the list. It appears to have been well received, as 118 applications were submitted on the first day alone, and over 2,700 by year-end.

Mind yourself

As the saying goes, your health is your wealth. In a welcome step for members, Law Society Psychological Services launched its enhanced LegalMind service on 15 January (known by some as 'Blue Monday'). We know that, as legal professionals, our work involves facing many pressures that can be stressful and demanding, which is why the Law Society has increased its investment in mental-health resources, such as LegalMind.

Heavily subsidised by the Law Society and delivered by a third-party provider, Clanwilliam Institute, the service is completely confidential and independent (see page 10 of this *Gazette*). This is a very welcome and much needed mental-health support for solicitors and will assist us to be at our optimal best – for ourselves, our families, our clients and those around us. Mind yourself in 2024, and the rest will follow.

LAW SOCIETY OF IRELAND

> PII PREMIUMS ARE AT THEIR LOWEST SINCE 2020

BARRY MacCARTHY,
PRESIDENT

THE BIG PICTURE

TIME BOMB

An unexploded missile seen jammed between two houses of the Al Nusairat refugee camp during Israeli operations in the southern Gaza Strip on 17 January 2024 – day 103 of the Israeli war against Palestine. As we go to press, 26,100 Palestinians and at least 1,300 Israelis have been killed since Hamas militants launched an attack against Israel from the Gaza Strip on 7 October, and the Israeli operations that have followed ever since in Gaza and the West Bank. Up to 1.9 million people, or more than 85% of the population, have been displaced throughout the Gaza Strip, according to the UN Relief and Works Agency for Palestine Refugees in the Near East (UNRWA). Most civilians in Gaza are in now "desperate need of humanitarian assistance and protection", it reports

PIC: MOHAMMED SABER/EPA-EFE/SHUTTERSTOCK

Majestic night in Waterford

At the Waterford Law Society Annual Dinner in the Majestic Hotel, Tramore, on 1 December 2023 were *(front, l to r):* Liz Pope (chief operations officer, Land Registry), Judge Alice Doyle, Olivia McCann (president, Waterford Law Society), Barry MacCarthy (president, Law Society of Ireland), Susan Martin (Law Society Council), Maura Derivan (Law Society Council), and Emma Meagher Neville (president, Southern Bar Association); *(standing, l to r):* Mark Garrett (director general, Law Society of Ireland), Michael Bergin (head, Department of Law and Criminal Justice, SETU), Matthew Kenny (president, Dublin Solicitors' Bar Association), Judge Brian O'Shea, Judge Eugene O'Kelly, Judge Kevin Staunton, Niall Rooney (court registrar, retired), and James Seymour (court registrar, Waterford)

Leona McDonald, Ian O'Hara, Jill Cunningham, and Ken Cunningham

Daniel Magnier, Liz Dowling, Gillian Kiersey, Nicola Walsh, and Mark Walsh

Anna O'Herlihy, Karina Tkachenko, and Rosie O'Flynn

Niall Rooney, Judge Kevin Staunton, Valerie Staunton, Judge Alice Doyle, and Niall King

Susan Martin (Law Society Council), Elaine Seymour, and James Seymour (court registrar, Waterford)

Matthew Kenny (president, Dublin Solicitors' Bar Association), Deirdre Walsh (DSBA), and Tony O'Sullivan (Law Society Council)

Orm Kenny, Judge Alice Doyle, and Jody Gilhooly

Deirdre McSweeney and John Breen

Richard Halley, Philip Neville, Emma Meagher Neville (president, Southern Bar Association), Barry MacCarthy (president, Law Society of Ireland), and Bernadette Cahill

Diploma Centre 2023 conferrals

Diploma conferees with *(fourth from front left, and l to r)*: Mr Justice Liam Kennedy, Richard Hammond SC (chair, Education Committee), Judge Shalom Binchy, Sandra Meade (vice-chair, STEP Ireland), and Claire O'Mahony (head, Diploma Centre)

Conferees of the Diploma in Trust and Estate Planning

Conferees of the Diploma in Aviation Leasing and Finance with *(front, fifth from left, and l to r)*: Ms Justice Bronagh O'Hanlon (retired judge of the High Court), Richard Hammond SC (chair, Education Committee), Claire O'Mahony (head, Diploma Centre), Mr Justice Barry O'Donnell, Judge Catherine Hayden, and Maria McElhinney (partner, A&L Goodbody)

Barry lauded by fellow solicitors

PICS: SHEILA FITZGERALD

Law Society President Barry MacCarthy *(front, centre)*, who practises in Charleville, Co Cork, was joined by practising and retired solicitors from Cork and Limerick, and by District Court Judge Patricia Harney, at an event in the Springfort Hall Hotel, Mallow, on 17 November, marking his appointment

Peter Wise (solicitor, Mallow), Philip Comyn (Cork City coroner), and Paddy McDonnell (solicitor, Kilfinnan)

Caroline Ahern (trainee solicitor), Elaine Snow (solicitor), and Michelle Buckley (solicitor)

Kilfinnan solicitor Paddy McDonnell *(left)* chats to Barry MacCarthy

New Council members dinner

Welcoming the Law Society's newest Council members at a dinner held in their honour: *(front, l to r):* Paul Ryan, John Fuller, Law Society President Barry MacCarthy, Avril Mangan, and Niamh Counihan. *(Back, l to r):* Senior vice-president Eamon Harrington, Rosemarie Loftus, Richard Hammond SC, junior vice-president Martin Lawlor, Siún Hurley, and Garry Clarke. (PIC: CIAN REDMOND)

WRC appoints new DG

Audrey Cahill has been appointed as the new director general of the Workplace Relations Commission (WRC).

Cahill, who was appointed after an open competition managed by the Public Appointments Service, had previously been a member of the WRC's board from 2015 to 2021.

She has more than 20 years' experience across all aspects of human resources, and joins the WRC from healthcare group UPMC, where she held the position of director of human resources.

Simon Coveney (Minister for Enterprise, Trade, and Employment) said: "Audrey's experience in this area will be hugely beneficial, and her stewardship will ensure that the WRC continues to deliver top-quality mediation, adjudication, and workplace-relations services."

The WRC's functions include industrial-relations advisory and conciliation services and the resolution of industrial-relations disputes across the public and private sectors.

Enhanced LegalMind service is now available

Law Society Psychological Services has launched a newly enhanced LegalMind service that is now offering access to accredited psychotherapists at a much-reduced rate. LegalMind's independent and subsidised therapeutic service both supports and develops solicitors – personally and professionally.

From Monday 15 January, LegalMind has entered a new partnership with the Clanwilliam Institute, an independent service. The institute was established in 1982 as a centre for systemic therapy and practice in Ireland. It is staffed by experienced professional therapists, all of whom are registered with the Irish Council for Psychotherapy, the Family Therapy Association of Ireland, and the European Association of Psychotherapy.

LegalMind provides a suite of eight to ten sessions a year with an accredited psychotherapist, now available to all Law Society members and solicitors. The first appointment is free, while subsequent appointments are at a subsidised fee of €30 plus VAT (that is, €34.50) per session. Appointments may be face-to-face or online, depending on location.

All enquiries to LegalMind are fully confidential to the Clanwilliam Institute. All therapy sessions are conducted by highly trained professionals in a confidential forum.

Legal practice is immensely demanding – and Law Society Psychological Services believes that no one needs to wait until they are experiencing burn-out or a crisis to engage with LegalMind:

- Would you like to acquire skills and insights that will support you personally as you progress professionally?
- Are you experiencing stress at work or at home?
- Does a series of attractively priced therapy sessions appeal to you?
- Are you navigating a painful situation, relationship, or behaviour that is affecting your wellbeing?

Getting in touch

You can contact LegalMind by:

- Emailing legalmind@clanwilliam.ie,
- Tel: 01 205 5010 (normal rates apply),
- Office hours for contacting LegalMind are Monday to Friday (9am to 5pm).

LegalMind will respond to all enquiries within two working days, and will confirm the start date for the suite of therapeutic sessions within two weeks of the initial contact.

IILA extends invitation to immigration stakeholders

● The Irish Immigration Lawyers Association (IILA) held its conference at the Law Society's Green Hall on 1 December, to a capacity audience.

During his opening address, IILA chair Thomas Coughlan spoke about the association's desire to engage with stakeholders in the area of immigration law and practice. He noted that Micheál Martin TD (as Taoiseach) had helped to launch the association in 2021, while judges Tara Burns, Charles Meenan, and Siobhán Stack had addressed the IILA at various events.

The organisation is furthering its links with the Immigration Asylum and Citizenship Bar Association. Its chair, Michael Conlon SC, addressed the meeting and spoke of cooperation between the two associations, with a planned joint conference in 2024. Cindy Carroll (deputy chair of the International Protection Appeals Tribunal) addressed IILA members at a training session in December. Connections with other agencies and stakeholders are ongoing.

The first session of the conference was addressed by Sarah-Jane Hillery BL, on constitutional rights and the non-citizen child, while Michael Conlon SC spoke on the duties of cooperation in international protection law. This was followed by an address by Mary Henderson (solicitor with the Immigrant Council of Ireland) on recent legislative and practice changes in the Irish naturalisation process, Maria Hennessy (assistant protection officer, UNHCR Ireland) on addressing statelessness in Ireland, and Catherine Cosgrave (managing solicitor, Immigrant Council of Ireland) on access to citizenship and addressing statelessness in childhood.

Following a lively questions-and-answers session, delegates retired for refreshments and a social gathering.

IILA committee members who organised the conference are Taise Azevedo (McGrath Mullan LLP Solicitors), Shehzad Bajwa (Bajwa Solicitors), Karen Berkeley (Berkeley Solicitors), Thomas Coughlan (Thomas Coughlan & Co, Solicitors), Kelly Coyle (Thomas Coughlan & Co), Aileen Gittens (Poe Kiely Hogan Lanigan LLP), Hiro Ino (Hiro Ino Solicitors), Eoin Joyce (Joyce & Co, Solicitors), Albert Llussa (Daly Lynch Crowe & Morris Solicitors LLP), Reza Nezam (RNL Solicitors), Carol Sinnott (Sinnott Solicitors), Colm Stanley (Stanley & Co, Solicitors), and Cristina Stametescu (Ferrys Solicitors LLP).

Membership of the IILA is open to fully-qualified immigration solicitors who hold practising certificates issued by the Law Society of Ireland, whether working for applicants or the State. Associate membership is open to trainee solicitors, legal executives, and staff working under the supervision of a solicitor member of the association.

Applications for membership can be made through www.iila.ie or by email to info@iila.ie.

Defendants 'can be named on turning 18'

Ms Justice Isobel Kennedy

● The Court of Appeal has ruled that children who are before the courts for criminal offences can be named once they turn 18 – if the proceedings are still ongoing.

A stay has been put on the lifting of reporting restrictions, however, to allow an appeal to the Supreme Court.

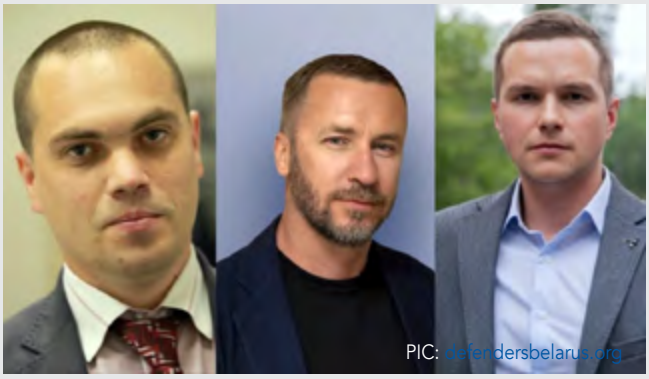
The court was giving judgment in the case of a youth who murdered student Cameron Blair in Cork in 2020. The youth was 17 when pleading guilty, but is now 21. The court had dismissed an appeal against the conviction in December, but had sought submissions on whether the youth could be identified.

The case centred on a previous interpretation of section 93 of the *Children Act 2001* that held that the rules protecting the identity of child offenders still applied when that person appeared before the Court of Appeal, having reached the age of 18.

Delivering judgment, however, Ms Justice Isobel Kennedy said that no provision of the act "provides for an extension of reporting restrictions and anonymity to those who age out before proceedings conclude. Reporting restrictions are expressly limited to those under the age of 18 years."

ENDANGERED LAWYERS

VADIM KOBZEV, IGOR SERGUNIN AND ALEXEI LIPTSER, RUSSIA



Vadim Kobzev, Igor Sergunin, and Aleksei Liptser

The NGO, Lawyers for Lawyers, reported on 20 December 2023 that the Federal Financial Monitoring Service of the Russian Federation, Rosfinmonitoring, has designated lawyers Vadim Kobzev, Igor Sergunin and Alexei Liptser – who represented Alexei Navalny – as terrorists and extremists.

Under the law, individuals on this list lose access to banking services, including the ability to open and operate accounts. Foremost, being listed implies that legal proceedings have been launched against them under the 'extremist' and 'terrorist' provisions of the Russian criminal code.

In October 2023, Alexy Navalny's five defence lawyers had their offices searched and the above-named lawyers were arrested. Alexander Fedulov and Olga Mikhailova fled the country. The three lawyers were charged with participating in an extremist organisation, rendering them liable to six years of imprisonment. The rate of convictions in Russian courts over is 99%. They remain in custody.

The charges against them are reportedly based on accusations that the lawyers facilitated Navalny's communication with the outside world while in detention, or the "regular transfer of information between the leaders and participants of an extremist organisation".

According to Lawyers for Lawyers, the detention and flight of the five lawyers comes at a delicate time – Navalny has been transferred to a 'special-regime' detention facility, where he is likely to face ill-treatment. Their absence not only significantly obstructs Navalny's ability to defend himself with the assistance of qualified, independent legal counsel of his choosing and to challenge the criminal convictions and sentence, but also obstructs his last means of communicating with the outside world. The lawyers' persecution reinforces the chilling climate in which lawyers may refuse to represent clients connected to politically sensitive or controversial issues for fear of becoming the target of harassment or acts of retaliation.

In its World Report 2024, Human Rights Watch notes that Russian authorities continued to expand and harshen already extensive and repressive legislation during the past year.

Alma Clissmann was a long-time member of the Law Society's Human Rights and Equality Committee.

Barry lauded at Mallow gathering

Linda Kelleher, Owen Binchy (past-president, Law Society), Law Society President Barry MacCarthy, and District Court Judge Patricia Harney

Members of the legal profession from Cork and Limerick gathered on 17 November at the Springfort Hall Hotel, Mallow, to celebrate the appointment of Charleville-based solicitor Barry MacCarthy as president of the Law Society, *writes Sheila Fitzgerald.*

A large turnout of both practising and retired solicitors, together with District Court Judge Patricia Harney, attended. The MC was Linda Kelleher (Matthew J Nagle & Co, Mallow).

Law Society past-president Owen Binchy recounted how Barry has been working tirelessly for the profession on many of the Law Society's committees since 1997. In this regard, Owen said that Barry was following in the footsteps of his late father, Finbarr.

A presentation of a specially commissioned piece of slate art was presented to Barry on behalf of his colleagues by Judge Harney, Owen Binchy, and Linda Kelleher. Before giving his CPD talk, Barry expressed his thanks to everyone present for all their support and encouragement.

Law Society hosts referenda discussion forum

At the Law Society's Justice and Law Reform Series discussion forum on 'Family, Care and the Constitution' were director general Mark Garrett (facilitator) with two of the panellists, Minister Roderic O'Gorman TD and Catherine Day (Chair of the Citizens' Assembly on Gender Equality). The discussion forum, held in The Merrion Hotel on 1 February, provided an opportunity to discuss the forthcoming referenda on family and care, as part of the national conversation on these important matters.

Law Society celebrates triple book launch

At the 15 November launch were Dr Gabriel Brennan, John Murphy, Deirdre Fox, Edwin Allen, Nuala Casey, Barry Magee, and David Soden

● The Law Society hosted the launch of a trio of publications on 15 November: the *Business Law Manual* (7th edition), *Landlord and Tenant Law* (8th edition), and *Conveyancing* (10th edition), published by the Law Society in conjunction with Oxford University Press.

Editors, authors, and members of the associate faculty heard from Law Society President Barry McCarthy and chair of the Education Committee Richard Hammond, who praised the efforts of all involved and pointed out the value of these publications to solicitors and trainees. The texts can be purchased directly from the Law Society.

Attending the launch of the *Business Law Manual* were authors Conor Keaveny, Philip Andrews SC, Piaras Power, Joanne Cox (editor), Barry MacCarthy (Law Society president), Paul Egan SC, John Hugh Colleran, Dr Vincent Power, Gavin O'Flaherty, and Neil Keenan

IRLI IN AFRICA

CHIEF JUSTICE OF ZAMBIA VISITS IRELAND

(From l to r): Justice Ann Malata-Ononuju, Chief Justice Donal O'Donnell, Chief Justice Mumba Malila SC, and Justice Dominic Sichinga

● Irish Rule of Law (IRLI) is a joint initiative of the Law Society of Ireland, the Bar of Ireland, the Law Society of Northern Ireland, and the Bar of Northern Ireland. Supported by the Department of Foreign Affairs, it promotes the rule of law in countries including Malawi, Tanzania and Zambia.

In Zambia, IRLI works with anti-corruption institutions on judiciary-capacity training in the new fast-track anti-corruption court. We are helping to develop rules of court for this new institution, along with a criminal-assets civil-forfeiture system. We are also helping the prosecution authority to develop capacity for cases concerning gender-based violence, and supporting the development of a prison court system for the huge number of unrepresented accused.

As part of our work with the Zambian judiciary, we recently hosted Chief Justice Mumba Malila SC, Justices Dominic Sichinga SC and Ann Malata-Ononuju, and Rodgers Kaoma (registrar, Supreme Court) in Dublin and Belfast for an eight-day programme. This included the annual judicial conference in Dublin, meeting Ireland's Chief Justice Donal O'Donnell SC, Supreme Court judges and other senior judiciary, including President of the Court of Appeal George Birmingham SC and President of the High Court David Barniville SC.

The trip also included the annual four-jurisdictions judicial training boards conference in Belfast, and a meeting with the Lady Chief Justice Dame Siobhan Keegan KC. The trip culminated with the Chief Justice of Zambia delivering a lecture at Trinity College Dublin (TCD). The lecture paid particular reference to James Skinner – born in Clonmel, Co Tipperary, and educated at Clongowes Wood College and TCD – who went on to become the Minister for Justice, the Chief Justice of Zambia, and later Chief Justice of Malawi.

During the trip, the delegation met all of the experts from both jurisdictions in Ireland who have helped with the programme to plan further capacity-building programmes. The Chief Justice of Zambia thanked the experts for their substantial contributions to date, all voluntary. The delegation will now compile a report containing lessons learned from the visit, and actions to be taken on its return to Zambia.

Norville Connolly is country director of Zambia and Tanzania for Irish Rule of Law International.

IMPORTANT NOTICE

Bank of Ireland

CHANGE OF ADDRESS

With effect from the 8th February 2024 there will be a change to the registered office of

- Bank of Ireland Group plc and
- The Governor and Company of the Bank of Ireland

The address of the new registered office is:
2 College Green, Dublin, D02 VR66

PLEASE NOTE the address of head office is:
Baggot Plaza, 27-33 Upper Baggot St.,
Dublin, D04 VX58, Ireland

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.

Per ardua ad astra

Years ago, my wife gifted me Shoukei Matsumoto's *A Monk's Guide to a Clean House and Mind*. I'm not New Age, but I was struck by its notion that spiritual meaning to cultivate the mind can be found in mundane home-cleaning routines.

To a corporate lawyer like me, who can resent family chores, this path to Buddha-hood was noble, if impossibly abstract. Mindfulness I can do at work on-screen and even get MPD for. Cleaning toilets, with two teenage boys in the house, is a practice of pain without solace.

But I couldn't let it go, particularly as my children grew, and time to try it out as a stay-at-home parent shortened. To shop, cook, do laundry, and clean mindfully. To store everything in its proper place. For the whole of daily life to be 'Zen'. What would that be like?

Getting cancer made my mind up. But this is not a self-care story of suffering and rebirth.

On a gap year now for a mid-career pivot, my first-ever real work break, I learned it takes me 4.3 hours daily, seven days a week, to shop, cook, do laundry, clean and tidy to a requisite standard. At times, I found some joy and peace in these daily habits. But, overall, I learned that the stay-at-home parent I wanted to be is beyond me.

I wanted to be a positive 21st-century-dad role model. What my children got, they say, was an unkempt home, an ill-stocked, often empty fridge, and a man who whinges a lot about chores.

Is this failure? I don't think so. 'Zengosaidan' – a Zen expression that we must put all our efforts into each day so we have no regrets – in the context of cleaning means, "don't put it off till tomorrow: do what you need to do without delay". But saying 'no', I learned, is also a superpower.

Tolstoy taught me this. For my great memory of this blessed time is reading *War and Peace*. Over 1,000 dense pages of small typeface with more than 500 characters, it is stupendous. For the first time in years, all urge to reach for a device and find out what's happening was gone. Much less could I care about chores. Here is Count Pierre Bezúkhov's epiphany as a shoeless and starving prisoner of war on the truth of life: "Life is everything. Life is God. Everything changes and moves and that movement is God … To love life is to love God."

My monk-mode ends soon. What a privilege it has been. Did I experience personal growth and self-improvement? I tried to increase my use of words of thanks and apology and politeness.

What I learned for sure is that the focused and disciplined lifestyle of monks is not for me. Life's everything is calling. What I hope my kids have learned is: *'Per ardua ad astra'*. They do their own laundry now. g

Phil Andrews SC is vice-chair of the Business Law Committee. He is co-author of Modern Irish Competition Law. *After three years' treatment for cancer, including surgery, radio, chemo, and hormone therapy, he is now two years in remission. 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 provider). 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); see lawsociety.ie/legalmind.*

AGM motion on class actions in Ireland

Philip Andrews, Rathmines, Dublin 6

● At the Law Society's AGM on 9 November 2023, a motion for the organisation to report on an optimum class-action regime in Ireland within two years was adopted. There are five reasons I proposed that motion.

First, a class-action regime could allow Irish consumers to enforce rights and get redress in a way they can't today, a particularly Irish quirk, promoting access to justice. "Only paupers or millionaires can afford to litigate in Ireland" said Kelly J, ex-president of the High Court and lead author of the seminal *Review of the Administration of Civil Justice Report* in October 2020, which itself questions Ireland's position on class actions (see also 'Few practise law for fun, fame or philanthropy: Ireland's legal costs problem', Catherine Sanz, *Business Post*). According to the Law Reform Commission, the Irish legal system "lacks a comprehensive procedure that would tackle class claims in a uniform and consistent fashion."

Second, by facilitating private enforcement, it could bolster Ireland's (oft-criticised) public enforcement of laws. "A history of underenforcement" is how one Irish competition law enforcement official recently described the national record of antitrust policing. Outlawed in 1991 legislation, over 30 years ago and counting, no firm has ever been held accountable for excessive pricing or other dominant-position abuses in Irish law. That's just one example. A class-action regime could help right the record.

Third, if best international practice is something to pursue, it would put our legal system into line with other EU and common-law jurisdictions. Every EU member state – and each of Australia, Canada, India, South Africa, the UK, and the US – allows class actions at a minimum in antitrust cases. Should we be different? In the UK, Mark Zuckerberg's Meta is being sued for £2.3bn in a class-action lawsuit that claims the competition-law rights of 44 million Facebook users in the UK were violated (see 'Meta sued for £2.3bn over claim Facebook users in UK were exploited', Dan Milmo, *The Guardian*).

Fourth, it could help Ireland compete for big-ticket international litigation. It is too early to measure Ireland for Law's success. What is clear, though, is that many bar associations from many jurisdictions are chasing global lawsuit business, and Ireland for Law needs every Irish lawyer's support.

Also clear is that class-action lawsuits are 'big game' in this safari. Without the in-demand product to sell (much less a track record of efficient and fast class-action litigation), I wonder if Ireland for Law is competing on a level playing field. In the three or so years since class actions kicked off in Europe, the Netherlands has become Europe's prime class-action jurisdiction, with approximately 65 class-action suits lodged since 2020 according to a public central register. Reportedly, this "can be traced back to an overhaul of the country's three-decades-old collective redress system in 2020. The changes were meant to make proceedings more effective and efficient and to encourage claimants and corporations to settle, once liability has been established" (see 'How the Netherlands became Europe's prime class action jurisdiction', Law.com).

Fifth, as first and foremost a public-interest, access-to-justice issue (if also transparently in the interests of members), the Law Society is uniquely positioned to lead on this, consistent with its dual mandate. And, to be sure, there will be resistance. Ireland's minimal implementation of EU rules to promote class actions, in the form of the *Representative Actions for the Protection of the Collective Interests of Consumers Act 2023*, proves it. Only ministerapproved non-profits that are "independent and … not influenced by persons other than consumers" may take cases, only 'opt-in' classes may be permitted and, critically, competition law – in many other EU and common-law jurisdictions, the main legal basis for class actions – is excluded. This will not be a surprise to everyone. Ireland's State Claims Agency, which manages personal-injury and third-party damage claims on behalf of State authorities, already has estimated outstanding liabilities of €5 billion. The Government must look at reforms in public-purse terms. Ransacking the public coffers is in no one's interest and can't be allowed to happen.

Moving Tesla's HQ to Texas, Elon Musk called California "the land of taxes, overregulation and litigation". That's not a tag Ireland wants, for sure. On the other hand, has anyone ever called out Ireland's loner class-action status as an FDI factor? Anyway, if it makes a difference, Musk repented and afterwards moved Tesla HQ back to the Sunshine State. God knows why.

Just give me a reason, please!

From: Jack Heron, student and solicitor (not currently practising), Oxford, England

● Tailte Éireann (created in 2022 from a merger of the Property Registration Authority of Ireland, the Valuation Office, and Ordnance Survey Ireland) has recently decided to cease its practice of giving detailed reasons for the rejection of a registration application, without prior consultation with or notice to the Law Society. It has stated that, in future, when rejecting an application, it will enclose "a copy of a checklist outlining the common reasons for rejection". This is a baffling approach that poses both practical and legal issues.

On the practical side, a lack of specific reasons as to why a particular application has been rejected is a serious obstacle to re-lodgement, even when that application is relatively straightforward. A checklist of common reasons for rejection may assist in a quick review of the application where something obvious has been missed, but, often, the queries raised will be more complex than this. For example, in the context of a first registration application, Tailte Éireann sometimes raises queries about the authority of signatories to any mortgages on title. Aside from being difficult information to obtain regardless – particularly given the departure of several retail banks from Ireland in recent years – this is an example of an issue that is not apparent from a generic list of common reasons.

Additionally, some queries result from misunderstandings or miscommunications and can be resolved by a brief phone call or email communication to save everyone time and money, but this cannot happen where the lodging solicitor does not know what the issue is. Tailte Éireann should be promoting this cheap and effective method of resolving issues, rather than shutting it down.

Finally on the practical side, this is inevitably going to result in problems for clients. Perhaps Tailte Éireann enacted this policy with a view to processing registrations more quickly and cutting down on the notoriously long timelines for registration. However, it is not much use to process registrations more quickly if the lack of reasons for rejection mean it will take longer for solicitors to re-lodge while they try to puzzle out what needs to be done. These solicitors must then deal with clients who may be (understandably) irate that their application has been rejected, particularly where it is an urgent matter, such as the registration of a charge. These are all reasonably obvious points that would occur quickly to anyone who has worked in conveyancing, so it is strange not only that Tailte Éireann enacted this new policy, but also that it appears to be standing by it in the face of objections by the Conveyancing Committee of the Law Society.

This policy is also potentially open to legal challenge. Of course, there is no entitlement to have a registration application approved where Tailte Éireann is not satisfied that the conditions have been met. However, case law establishes that, without specific reasons as to why an administrative decision has been made, an applicant cannot understand the basis for the decision, nor can they ascertain whether grounds exist to appeal or review it; the duty to give reasons for an administrative decision directed towards an individual is a fundamental component of natural and constitutional justice.

In the registration context, a lack of reasons for a rejection decision makes it much more difficult to bring an effective appeal to the Circuit or High Court under section 19 of the *Registration of Title Act 1964*, and this lack of reasons is potentially contrary to the requirements of natural justice.

I am not currently working in this area, but I can imagine this being a source of considerable frustration for solicitors and clients both. Hopefully, a constructive resolution can be reached to ensure the smooth operation of this crucial system for all parties.

Mediation and Dispute Resolution: Contemporary Issues and Developments

Tony Whatling. Jessica Kingsley Publishers, London (2021), uk.jkp.com. Price: Stg£24.99 (plus VAT and shipping).

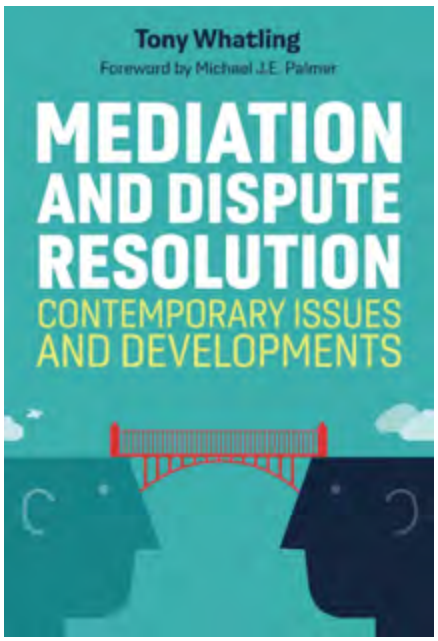
This is not the first book on mediation written and published by Tony Whatling. Following a career in social work, Whatling engaged in an extremely successful career in mediation and mediation training, an area in which he continues to excel.

In 2012, he published *Mediation Skills and Strategies – A Practical Guide*. Writing as a lawyer, I can acknowledge that, as a non-lawyer, Whatling is able to give an excellent and objective overview of mediation and the role of various professionals entering into the world of mediation practice.

Whatling references John Haynes, a renowned US alternative-dispute-resolution (ADR) practitioner who, in Whatling's words "cautioned that, when the going gets tough for us as novice mediators, what we tend to do is slip into the more familiar activities of our previous professional role". Lawyers, for example, "may start giving some legal information, or, worse still, some legal advice". He repeatedly warns against mediators defaulting to their primary profession and training in the course of providing mediation services. As a lawyer who learned the hard way, I wholeheartedly agree.

The theoretical issues (explored by Whatling in his 2012 publication) are expanded on in this work in a very practical way. It focuses on practical issues, such as the process of becoming a mediator, mediator supervision, bias, self-awareness (gender and cultural awareness and sensitivity), and how people think. The author identifies biases that any good mediator should be conscious of, and the need for intellectual humility. In an era in Ireland when we are becoming more multicultural, this book is valuable for what it has to say on that subject alone.

The author examines and explains the role of emotion, the potential for the use of apologies in reconciliation, and explores process options for practitioners, mediation of high-conflict disputes, and the extent to which mediators incorporate mediation into



resolving conflicts in their personal lives.

The book looks deceptively short, at only slightly over 200 pages, but each chapter is a treasure trove. Even reading the book for this review took me quite some time, as every chapter is extremely thought-provoking, prompting self-analysis and reflective assessment/analysis of one's practice as a mediator. Right up to date, it even includes a chapter on 'The Coronavirus pandemic and its potential effects on the behaviour of people in dispute'.

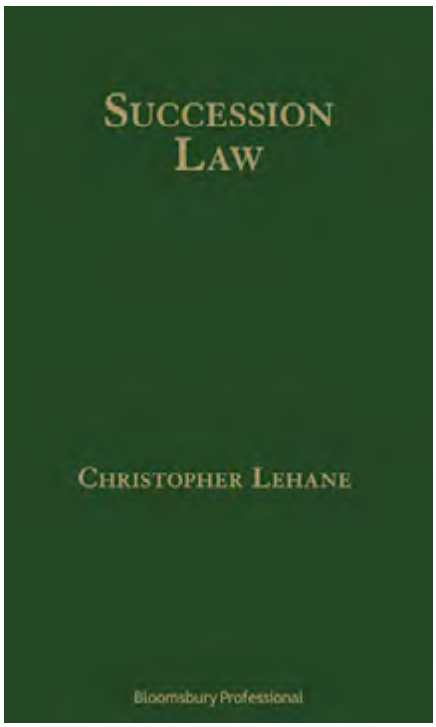
My initial reaction was that this is a book for mediators who have been 'on the road' for some time, which they could use as a toolset to reassess, rebuild, consolidate and improve their mediation practice. On reflection, however, it became clear that potential converts to the 'one true church of mediation' could do well to study this book, with care.

Definitely a good present for the mediator (or potential mediator) in your life!

Bill Holohan SC is a member of the Law Society's Alternative Dispute Resolution Committee.

Succession Law

Christopher Lehane. Bloomsbury Professional (2022), bloomsburyprofessional.com. Price: €275 (hardback, incl VAT); €242.79 (e-book).



● Christopher Lehane recently retired as an officer of the High Court, where he served for 42 years, 22 years of which were spent in the Probate Office and 12 as an official assignee in bankruptcy.

He served as both deputy and assistant probate officer over a period of 13 years. He has taught and examined solicitor trainees and has delivered CPD lectures on probate law. He recently qualified as a barrister.

It is very clear on reading this book that Mr Lehane's practical knowledge in the area of probate law shines through in an extremely satisfying text, which is practical, comprehensive, and very readable.

My method of reviewing this book was to retain it in my office and, when I encountered a query on probate, to see whether I could locate the answer. Infallibly, the answer, easily accessible and easily understandable, was always in this book.

I also listened to the author discussing his book on the podcast *Obiter Dicta*. He was asked about the three most important matters in probate practice. Number one on his list was 'Don't lose the will!' and, indeed, it is much more common for a solicitor in practice to face this scenario, rather than dealing with some high-end statutory interpretation.

Errors in drafting and execution are also reviewed, all of which can lead to unpleasant outcomes. The effects of the practical issues that happen to practitioners, from time to time, are all well presented in this book, with comprehensive solutions or, at least, details of the consequences.

The author comments that he wishes the book to be regarded as a 'one-stop shop' for practitioners. I can heartily say that it is an excellent reference for all practitioners in general practice, as well as those with any level of specialisation in dealing with probate and the administration of estates.

What Mr Lehane does spectacularly well in this publication is to carefully link other areas of law to succession law, such as the conveyancing practices that should be observed in regard to a deceased's estate.

I found *Succession Law* extremely helpful and, indeed, enjoyable to read. It is not only a well-laid-out discussion on the various topics, but a comprehensive toolbox of practical solutions, offering appendices, precedents, and excellent guidance.

In the area of the administration of estates, the roles can be blurred by strong personalities, differing views, and familial emotions. It is thus helpful to have a practical, readable guide on such matters.

Peter Kelly, former president of the High Court, sums up the only flaw of the book, where he states: "Since his retirement from the Courts Service in 2020, [the author] has commenced practice at the Bar. By writing such a comprehensive book, I fear that he has deprived himself of fee income, since the book answers many of the queries likely to be directed to him for advice."

I would still continue to seek Mr Lehane's valuable advices, but this book is a find!

Gwen Bowen is a solicitor at Bowen & Co Solicitors, Sixmilebridge, Co Clare.

Divorce in the District Court

The proposal to allow the District Court to hear judicial separation and divorce applications should be welcomed, says Carol Coulter

IT IS CONCERNING TO SEE IT SUGGESTED THAT THE DISTRICT COURT MAY LACK THE JUDICIAL EXPERTISE TO DEAL WITH COMPLEX FAMILY-LAW MATTERS. ALREADY, THE DISTRICT COURT DEALS WITH FAMILY-LAW ISSUES OF FUNDAMENTAL IMPORTANCE

The provision in the *Family Courts Bill 2022* to move divorce and judicial-separation cases from the Circuit to the District Court has aroused widespread opposition from the legal profession, most recently articulated by Keith Walsh SC in *The Parchment*. Mr Walsh argues that this will lead to increased delays in family-law proceedings, "gridlock for judicial separation and divorce applicants, and result in a system that currently is in need of overhaul being replaced with a system that does not function".

I think these concerns are misplaced, and the arguments against extending the jurisdiction of the District Court (following the establishment of a dedicated family-law jurisdiction at all court levels) do not stand up to scrutiny.

Mr Walsh states: "Cases involving judicial separation and divorce in the Circuit Court, when contested, rarely take less than two hours or half a day. Many cases take one day, and some other cases take two or more days to complete." He goes on to extrapolate from the 2022 Courts Service figures that the transfer of almost 6,000 judicial separation and divorce cases to the District Court would overwhelm the system.

When contested?

But the crucial words here are 'when contested'. Only a minority of divorce and judicial separation cases are contested. The majority are on consent. The Courts Service statistics do not distinguish between cases that are contested and those where the court makes orders on consent.

In 2006, I was commissioned by the Courts Service to set up and run a pilot project reporting on private family law, and did so from October of that year to the end of 2007. As part of that project, I examined the family-law files for a single month in every Circuit Court in the State, taking this as a likely representative sample of the year. I published the results both in the *Family Law Matters* magazine published by the Courts Service during the project, and in a book published in 2009 based on all the data I had collected while conducting it (*Family Law in Practice: A Study of Cases in the Circuit Court*, Clarus Press, Dublin 2009).

Due to the fact that, at that time, a couple had to have separated four years earlier in order to seek a divorce, the analysis showed that judicial separation was clearly used by many couples to resolve issues concerning the family home, maintenance and other financial issues, and custody of and access to children, as soon as possible after the breakdown of the marriage.

Judicial separations

Judicial separations significantly outnumbered divorces. Often, a divorce followed a prior judicial or a legal separation. In the month analysed, there were 364 judicial separations and 94 divorces – a total of 458 cases. Only 41 – or 9% – went to a full hearing. This was twice as likely where judicial separations were involved as when people were seeking divorces, presumably because many of the contested issues had been resolved by the time the couple had met the four-year separation requirement. Thus, 91% of all cases concluded that month were on consent at that time.

Of the 41 contested cases, 26 involved children. In 17 cases, the family home was an issue, usually combined with others. Other financial matters, either maintenance or the disposal of other assets, featured in 20 cases. In many cases, there was an overlap of these disparate issues. So, potentially complex financial issues featured in less than 5% of all the cases disposed of in that snapshot.

I acknowledge that this data is now 16 years old, and a major shift has taken place, where now


PIC: SHUTTERSTOCK

the majority of private family-law applications in the Circuit Court are for divorce (4,890 granted in 2022, as against 314 judicial separations), but there is no reason to think that the proportion of those consented to has significantly changed and, to my knowledge, no similar study has been published since.

Limited relevance

Thus, the argument that the District Court is ill-equipped to deal with the complex financial issues that can arise in judicial separation and divorce cases is of limited relevance to the proposed reform of the family court system. In any case, the proposed legislation provides for cases to be transferred to the Circuit Court from the District Court if required by their complexity. There is no obvious reason why the potentially 90% or so of cases (or whatever the proportion may be now) where the order is granted on consent cannot be dealt with by the District Court. In the Circuit Court, where I have attended dozens of cases, including for a separate study in 2018, I have seen consent divorces and judicial separations disposed of in as little as ten minutes.

It is also concerning to see it suggested that the District Court may lack the judicial expertise to deal with complex family-law matters. Already, the District Court deals with family-law issues of fundamental importance – the removal of children from their parents, perhaps at birth, for up to 18 years. It is difficult to imagine a decision of greater import, engaging, as it does, fundamental constitutional issues with potentially life-changing consequences for parents and children alike.

Welfare of children

Issues relating to the ongoing welfare of children in care are also decided by the District Court. These cases are often highly complex, involving constitutional, ECtHR and European law, and evaluating expert opinion from a range of medical, psychological, and psychiatric witnesses. In some instances, the cases can take, and have taken, many weeks. The overworked judges of the District Court who hear these cases regularly have developed great expertise in these areas, delivering carefully considered and sometimes written judgments, and it is to be hoped that they will be allocated to the new Family District Court.

There is no reason why the Family District Court, *if properly resourced*, cannot deal with judicial separation and divorce cases as well as other family-law matters. This is crucial, and if the appropriate resources are not provided, those who have warned against the transfer of jurisdiction will be proved right. Undeniably, some cases will not be suitable for hearing in the District Court, but, as stated above, the provision exists for cases to be transferred to the Circuit Court where it is deemed necessary.

We should remember that the issue of jurisdiction for hearing divorce and judicial-separation applications is not just a matter for lawyers. It is of great importance for those citizens who will need the courts to hear and grant their applications. Is there any good reason why citizens whose marriages have broken down, who seek to end them legally through judicial separation or divorce, who have already moved on in their lives and who have agreed on most or all of any ancillary matters outstanding, should not be able to apply to the District Court, especially as this will be at lesser cost than the Circuit Court inevitably involves? g

Carol Coulter is former legal affairs editor of The Irish Times, *the founder and executive director of the Child Law Project, and ran the Courts Service Pilot Family Law Reporting Project. She writes here in a personal capacity.*

War – what is it good for?

The recent British Court of Appeal judgment in *Churchill v Merthyr Tydfil County Borough Council* appears to have lifted the barrier to courts directing warring parties towards mediation. Bill Holohan takes us through it

EXPERIENCE HAS SHOWN THAT IT IS EXTREMELY BENEFICIAL FOR THE PARTIES TO DISPUTES TO BE ABLE TO SETTLE THEIR DIFFERENCES CHEAPLY AND QUICKLY. EVEN WITH INITIALLY UNWILLING PARTIES, MEDIATION CAN OFTEN BE SUCCESSFUL

For nearly 20 years, Lord Justice Dyson's remarks in *Halsey v Milton Keynes General NHS Trust* – suggesting that forcing unwilling parties into mediation infringed their right to court access – had been seen as a barrier to courts directing warring parties towards mediation.

However, this view was critically reassessed by a specially convened UK Court of Appeal panel (including Baroness Carr, Sir Geoffrey Vos, and Lord Justice Birss) sitting to hear *Churchill v Merthyr Tydfil County Borough Council*, which has made a significant stride in the evolution of dispute resolution.

They unanimously concluded that Dyson LJ's observations were merely *obiter dicta*, and not part of the *ratio decidendi*. In modern language: "They were not a necessary part of the reasoning that led to the decision."

The court determined that:

1) The passage in *Halsey* was *obiter* and therefore
2) Parties can be compelled to engage in some alternative, non-court based, ways of resolving their disputes.

At paragraph 59 of his judgment, Vos MR said: "Experience has shown that it is extremely beneficial for the parties to disputes to be able to settle their differences cheaply and quickly. Even with initially unwilling parties, mediation can often be successful."

This opens the way to a court compelling initially unwilling parties to at least attempt some kind of alternative dispute resolution (ADR).

Key passage

The key passage giving the conclusion to the second issue is found in paragraph 65, where Vos MR said: "The court should only stay proceedings for, or order, the parties to engage in a non-court-based dispute-resolution process, provided that the order made does not impair the very essence of the claimant's right to proceed to a judicial hearing, and is proportionate to achieving the legitimate aim of settling the dispute fairly, quickly and at reasonable cost."

Method of ADR

As to the method of alternative/non-court based dispute resolution, Vos MR said that this was a matter for the court's discretion. However, the particular method of non-court-based dispute resolution will be relevant as to the exercise of that discretion. He pointed to the (English) Bar Council's list of suggested factors that might be relevant to the exercise of discretion, but held that this was too restrictive and the court should use the totality of its discretion.

The factors are set out in paragraph 61 and are, as follows:

- The form of ADR being considered,
- Whether the parties were legally advised or represented,
- Whether ADR was likely to be effective or appropriate without such advice or representation,
- Whether it was made clear to the parties that, if they did not settle, they were free to pursue their claim or defence,
- The urgency of the case and the reasonableness of the delay caused by ADR,
- Whether that delay would vitiate the claim or give rise to, or exacerbate any limitation issue,
- The costs of ADR, both in absolute terms, and relative to the parties' resources and the value of the claim,
- Whether there was any realistic prospect of the claim being resolved through ADR,
- Whether there was a significant imbalance in the

PIC: SHUTTERSTOCK

parties' levels of resource, bargaining power, or sophistication,
- The reasons given by a party for not wishing to mediate: for example, if there had already been a recent unsuccessful attempt at ADR, and
- The reasonableness and proportionality of the sanction, in the event that a party declined ADR in the face of an order of the court.

The court held that these principles are relevant to a decision made on an application to stay a claim at any point in ongoing litigation.

The UK Court of Appeal, in addition to hearing the parties, also heard argument from interveners, including the Bar Council, the Law Society, the Civil Mediation Council, the Centre for Effective Dispute Resolution, the Chartered Institute of Arbitrators, the Housing Law Practitioners Association, and the Social Housing Law Association.

The judgment is available for download at caselaw.nationalarchives.gov.uk/ewca/civ/2023/1416. g

Bill Holohan SC is a senior partner at Holohan Lane LLP, Waterview House, Sundays Well Road, Cork, and The Capel Building, St Mary's Abbey, Dublin.

THIS OPENS THE WAY TO A COURT COMPELLING INITIALLY UNWILLING PARTIES TO AT LEAST ATTEMPT SOME KIND OF ALTERNATIVE DISPUTE RESOLUTION

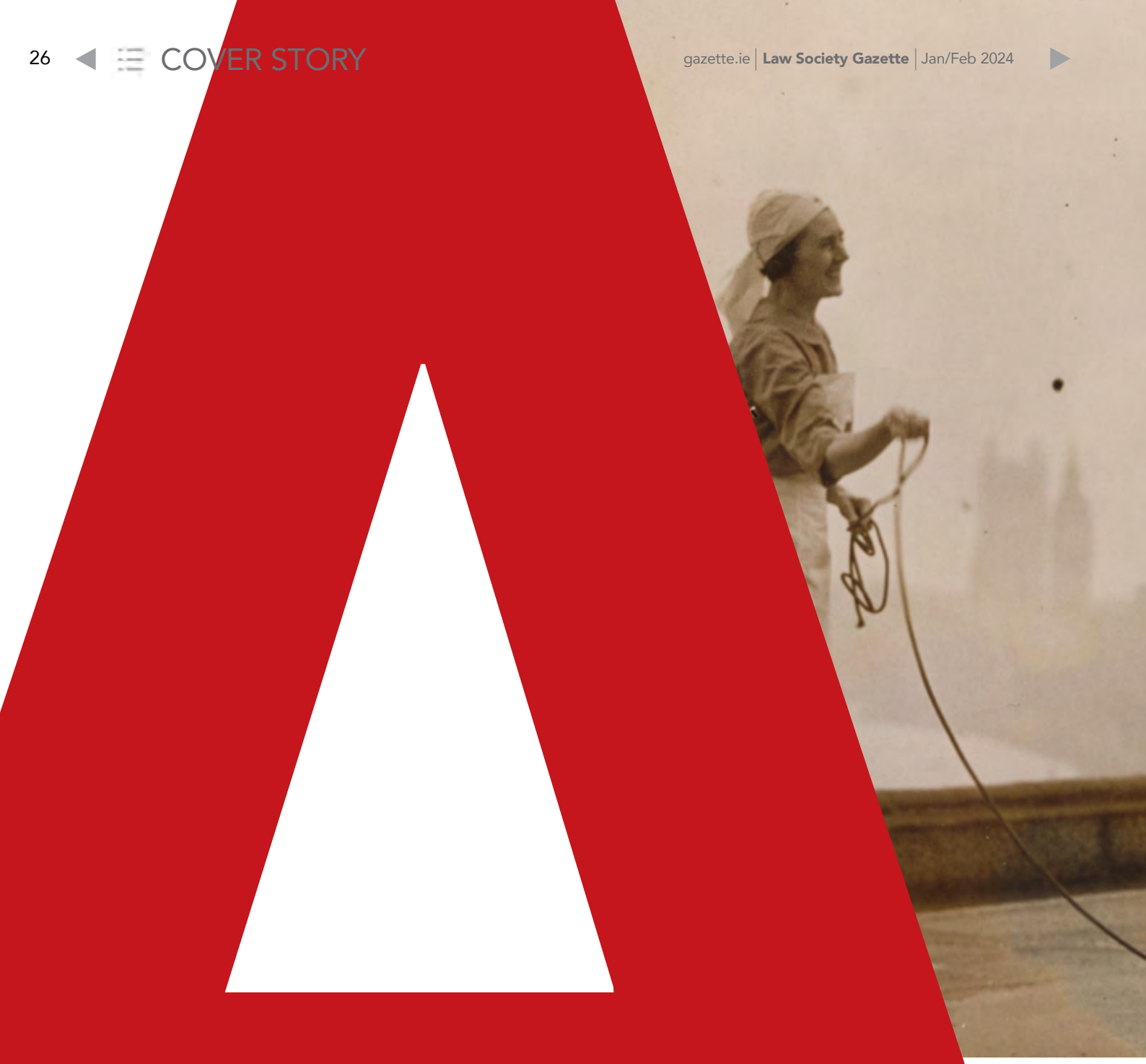
LOOK IT UP

CASES:
- *Churchill v Merthyr Tydfil County Borough Council* [2023] EWCA Civ 1416
- *Halsey v Milton Keynes General NHS Trust* [2004] EWCA Civ 576, [2004] 1 WLR 3002

Carry on nurse!

SI 618 of 2023, amending the *Nursing Homes Support Scheme Act 2009*, came into effect on 1 February. Elaine Byrne carries out a thorough examination of the Fair Deal Scheme in light of this amendment

PIC: ALAMY



s a society, we are living longer, and many of us will end up knocking on the doors of nursing homes to be cared for in our final years. As solicitors, it is helpful to be familiar with the law surrounding the application process for nursing-home care, payment for care, and also, on death, the impact of having been in a nursing home on the administration of estates.

The most recent amendment to the law in this area came into effect on 1 February, namely the *Nursing Homes Support Scheme Act 2009 (Modification of Assessment of Eligible Rental Income) Order 2023*. With this in mind, now is an opportune time to examine the Fair Deal Scheme. The key piece of legislation is the *Nursing Home Support Scheme Act 2009*, which commenced on 27 October 2009. Prior to this, we had the concept of subvention and public and private nursing homes.

The act comprises nine parts. Part 1 is headed 'Preliminary and general'. Of interest is section 4, which provides a unique definition of 'couples', different to that provided for in other legislation – including the *Civil Partnership and Certain Rights and Obligations of Cohabitants Act*. For the purposes of the act, a 'couple' means "two persons married to each other, a man and woman who are not married to each other but are cohabiting as husband and wife, or two persons of the same sex who are cohabiting in domestic circumstances comparable to that of a man and woman who are not married to each other but are cohabiting as husband and wife … for period of not less than three years immediately preceding the date of making an application for State support".

THE MOST RECENT AMENDMENT TO THE LAW IN THIS AREA IS DUE TO COME INTO EFFECT ON 1 FEBRUARY. WITH THIS IN MIND, NOW IS AN OPPORTUNE TIME TO EXAMINE THE FAIR DEAL SCHEME

FOCAL POINT

HOW IT WORKS

EXAMPLE 1: ELIZABETH

Elizabeth's assets are:

ASSET	VALUE €
Principal private residence in Co Westmeath	300,000
Holiday home in Co Donegal	250,000
Shares and equities	100,000
Savings	80,000
Total	730,000

CALCULATION OF CONTRIBUTION TO CARE	€
Total assets	730,000
Deduction (single person)	36,000
=	694,000
At 7.5%	52,050
/52	1,000.96

Elizabeth will pay €1,000.96 per week towards the cost of her care. She will also contribute 80% of her assessable income. The weekly cost of care with the nursing home is €1,500 per week, so if there is any shortfall, the State will pay the balance.

Since 20 October 2021, the three-year cap can, in certain circumstances, also extend to a family farm or business (see sections 14A to 14N of the act).

EXAMPLE 2: JOHN

John is going to a nursing home and owns a 200-acre farm in Co Meath. John's solicitor tells him that he can apply for a three-year cap regarding his farm and must satisfy three conditions:

1) John must apply to the HSE to appoint his family successor, who will commit to running the farm for at least six years,
2) The farm must have been actively run by John or his partner or his proposed family successor for at least three of the last five years,
3) A charge in favour of the HSE will be placed on the farm.

John advises that his son Tadhg is farming. John completes part 6 of the Fair Deal application form and submits it with vouching documentation and a statutory declaration. Tadhg also completes a statutory declaration. A charge will be registered against the farm.

State support

Part 2 of the act is headed 'Establishment of scheme and application for State support'. There are potentially four steps in any application for nursing-home support/the Fair Deal Scheme. The first of these steps is to provide for a care-needs assessment in accordance with section 7. If the applicant is found to need nursing-home care, an application can thereafter be made for State support. This is where we, as solicitors, are often contacted.

The applicant should compile a note of assets, remembering that, if the applicant is a member of a couple, all assets in the names of the applicant and the other member of the couple should be disclosed. It may be useful to remind any client of section 9(5) of the act, which provides that "any person who knowingly or recklessly gives the executive information which is false or misleading in a material particular in, with, or in connection with an application for State support is guilty of an offence". The applicant will also need to provide details of income.

Sections 10 to 14, together with the schedules, as referred to, look at the financial assessment of income and means:

- Assessment of income – 80% of the applicant's assessable income is given as a contribution towards the cost of care. A member of a couple will pay 40% of the combined assessable income. From 1 February 2024, the entire income derived from rental of a principal private residence shall not be taken into account.
- Assessment of assets – assets are taken into account at the rate of 7.5%. The first €36,000 of means is exempt from the assessment in the case of a single person. A member of a couple will pay 3.75% of the combined assets, with the first €72,000 being exempt from the assessment.

Remember:

- The principal private residence is taken into account for a maximum of three years (three-year cap),
- The three-year cap has been extended to the proceeds from the sale of the family home,
- Any assets transferred in the five years before the date

of the first application are included in the financial assessment, and
- The three-year cap can apply to a family farm/business.

Nursing-home loan

Part 3 of the act is headed 'Ancillary State support', known more commonly as the 'nursing-home loan'. Paying for care can be deferred until after the applicant is deceased, using assets to secure the loan.

Remember:
- After the death of the person in care, the loan must be repaid within 12 months to the Revenue Commissioners,
- If the property is sold or transferred when a person is still in care, the loan must be repaid within six months of the date of sale or transfer,
- If the loan is not repaid within the time above, interest will be applied – in case of death, interest will start from the date of death,
- The person who is responsible for repayment of the nursing-home loan to the Revenue Commissioners is called the 'relevant accountable person'; the personal representative of the deceased person or a person who inherits or has an interest in the property can also be held accountable,
- An application can be made for deferral of the nursing-home loan.

Enduring power of attorney

Part 4 of the act is headed 'Care representative'. This role has been removed since the commencement of the *Assisted Decision-Making Capacity Act 2015*. Going back to Elizabeth, if she needs to apply for a loan and she lacks capacity, her solicitor should, in the first instance, establish whether she made an 'enduring power of attorney'. If no such power of attorney is in place, an application can be made to the Circuit Court to apply to have a decision-making representative appointed in accordance with part 5 of the 2015 act. The loan is applied for and is thereafter registered as a charge against the property.

Parts 5 to 9 of the 2009 act refer to 'Notification of specified matters', 'Joint ownership', 'Reviews and appeals', 'Charges in respect of care services', and 'Miscellaneous'.

Having regard to the situation post-death and when acting for a legal personal representative, we should bear in mind part 5, section 27, which obliges the legal personal representative to provide a schedule of assets (SA2 and notice of acknowledgement) to the HSE. The estate should be retained until clearance is received. This correspondence should be emailed to the HSE, Tullamore Office, at email: nhsssoa@hse.ie. Additionally, if there is a loan, the Relevant Events Section should be contacted at the same email or at fairdealqueries@hse.ie.

Moving away from the 2009 act, there are some other matters that might crop up for legal practitioners:
- Estate planning and, in particular, section 47 of the *Succession Act 1965*, which provides that: "Where a person … by his will disposes of, an interest in property, which at the time of his death is charged with the payment of money … and the deceased person has not by will, deed or other document signified a contrary or other intention, the interest so charged shall, as between the different persons claiming through the deceased person, be primarily liable for the payment of the charge; and every part of the said interest, according to its value, shall bear a proportionate part of the charge on the whole thereof."
- Pursuant to the 2015 act, a decision-making representative is obliged to submit a report to the Director of the Decision Support Service (section 46), while section 75 provides for a similar obligation for attorneys. This may, in the administration of estates, be of benefit to the representative/attorney in explaining to beneficiaries where their inheritance has gone!
- Very often, a client will transfer property to another, subject to a right of maintenance and support.

For the latter point, the remarks of Ms Justice Whelan in the recent Court of Appeal judgment in *Reidy v Bank of Ireland* are of interest, where emphasis was placed on the right of maintenance and support being limited to the right while at home, and not extending to a nursing home: "I am satisfied that the word 'therein' was intended to confine the benefit of the obligation to maintain and support the widow to be limited and, in particular, that the obligation would not be enforceable in circumstances where the widow came to reside in a nursing home."

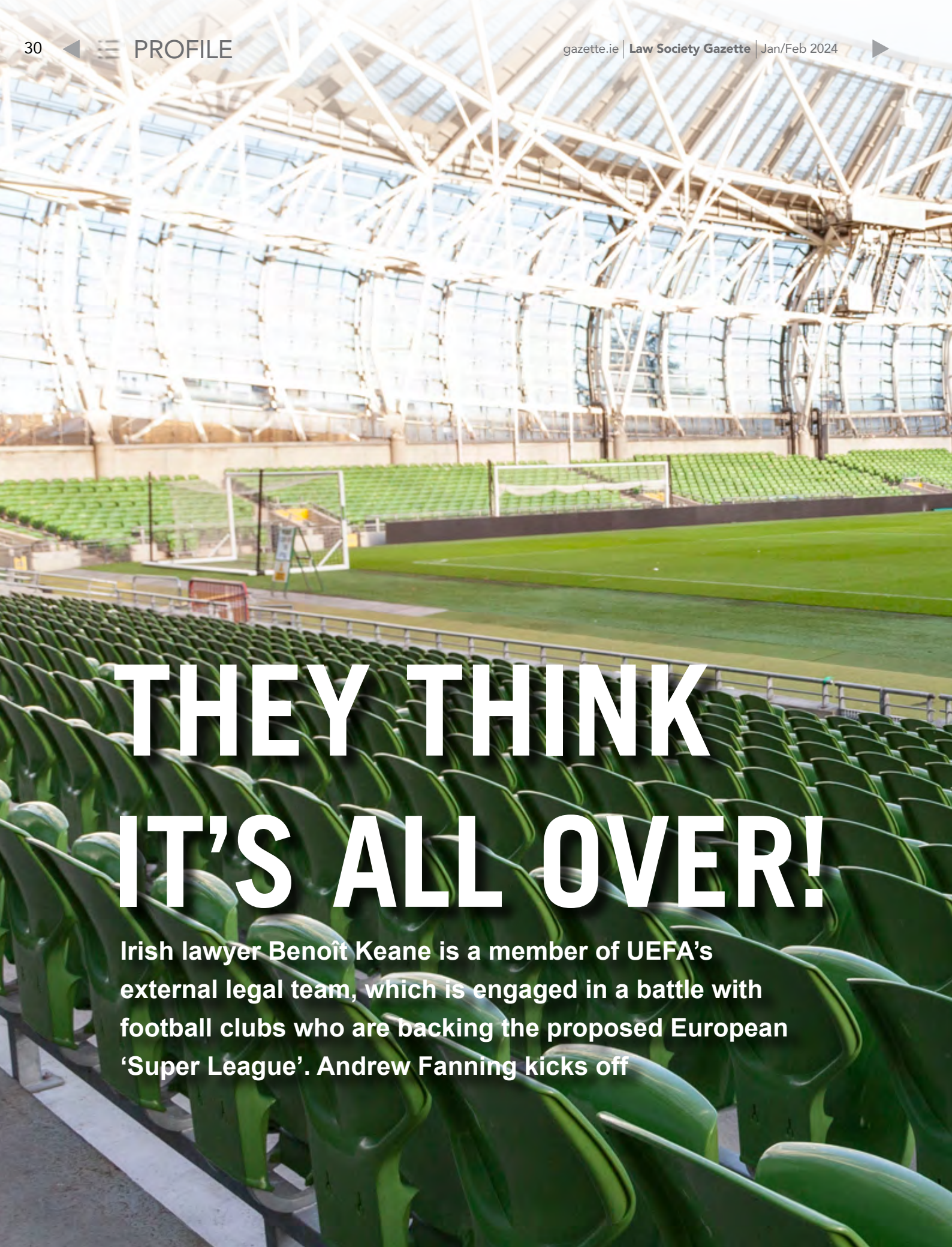
No doubt, there will be further changes and updates to this area of the law. One thing is for sure, nursing-home care will always be with us, so it is important for us as solicitors to keep abreast of developments. g

Elaine Byrne is a solicitor and principal at Elaine Byrne Solicitors, Co Meath. She is a member of the Law Society's Probate, Administration and Trusts and Taxation Committees.

LOOK IT UP

CASES:
- *Reidy v Bank of Ireland* [2023] IECA 212, 8 August 2023

LEGISLATION:
- *Assisted Decision-Making (Capacity) Act 2015* (revised)
- *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010* (revised)
- *Nursing Homes Support Scheme Act 2009*, as amended
- *Practice Direction: Charging Orders under the Nursing Homes Support Scheme Act 2009* (Tailte Éireann)
- *Nursing Homes Support Scheme Act 2009 (Modification of Assessment of Eligible Rental Income) Order 2023* (SI 618 of 2023)
- *Succession Act 1965*



THEY THINK IT'S ALL OVER!

Irish lawyer Benoît Keane is a member of UEFA's external legal team, which is engaged in a battle with football clubs who are backing the proposed European 'Super League'. Andrew Fanning kicks off

ALL PICS: CIAN REDMOND

Brussels-based Irish lawyer Benoît Keane has started 2024 in a positive frame of mind, after what he describes as a "dramatic finish" late last year. Keane, who specialises in sports law and EU competition law, is part of UEFA's external legal team in its legal battle with those football clubs behind the proposed European 'Super League'.

On 21 December last, the Court of Justice of the European Union (CJEU) handed down its judgment on questions referred to it by Madrid's Commercial Court, where the Super League organisers had challenged measures announced by UEFA and FIFA aimed at preventing the project from coming to fruition.

Keane describes the process of watching the judges read out their answers, then receiving the CJEU press release at the same time as everybody else. That release, which UEFA has reportedly described as "inaccurate", initially sparked headlines such as "boost for Super League". It highlighted a finding that the rules laid down by football's governing bodies that require any new club competition to be approved by them were unlawful.

A game of two halves

As UEFA was quick to point out, this finding related to previous pre-authorisation rules, which were updated in 2022. And Keane told the *Gazette* that, after reading the full judgment, his mood had turned "very positive" by the end of that morning – and remains so.

"UEFA can remain both a regulator and organiser: it can require pre-authorisation, and it is allowed to protect sporting merit," he says.

"The CJEU requires UEFA and FIFA to have transparent rules for authorising independent events. But UEFA was already working on this when the Super League was announced, and has since adopted detailed authorisation rules that protect sporting merit and other principles of the European sports model in a non-discriminatory manner."

"Therefore, any new proposal from the promoters of the Super League would have to meet these requirements."

The case now goes back to the Madrid court. However, it is far from over. The case before the CJEU focused on UEFA's rules, Keane points out, but the CJEU noted that there remains a "robust debate" on the compatibility of the Super League project with competition law, due to its closed features.

Whatever the outcome of this 'leg' of the battle, Keane believes that the December ruling is more important for the future of the European sports model, which is based on elements such as

> IN THE *SUPER LEAGUE* CASE, THE FUNDAMENTAL QUESTION IS SPORTING MERIT. THE IDEA OF PROMOTION/RELEGATION IS A FUNDAMENTAL VALUE OF FOOTBALL. WITHOUT IT, THE WHOLE MODEL COLLAPSES

sporting merit and the pyramid system of promotion and relegation, and is recognised in article 165 of the *Treaty on the Functioning of the European Union*.

"We should look at it, not only in the light of this specific case, but also as a long-term signpost that the European sports model can be protected, as long as there are clear, transparent and non-discriminatory rules in place," he says.

Keane encourages sports' governing bodies to ensure that their authorisation rules meet these standards, so that they can continue to act in the interests of their sports, in line with EU competition rules.

Great advert for the game

The Cork-born lawyer had previously spoken to the *Gazette* before the CJEU ruling, when he had described his involvement in the Super League case as a "huge honour", but also a huge responsibility.

He also wondered if his journey to the courts of Luxembourg and Brussels had almost been "written in the stars" – there's the unusual first name, for a start! While there are French connections, there is, surprisingly, no French blood. Keane's grandparents worked in Paris on the Marshall Plan to rebuild Europe after World War II and, when his uncle Benedict was born, the locals began to call him Benoît.

"When I was born, my parents, who are French teachers, really liked the name, and they decided that they would give me the French version of the name, not the English," he explains.

The family went on holidays to France every summer, and the young Benoît was even sent to a *colonie des vacances*, a summer camp for French children. He emerged, he says, with some French – but much better football.

When he went to study law at UCC, which he chose mainly because of its strong EU-law programme, he also made French a component of his degree.

Playing a blinder

It was a summer spent in the Belgian city of Ghent, however, that crystallised his ambitions. As well as visits to the EU institutions in Brussels, there was a trip to Bruges, where Keane stumbled across the College of Europe. He was allowed in to have a look round, and was later selected for a one-year immersive master's programme in European law.

During that year, there was a visit to the Court of Justice of the European Union (CJEU) to watch the court's first case in the wake of the momentous *Bosman* ruling on player contracts.

"I was fascinated by it. But I had little idea that I would actually be in court opposite a number of the lawyers who had brought that case within a few years," he recalls.

A period at an international law firm in Brussels deepened his interest in European law: "When they offered me a trainee contract to become a solicitor in England and Wales, it was an obvious thing to do, but I always kept an eye on returning to Brussels," he says.

Keane also arranged for five months of his training to be done as a *stage* (traineeship) with the European Commission. This is when the young Irish lawyer had his first taste of EU sports law. The commission was, at the time, investigating whether the English Premier League's media-rights deals were breaching competition rules, and Keane was allowed to sit in on tense

meetings between the league and the commission officials.

"It was brilliant, but what it also meant was that I spent the five months really immersing myself in the subject. I think I came out with an expertise, but mostly I came out with an idea that maybe this is something I could do myself when I went back to practise as a lawyer. So, in the next few years after that, I tried to build up a bit of sport experience."

No easy games at this level

While this was valuable for his future career, he acknowledges that, sometimes, a little bit of luck helps.

A case was brought in Charleroi by lawyers who were suing FIFA over the rules covering the release of club players for international matches. At the preliminary hearing, Keane realised that this case would have huge ramifications for UEFA. His contacts with some Belgian lawyers led to UEFA's eventual intervention in the case, which was settled some years later: "It was my personal gateway into working in a serious way with football and European law".

After that, he learned much from working on cases involving media rights and listed-events regimes. Keane later worked on UEFA's defence of its financial fair-play rules before the European Commission and national courts.

Goals win games

As you'd expect, Keane does have a strong interest in football (he's a Liverpool fan). It's not his first sporting love, however.

"I was very involved in my local tennis club. I used to run the local club competitions for the juniors – I was actually a coach for a while for young players," he says.

"When I went into European law, it was to be a classic European lawyer working on competition cases, or free-movement cases. It was only when I was working on the European Commission case that I could suddenly see that there was an opportunity here – that sport was going to be increasingly affected by European law.

"You can be as interested as you want to be in a subject, but it's not necessarily obvious that that's going to be your career. I've been very lucky to blend the two of them together," he acknowledges.

SLICE OF LIFE

- **What makes you happiest?**
When I'm with my children.
- **Favourite concert?**
The Pixies last year.
- **Favourite song?**
'Drive' by REM.
- **Gadget you can't live without?**
It has to be the iPhone! (If I had to choose a second one it would be my Marshall speakers.)
- **What are you most grateful for?**
My family (wife Alexandra, children Raphael and Sophia).
- **Favourite lunch companion, living or dead?**
Leonardo da Vinci – so much to discuss and he was the 'patron' of my academic year at the College of Europe.
- **Why choose law?**
Because it opens up so many possibilities. It's an opportunity to work in any sector in any part of life.
- **Career high?**
Undoubtedly representing UEFA in the Super League case – the legal equivalent of playing in a Champions League final!

> YOU CAN BE AS INTERESTED AS YOU WANT TO BE IN A SUBJECT, BUT IT'S NOT NECESSARILY OBVIOUS THAT THAT'S GOING TO BE YOUR CAREER. I'VE BEEN VERY LUCKY TO BLEND THE TWO OF THEM TOGETHER

After his initial exposure to sports law, he began to attend conferences on the issue, getting to know people in the industry, and building up a network of contacts.

"That meant that they knew who I was in the competition sphere. It's not every day that they're going to have competition issues, but they knew who to turn to."

Team effort

That was how he turned an early opportunity to work on one sports case into a body of work that eventually led to the establishment of his own practice, Keane Legal, in Brussels in 2012.

He works as an independent lawyer – in some cases entirely on his own, but often as part of a team with different skill-sets.

"Firstly, I bring in the EU law and competition-law expertise to a classic sports-law firm. But the second dimension is for EU-law practitioners who don't necessarily have an immediate sense of the sports world. I work alongside them, and I bring them the sports perspective," Keane says. "It is very much a team effort."

He describes sport as a "unique sector" because competition law was built on the premise that independent entities should compete with, not help, each other.

"Clubs work together – they cooperate within leagues, member associations, and international federations," he explains. "International federations need to be able to enforce their rules on a global basis. So this is a highly interdependent sector that, in other sectors, from a competition perspective, would simply not be permissible."

Play to the whistle

Keane argues that the EU courts have, from the first cases in the 1970s, recognised the special position of sport – including its social and educational role. This culminated in the broader recognition of the European sports model provided by article 165 of the *Lisbon Treaty*.

He adds, however, that this does not give sports bodies or clubs a "blank cheque" on compliance with competition law: "It's always a question of how much weight one gives to the social element, versus the realities of competition law," Keane says.

"In the *Super League* case, the fundamental question is sporting merit. The idea of promotion/relegation is a fundamental value of football. Without it, the whole model collapses," Keane adds.

The table doesn't lie

Asked about advice for any young solicitors seeking to gain a foothold in sports law, Keane says that things have changed since he began, with more direct routes into the field.

He cites a number of master's courses in sports law, as well as a diploma run by the Law Society every few years.

He acknowledges, however, that it's harder to forge a career in the area in Ireland, as most of the main sports-law practices are either in London or Switzerland, with some in the larger EU member states.

"I think looking outside of Ireland and then, maybe, coming back is no harm. That's how you can find yourself an international career and gain the contacts, and then, if Ireland is where you want to be, you know you have the opportunity to come back when the jobs arise," he advises.

"UEFA, FIFA, the IOC, and the big sports organisations – even the big clubs – now all have very sizable legal teams. Gaining that experience is going to be outstanding for anyone who wants a long-term career in sport," Keane adds.

Drawing from his own experiences, his main message to those wanting to pursue careers in EU or sports law is not to focus on themselves too much.

"Don't forget that it will be with the help of other people that you will achieve this. It's very often easy to think of it as only your individual achievements, but your achievements are actually thanks to the help and support of colleagues or clients – people who put trust in you over the years. That's why I always say that a legal career is very much a team sport," he concludes.

Andrew Fanning is a freelance journalist working for the Law Society Gazette.

Flawed expert evidence can lead to a court, acting in good faith, reaching an unsound decision. Brian McMullin examines the fundamental importance of expert evidence to the rule of law – and the expert's primary duty

THE EXPERT

r Justice Peart, retired judge of the Court of Appeal, observed of expert witnesses at a webinar in 2021 that: "Very often, the names that appear on a plaintiff's side never appear on a defendant's side, and vice versa." In addition, he pointed out that the primary duty of experts "is to the court and not to the parties that are paying them".

In consideration of the best use of experts, we should firstly start with the end result, and the purpose of experts participating in court proceedings and the hearing. Firstly, this participation is a fundamental part of the rule of law. The rule of law can fall down for

PIC: ALAMY

The expert witness should not be a hired gun

various reasons – for example, objective bias, unnecessary delay in getting justice, a difficulty in enforcing a decision – but, fundamentally relevant to this discussion, flawed evidence may have been adduced.

Flawed evidence

Flawed evidence can lead to miscarriages of justice and, in turn, to a lack of confidence in justice and a degradation of the rule of law. That is why expert evidence is absolutely fundamental to the rule of law, as flawed expert evidence can lead to a court acting in good faith reaching an unsound decision.

The second most important point already alluded to is that the expert's primary duty is to the court, and not to their client who will be paying his or her fees. It is useful to consider some of the relevant case law, starting with the UK House of Lords decision in *Whitehouse and Jordan* in 1981.

In that case, Lord Wilberforce points out that, while some degree of consultation between experts and legal advisors is entirely proper and necessary, the expert evidence presented to the court should be, and should be seen to be, the independent product of the expert uninfluenced as to form or content by the exigencies of litigation. This was presumably his way of saying that it should not be influenced by the narrow self-interests of the client.

Lady Justice Carr in the *Secretariat* case later put it very succinctly in that judgment when she said that "an expert who complies fully with his duty of independence and objectivity to the court or arbitral tribunal is an expert who provides his client with the best possible service".

Key principles

Mr Justice Cresswell in the *Ikarian Reefer* case in 1993 identified key principles and responsibilities of expert witnesses. He pointed out that the list was not exhaustive and, after reaffirming the comments of Lord Wilberforce in *Whitehouse v Jordan* as regards independence, he went on to set out his principles as follows:

1) Such witnesses should provide independent assistance to the court by way of objective, unbiased opinion in relation to matters within their expertise, and should never act as advocates.
2) Such witnesses should state the facts

IF THE WITNESS IS NOT SURE THAT THEIR REPORT CONTAINS THE TRUTH, THE WHOLE TRUTH AND NOTHING BUT THE TRUTH, WITHOUT SOME QUALIFICATION, THEY SHOULD STATE THAT QUALIFICATION IN THEIR REPORT

or assumptions upon which their opinion is based, and consider material facts that could detract from their concluded opinion.

3) Expert witnesses should make it clear when a particular question or issue is outside their expertise.
4) If such witnesses consider that insufficient data is available, they should say so, and indicate that the opinion is provisional only.
5) If the witness is not sure that their report contains the truth, the whole truth and nothing but the truth, without some qualification, they should state that qualification in their report. If an expert witness changes his views on a material matter, such change of views should be communicated (through the lawyers) to the other side without delay and, when appropriate, to the court.
6) Where expert evidence refers to photographs, plans, calculations, analyses, measurements, survey reports, or other similar documents, these must be provided to the opposite party at the same time as the exchange of reports.

These duties and responsibilities have been considered with approval in our courts, as noted most recently by Noonan J in *Duffy v McGee* (2022), when he commented: "The overriding duty of the expert is owed to the court and includes the duty to provide an objective opinion. Objectivity, by definition, requires that one has regard to both sides of the case. A central component of the duty of the expert is to ascertain all relevant facts, whether they support the client's case or not."

He further observed that: "It is unfortunately commonplace for experts to succumb to the natural tendency to put the interests of their own clients first, unconsciously or otherwise."

Danger of 'hired guns'

In essence, the expert must be independent, provide an objective and unbiased opinion, and his or her opinion should be based on relevant, accurate, and complete information. The expert should not, in any sense, be a 'hired gun' perceived by the litigant to be favourable to their case.

Collins J, in the *Duffy* case, observed that "arguably, the most significant concern about expert evidence relates to issues of objectivity, impartiality and independence".

Concerns of that kind prompted Cresswell J to formulate a detailed statement of the duties and responsibilities of expert witnesses in the *Ikarian Reefer*, and "variants of it have been [regularly] cited with evident approval in this jurisdiction". He further commented that the Law Reform Commission has drawn on it in formulating its recommendations for legislation enshrining the general duties of the expert witness in its *Report on Consolidation and Reform of Aspects of the Law of Evidence*.

He goes on to state, in the context of the matters at issue in that case:

1) "It is sufficient to set out what the authors of Hodgkinson and James, *Expert Evidence: Law and Practice* (5th edition, 2020) suggest is 'clear law' in both civil and criminal cases, as follows: (1) expert evidence presented to the court should be, and should be seen to be, the independent product of the expert uninfluenced as to form or content by the exigencies of litigation; (2) an expert witness should provide independent assistance to the court by way of objective unbiased opinion in relation to matters within their expertise. An expert witness should never assume the role of advocate."
2) "In my opinion, these principles are 'clear law' in this jurisdiction also. Their essence is reflected in order 39, rule 57(1) of the *Superior Courts Rules*, providing as it does that 'it is the duty of an expert to assist the court as to matters within his or her field of expertise. This duty overrides any obligation to any party paying the fee of the expert'."

He concluded that, "where it appears that an expert is unable and/or unwilling to comply with his or her duty to give objective, impartial and independent evidence", "then in my view their evidence should ordinarily be excluded as inadmissible".

In his concluding comments, MacMenamin J, in dismissing the *O'Leary* appeal, applied the *Ikarian* tests when stating: "The evidence is not sufficient to conclude, in the words of Cresswell J in the *Ikarian Reefer*, that the testimony of the expert witnesses in this case was affected by 'the exigencies of litigation'. Again, adopting the tests in the *Ikarian Reefer*, it has not been shown that the evidence was anything other than independent, objective and unbiased. No case has been advanced that there was some aspect of the evidence that fell below the range of duties identified in this, the main relevant legal authority cited to the court. There is, therefore, no sufficient basis for this court to conclude that the trial was unsatisfactory, or that the evidence was such as might have been rendered inadmissible. There is no sufficient evidence that would warrant a finding that, even had the facts regarding the charges been known, it would have affected the weight which the trial court would have attached to the evidence or its admissibility."

Expert independence

The Supreme Court decision in *Sweeney v VHI* is also of interest, as it considers the *Secretariat* and the *O'Leary* decisions, and the fundamental importance of maintaining expert independence.

Experts should be fully cognisant of what Ferriter J in *McLaughlin v Dealey* describes as the *Ikarian Reefer* "classic statement of the duties of experts", but experts should also remember that they are simply expressing an opinion as a skilled person. The opinion should be objective, impartial, independent and unbiased, but it should also be clear, succinct and capable of being understood by a layperson.

> THE EXPERT'S PRIMARY DUTY IS TO THE COURT, AND NOT TO THEIR CLIENT WHO WILL BE PAYING HIS OR HER FEES

The lawyer cannot effectively argue and be persuasive about the case unless he or she fully understands the technical evidence put forward by the expert, but the end goal of the expert should be to assist the court in reaching the correct conclusion. The lawyer, in making the best use of the expert, needs to fully respect the duties, responsibilities and purpose of the expert in the process of endeavouring to persuade the court to favour their client's case over that of their opposition.

Hands-on role

An expert should be hands-on in fulfilling this vital role and should be actively listening to the opposing evidence. The expert should also have a role at all stages in challenging the litigants' and lawyers' perceptions of the strengths of the case to bring some reality into the adjudication process.

Mark Tottenham BL, during above-mentioned 2021 webinar, described the expert witness's primary duty as that of telling the truth. Mr Tottenham went on to identify the main duties of an expert witness, echoing the *Ikarian Reefer* principles. He stated that the expert witness is required to:

- Report, in oral evidence,
- Be independent of the client and legal team,

THE *IKARIAN REEFER*

The *Ikarian Reefer* case concerned the loss at sea of the *Ikarian Reefer*, which had run aground and then caught fire, leading to its abandonment off the coast of Sierra Leone in West Africa.

The question was whether those acts were deliberate or accidental – much depended on the expert evidence.

The judge in the case, Cresswell J, was of the view that several of the expert witnesses misunderstood their duties and responsibilities, which meant that the trial took longer than he considered necessary (even allowing for the complexity of some of the evidence). Therefore, he took the opportunity to set out what those duties were in what are now known as the '*Ikarian Reefer* principles'.

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THE ACID TEST IS THAT EVERYONE INVOLVED IN THE PROCESS SHOULD BE SATISFIED THAT THE CONCLUSIONS OF THE EXPERT WOULD BE NO DIFFERENT, REGARDLESS OF THE PARTY WHO HAS ENGAGED HIM OR HER

- Give evidence within their own expertise to assist the court in reaching its own decision,
- Research or ascertain the relevant facts, to educate the court in specialist or technical knowledge,
- Reach a reasoned and honestly held opinion,
- Cooperate with the client and instructing legal team,
- Cooperate with other legal teams when required,
- Cooperate with other experts,
- Communicate any change of mind,
- Comply with the directions of the court.

Acid test

In order to make best use of the expert, the lawyer and experts need to be clear as to their respective roles. The legal team needs to identify the relevant issues in dispute, and this must be confined to the issues between the parties. The expert should not be left to find the questions that need to be answered, and the legal team should not have a role in settling the conclusions of the expert. The acid test is that everyone involved in the process should be satisfied that the conclusions of the expert would be no different, regardless of the party who has engaged him or her.

The court process seeks to get at the truth, and an objective, independent and unbiased expert can greatly assist the court in reaching the correct decision, provided that expert engages with the court and lawyers in a clear, succinct, and effective manner and applies the established principles. The qualities required in an expert – over and above independence, impartiality, and having the requisite expertise – are probably the following: effective engagement, consistency, clarity and communication skills, confidence in presentation, concision, and high standards of preparation.

So, in overall summary, expert evidence is absolutely fundamental to the rule of law, as flawed expert evidence can lead to a court, acting in good faith, reaching an unsound decision. I have also articulated the classic guiding principles, duties and responsibilities of expert witnesses, as set out in the *Ikarian Reefer* case. They have robustly stood the test of time and have been regularly cited with approval by the Irish superior courts, most recently in the *O'Leary v Mercy*, *Sweeney v VHI*, *Duffy v McGee*, *McNamara v Revenue Commissioners*, and *McLaughlin v Dealey* judgments.

The expert's primary duty is simply to tell and present the truth in an independent, objective and unbiased manner, and his or her opinion should be based on relevant, accurate and complete information. g

Brian McMullin is a member of the Law Society's Litigation and ADR Committees, and is a member of the Council of the Law Society of Ireland.

LOOK IT UP

CASES:

- *Duffy v McGee* [2022] IECA 254, Noonan J, Collins J, 7 November 2022
- *McLaughlin v Dealey* [2023] IEHC 106, Ferriter J, 7 March 2023
- *McNamara v Revenue Commissioners* [2023] IEHC 15, Barr J, 19 January 2023
- *National Justice Compania Naviera SA v Prudential Assurance Company Ltd* (*Ikarian Reefer*, 1993)
- *O'Leary v Mercy University Hospital Cork Ltd* [2019] IESC 48, MacMenamin J, 31 May 2019
- *Secretariat Consulting PTE Ltd & Ors v A Company* [2021] EWCA Civ 6 (11 January 2021)
- *Sweeney v Voluntary Health Insurance Board Ireland* [2021] IESC 76, O'Donnell CJ, 10 November 2021
- *Whitehouse v Jordan* [1980] UKHL 12, 17 December 1980; [1980] UKHL 12; [1981] 1 All ER 267); [1981] 1 WLR 246

LEGISLATION:

- *Superior Courts Rules*, order 39, rule 57(1)

LITERATURE:

- Tristram Hodgkinson and Mark James, *Expert Evidence: Law and Practice* (5th edition, Sweet and Maxwell, 2020)

LOST IN THE WOODS

A recent Court of Appeal decision provides much-needed comfort to professionals working in the area of historic disclosures, particularly medical and psychological services, argues Clare Daly

A recent Court of Appeal decision (*McGrath v HSE*) has provided some much-needed comfort to professionals working in areas at the coalface of historic disclosures, particularly medical and psychological services. The decision provides clarification regarding mandatory reporting obligations arising from disclosures of historic harm and, in doing so, sets out guidance for those clinicians trying to navigate their mandatory reporting obligations in the face of reticent patients.

The *Children First Act 2015* provides for certain mandated professionals to report onwards concerns of harm to a child to the Child and Family Agency (CFA). Section 14(1) provides that, "where a mandated person knows, believes or has reasonable grounds to suspect, on the basis of information that he or she has received, acquired or becomes aware of in the course of his or her employment or profession as such a mandated person, that a child (a) has been harmed, (b) is being harmed, or (c) is at risk of being harmed, he or she shall, as soon as practicable, report that knowledge, belief or suspicion, as the case may be, to the agency".

The interpretation of section 14, in the context of reporting retrospective disclosures of harm in childhood, made by an adult, has resulted in disparate interpretations and applications of this section. This resulted in a High Court case, *McGrath v HSE*. The court findings were appealed to the Court of Appeal, which has now issued judgment.

Charlotte's web

The appellant (a director of a counselling service) and the respondent (the HSE) were in disagreement as to the scope of section 14(1)(a) of the 2015 act. The appellant contended that the word 'child', as used within that section, refers only to a person who is a 'child' as defined in the 2015 act at the time that the mandated person referred to in section 1(1) receives, acquires, or becomes aware of the information referred to in that section.

The respondent argued that the statutory definition of child should be properly construed within the context of the statute as a whole and within the objectives of the legislation: that the word 'child' includes any person who has been harmed when a child, even though that person may now be an adult.

This disagreement between the parties as to the scope of section 14(1)(a) came to a head following the publication by the respondent, on 14 November 2019, of a document entitled *HSE Child Protection and Welfare Policy*. Following issues arising from same, a further clarifying document – an interim standard operating procedure – was circulated by the respondent in 2021.

The applicant sought leave to issue judicial-review proceedings seeking an order of *certiorari* quashing both the policy and the 2021 interim operating procedure.

In 2022, the High Court had held that section 14(1)(a) of the act required mandated persons to notify the Child and Family Agency where an adult disclosed retrospective harm suffered as a child, where that harm reached the threshold as set down in section 2 of the 2015 act.

The court also provided that section 14(1)(a) did not require the consent of the person disclosing this harm, prior to making the notification to the CFA. Instead, the mandated person had an obligation to ensure that the person was informed of the counsellor's mandatory reporting obligations, including the limitations on the counsellor's duty of confidentiality.

> THE INTERPRETATION OF SECTION 14 IN THE CONTEXT OF REPORTING RETROSPECTIVE DISCLOSURES OF HARM IN CHILDHOOD, MADE BY AN ADULT, HAS RESULTED IN DISPARATE INTERPRETATIONS AND APPLICATIONS OF THIS SECTION

Little Jack Horner

The Court of Appeal has now overturned that decision and has held that the High Court fell into error in failing to place sufficient emphasis on the statutory definition of 'child', and also in concluding that the use of the past tense in section 14(1)(a) indicated an intention to include those who had suffered harm in the past, but who had since passed into adulthood.

The court held that there is no ambiguity about who is a 'child': it refers only to a person who, at the time that the mandated person receives or acquires or becomes aware of the information referred to in the section, is a child as defined in the 1991 act and cannot, in any circumstances, include persons over the age of 18 years.

It was further held that the trial judge "fell into error" in concluding that section 14(1)(a) requires mandated persons to notify the CFA where an adult discloses past harm suffered as a child, where that harm falls within the definition of 'harm', as set out in section 2 of the 2015 act. The court said that this interpretation of section 14(1)(a) "is consistent with the 2015 act as a whole, [and] does not give rise to any anomaly or absurdity and nor is it undermining of the legislative intention to protect children". Moreover, this interpretation does not obviate the obligation of mandated persons to report any reasonably held suspicions that a child is at risk of harm.

Submissions to the Court of Appeal raised interesting points of law on both sides. The appellant argued that the definition of 'child' in the 2015 act means a person under the age of 18 years "other than a person who is or has been married". The exclusion of a person who is married reflects the fact that, at the time of the enactment of the 2015 act, it was possible for persons under the age of 18 years to marry, and could result in significant anomalies.

The respondent's submissions included an interesting comparison as regards the defences available under the *Criminal Justice (Withholding of Information on Offences Against Children and Vulnerable Persons) Act 2012*, where no such defences are available under the 2015 act.

However, the Court of Appeal said the 2015 act does not make it an offence for a mandated person not to comply with the reporting obligations in that act. Secondly, the obligation in the 2012 act is *not* framed around the moment in time when a person receives information, but rather is engaged by the knowledge that an offence has been committed against a child in the past, and it is clear that this refers to any time in the past.

Hansel and Gretel

The Court of Appeal decision underscores four crucial factors that a professional can rely on when making a risk-based analysis in light of disclosures of historic abuse:

- The phrase "a child has been harmed" can only apply to a person who is a child at the time that the mandated person receives or acquires or becomes aware of the information referred to in the section. To find

THE DECISION APPEARS TO PROVIDE INCREASED REASSURANCE TO CLINICIANS WHEN FACED WITH DIFFICULT QUESTIONS AROUND DISCLOSURE IN THE FACE OF A CLIENT'S RELIANCE ON THE DUTY OF CONFIDENTIALITY

otherwise would deprive the word 'child' of its ordinary meaning.

- To require mandatory reporting of historic harm that has been disclosed by an adult who was a victim of childhood harm or abuse to a mandated person would represent a "significant change in the law".
- Notwithstanding the interpretation of section 14(1)(a), which the court favoured, a mandated person who, as a result of information received from an adult (in the course of the mandated person's employment or profession), has formed a suspicion on reasonable grounds that a child is at risk of being harmed, must report that suspicion to the agency.
- Where an adult who has been a victim of harm in childhood discloses to a mandated person the identity of the person alleged to have caused the harm, the mandated person is not subject to a mandatory reporting obligation as the legislation stands, in the absence of any current risk to a child. Where the adult providing such information consents to its being reported to the agency, then the mandated person can, and should, do so.

Little Red Riding Hood

This clarification from the Court of Appeal is a welcome one. A key concern arising from the original interpretation of the act was the view that fewer adults would avail of counselling services and this, in turn, would inevitably reduce the extent of existing reporting of historic childhood abuse to the CFA rather than increase it.

Moreover, it is clear that the active participation of the person making the disclosure is a vital component of mandatory reporting, as regards any decision to share this information with the CFA. The High Court had emphasised the importance of informed consent in counselling services in circumstances where counsellors are subject to mandatory counselling requirements.

A 2021 study by Dr Joseph Mooney from the School of Social Policy in UCD, entitled *Barriers or Pathways*, found that 77% of the people he surveyed stated that they were not advised that their personal data, and specifically details of their disclosure, would be shared; and a similar percentage were not told with whom their information would be shared. In the course of this study, Dr Mooney opined: "We need to avoid what appears to be a slow drift towards treating adults who come forward to make retrospective disclosures of childhood abuse as mere suppliers of information."

This Court of Appeal decision provides valuable clarification regarding the legislative definition of 'child' when assessing whether retrospective disclosures of abuse, coming from adults, fall within the remit of section 14. Moreover, the decision appears to provide increased reassurance to clinicians when faced with difficult questions around disclosure in the face of a client's reliance on the duty of confidentiality. The question to be assessed in real terms is whether a child is at risk of being harmed. If that answer is in the affirmative, then a report must always be made. A service user should always be made aware of the limitations impinging on a counsellor's duty of confidentiality, particularly where a child-protection concern arises. g

Clare Daly is a solicitor practicing in the area of data protection and child-protection law.

LOOK IT UP

CASES:

- *McGrath v HSE* [2022] IEHC 541; [2023] IECA 298

LEGISLATION:

- *Children First Act 2015*
- *Criminal Law (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012*

LITERATURE:

- Dr Joseph Mooney (2021), *Barriers or Pathways? Aiding retrospective disclosures of childhood sexual abuse to child protection services* (School of Social Policy, Social Work, and Social Justice, UCD)
- *HSE Child Protection and Welfare Policy*

CRIMINAL MINDS

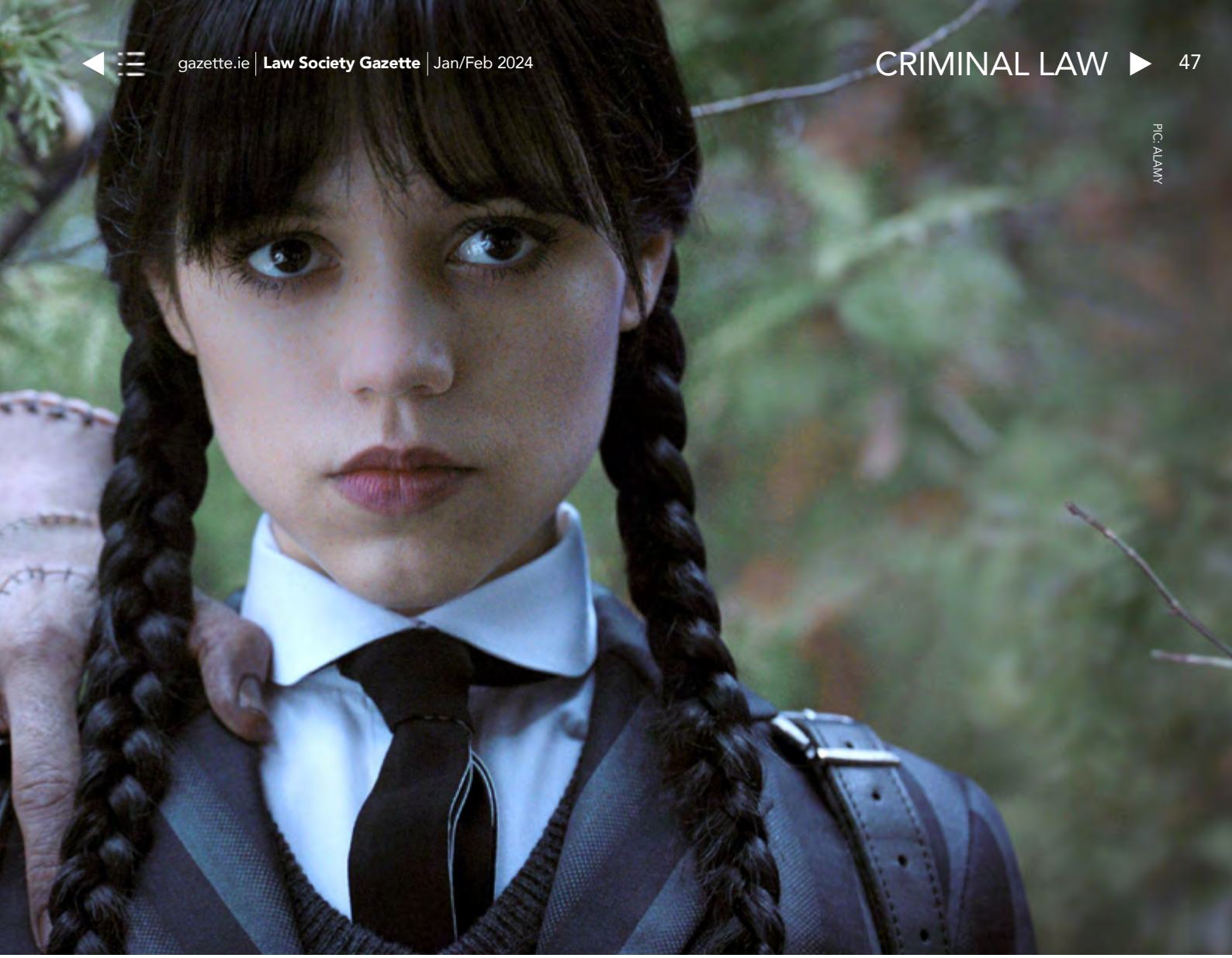
Despite their profusion, few courts anywhere have had occasion to address the status and effect of character references at sentencing stage. The *Criminal Justice (Amendment) Bill 2022* proposes some changes, writes Sean Smith

The ***Criminal Justice (Amendment) Bill 2022***, which cleared the Seanad in December 2022, proposed radical changes to certain sentencing proceedings. In July 2023, one of the bill's sponsors announced that the proposed legislation would be incorporated into the expansive *Criminal Law (Sexual Offences and Human Trafficking) Bill 2023*, currently passed its third stage in the Dáil.

This bill's key innovation will require character evidence to be given by affidavit or in person at the sentencing hearings for those convicted of sexual offences. But these measures do not arrive in a vacuum. Recently, some judges have refused to accept character references in cases where their authors were not present in court. Prominent journalists, such as Mary Carolan of *The Irish Times*, have also focused on the question. A deeper assessment of the Government's plans and their potential impact on practitioners and referees is, therefore, timely.

Character evidence

Character evidence at trial has a long history. In medieval times, an accused could be acquitted by calling a specified number of kinsmen and neighbours to swear in favour of his or her character – an elaborate process called 'compurgation'. In the Victorian era, evidence of good character was often deployed at trial to demonstrate the improbability of the accused having committed an offence. The academic Carolyn Conley notes its prominence in Victorian rape trials, where the "fundamental consideration was the perceived character of the accused". We have gladly moved on since then. Now, strict rules govern the admission of character evidence in the trial proper (for example, the *Criminal Justice (Evidence) Act 1924* and the *Criminal Procedure Act 2010*, section 33).



PIC: ALAMY

Wednesday Addams – not the most advisable of character witnesses...

Yet, character evidence at sentence still operates under a more permissive regime. For practitioners, the stereotypical example of good-character evidence is the absence of prior convictions – an objective fact that rarely occasions dispute.

Character references and testimonials are another subset. However, while sometimes controversial, they are not uncommon, either in general or in sexual-offence cases. Examples abound: in March 2023, in *DPP v G McD*, the Court of Appeal noted that the Circuit Court judge "had read several testimonials which were very positive, and which attested to [the convicted man's] good character and the many positive attributes that he has". In *DPP v B O'S*, the Court of Appeal recited the fact that the "sentencing court's attention [was drawn] to testimonials tendered to the court below by *inter alia* [the convicted man's] aunt, his sister, and one of his former employers".

Despite their profusion, few courts anywhere have had occasion to address the status and effect of character references.

The English Crown Court considered them quite recently in *R v Charles Elphicke* (2020), albeit in a very discrete context. Considering an application by media organisations to publish character references submitted in a prominent criminal prosecution, Whipple J ruled that such references relied on at sentencing hearings are, as a class, not confidential documents. "Character references", the court concluded, "are evidence, like any other evidence." For present purposes, it is worth keeping this key teaching in the foreground as we discuss the proposed new bill.

In Ireland, a point of interest has increasingly been the manner in which character references as evidence can be admitted – and if they can be challenged. This is illustrated by the reported positions of individual High Court judges. For instance, in a Sligo case in 2022, a judge of the Central Criminal Court refused to allow character references unless their authors were present in court to take the stand. However, in a Cork case disposed of just after the Sligo case, 11 character references were considered by a different judge of the same court.

Free-for-all spaces

Despite different approaches, the proposed bill may be a solution in search of a problem. Have our courtrooms become free-for-all spaces where the convicted can hoodwink sentencing courts with glowing panegyrics? Criminal practitioners know this does not reflect reality. Instead, the bill's proposals likely reflect a perceived imbalance between injured parties and

> RECENTLY, SOME JUDGES HAVE REFUSED TO ACCEPT CHARACTER REFERENCES IN CASES WHERE THEIR AUTHORS WERE NOT PRESENT IN COURT


PIC: ALAMY

Funny characters

the convicted. While current legislation allows for victim-impact statements at sentencing, the admission of unchallenged hagiographies on behalf of sex offenders is regarded as an unacceptable aspect of sentencing procedure. Yet practitioners' initial views on this project appear quite negative. Indeed, for her *Irish Times* article, Mary Carolan consulted well-known practitioners who were decidedly lukewarm about the innovations. Nonetheless, the bill's potential impact on practitioners and other interested parties is best grasped if we approach it with an open mind.

Absence of key definitions

The original Seanad bill on the admission of character references was highly detailed. In contrast, the 2023 bill addresses the issue in a very brief chapter (chapter 3 of Part 2) of a much wider piece of legislation. The chapter leaves convicted persons largely free to introduce this type of evidence at sentence, but controls how they may do so. After a short 'definitions' paragraph, it simply states at section 14(1): "Where a person is convicted of a specified offence and he or she intends to adduce evidence of his or her character for the purpose of the determination by the court of the sentence to be imposed on him or her for the specified offence, such evidence shall:

a) Where the evidence is to be given orally before the court, be given on oath, or
b) Otherwise be given by affidavit."

Brevity can be a noble quality in legislative acts, yet the first noteworthy issue in this provision is the absence of key definitions. To be sure, it defines 'affidavit', 'oath', and 'specified offence' (this last refers to offences covered by the schedule of the 2001 *Sexual Offences Act*). It does not, however, define 'character evidence'. This is consequential, because drafters in the legislature have occasionally elevated the importance of certain themes when discussing this issue. For example, when the Seanad bill was debated, Senator Regina Doherty took issue with "glowing personal references" for convicted persons. For her part, Senator Lisa Chambers indicated horror that "someone can get the local bishop or GAA chairman to come in and say what a great guy [the convicted person] is".

To set these views in context, let's look at this hypothetical letter from Mr Bloggs, an associate of Mr Doe, who has recently been convicted of a sexual offence against a distant family member:

Dear Judge

I am writing to the court because I have known Mr Doe for 24 years. I was horrified to learn of his conviction and wanted to convey my personal experience of him for the court's benefit.

I am the manager of a nursing home. Mr Doe has provided voluntary assistance to the nursing home since its establishment in 1999. He comes by almost every week and helps with maintenance of the facilities. Mr Doe mainly assists with upkeep of the gardens.

I do not know if Mr Doe is a good person and I leave the matter of his sentence to the court. However, I can say that the residents of this nursing home are frail men and women nearing the end of their lives. They appreciate the bit of brightness which the well-tended gardens give them.

Now, although this letter is fictional, measured letters like it are common. Indeed, character references range from the grandiloquent to the highly restrained. There is, therefore, a risk that, by focusing on a single tree – the 'great guy' references – a forest of other mitigation potentially caught by the bill may be missed.

To return to the example above, the information on Mr Doe's voluntary work at the nursing-home garden might easily appear in a psychological report. Doctors, psychiatrists, teachers, and other experts submit all sorts of facts and assessments concerning a convicted person's life, and these often bear directly on their character. Yet, whether expert reports are governed by the bill is uncertain. Without defined exceptions, it may be unclear to those who furnish written reports to the court if they will be governed by the bill's provisions.

Impact on practitioners?

Definitional issues aside, how will the new provisions affect sentencing proceedings? The impact on practitioners will largely depend on forum. To start, the 2023 bill does not limit its reach, so we must assume it will apply even in the District Court. There, sentences quite often resolve on the same day as conviction or plea; adjournments typically happen only where certain reports are required. Where character references are submitted at all, these are often limited to a couple of letters. However, the District Court often refuses jurisdiction on specified offences targeted by this bill; the effect here will likely be a small ripple.

This will not be the case in the Circuit and Central Criminal Court, where the new framework will be felt. On a practical level, mitigation for these courts is often

harvested in the period between either arraignment (if a plea is to be entered) or trial (if conviction occurs) and sentence. In this period, defence solicitors will now have to arrange attendance of referees in court under section 14(1)(a) or ensure that affidavits are sworn by them under section 14(1)(b). This should be readily achievable for most references. Yet, some mitigation materials, including character references, flow into a solicitor's office right up to the day of sentence. As a logical consequence, the two new provisions mean that defence-mitigation work may have to be planned a lot earlier.

Other parties

The ramifications for other parties, such as victims and prosecutors, are less clear under the new provisions. For example, will complainants be notified of character affidavits submitted on behalf of the accused? Section 5C(5)(b) of the Seanad's bill specifically provided for notification – the Government's new provision does not. As for prosecutors, the Seanad's bill specifically granted prosecutors the right to cross-examine referees, but the new bill is silent on this.

Apart from practitioners, the act places new responsibilities on referees themselves. The bill's novelty here is best judged against current practice. In preparation for sentencing, solicitors and counsel will typically meet with the convicted person. The focus of these meetings includes discussing potential character references. Referees sometimes come forward of their own volition but, in many cases, solicitors are simply given contact details of proposed referees. Those that participate generally take their job seriously – some seek advice on written content, and others even attend court.

Up to now, however, there is currently no requirement for in-court testimony or solemnised references and, in fact, email references are becoming very common in court. The new requirements for a less casual approach should then be welcomed by victims and prosecutors.

Further, the prime position of *viva voce* testimony at section 14(1)(a) perhaps reflects some judges' recently reported preference for in-court character evidence at sentencing. Will referees be hesitant to get involved in the revamped process?

Of course, where issues arise from sworn affidavits or solemn declarations, oral testimony may be unavoidable and, consequently, a chilling effect on some referees is possible. However, Whipple J's comments in *Elphicke* may give some comfort: "If people understand the role that a character reference plays in the sentencing process, informing the court of the wider picture, I doubt that many will walk away."

Unfinished artefact

At the time of writing, it is unlikely that any of the old soil in the Seanad bill will filter into the 2023 bill. The new provision is still an unfinished artefact, lacking as it does a definition of character evidence and enumerated exceptions. As they stand, its requirements will have appreciable impact in the Circuit and Central Criminal Courts, although the exact role of victims and prosecutors in the new regime remains uncertain.

> IN IRELAND, A POINT OF INTEREST HAS INCREASINGLY BEEN THE MANNER IN WHICH CHARACTER REFERENCES AS EVIDENCE CAN BE ADMITTED – AND IF THEY CAN BE CHALLENGED. THIS IS ILLUSTRATED BY THE REPORTED POSITIONS OF INDIVIDUAL HIGH COURT JUDGES

And some defence practitioners may still object to the whole enterprise on the basis that the bill's innovations will likely lead to sentencing hearings more akin to trials, and bound to be more costly and contentious.

There are also forceful counterarguments to any critiques of the provisions, as published. From victims' perspectives, even the trimmed-down measures reflect greater sensitivity to their rights and mark a further step in anchoring these in Irish law. Secondly, the bill will clearly provide a robust legislative tool for extracting untrustworthy character evidence from sentencing proceedings. Third, practitioners of all stripes might welcome legislative guidance in this area in circumstances where different sentencing practices persist. g

Dr Sean Smith is a prosecution solicitor at the Office of the DPP.

LOOK IT UP

CASES:

- *DPP v G McD* [2023] IECA 94
- *DPP v B O'S* [2023] IECA 84
- *R v Charles Elphicke* [2020] 12 WLUK 155

LEGISLATION:

- *Criminal Law (Sexual Offences and Human Trafficking) Bill 2023*

21 years BC (LC)

Ballymun Community Law Centre celebrates 21 years of dedicated service to the people of Ballymun. The centre's story is all about the community it serves and its fight for fairness and access to justice, says Sarah Barrett

> BEFORE THE LAW CENTRE OPENED IN 2002, THERE WERE NO SOLICITORS IN BALLYMUN – YET IT HAS A CORE POPULATION OF 22,000! THE CENTRE DEALS WITH HOUSING, WELFARE, AND HEALTH

Ballymun Community Law Centre (BCLC) marks a significant milestone this year – 21 years of dedicated service to the community of Ballymun, where the work of staff, past and present, has had a great impact beyond the centre's doors.

The 21st birthday celebrations took place in the Ballymun Civic Centre on 30 November, attended by supporters and community figures, including Law Society President Barry MacCarthy and director general Mark Garrett.

Speaking to the *Gazette*, BCLC community solicitor Paul Dornan said that the anniversary reception was an occasion not just to reflect on the history of BCLC and its work, but to celebrate its links with the people and community of Ballymun. It was also an opportunity to thank all of its staff and volunteers for their dedication down through the years.

Origins and odyssey

Picture the humble beginnings in 2002, three years after local groups ignited a flame in the pursuit of legal services, which led to the creation of the Ballymun Community Law Centre Campaign Committee in response to the unmet legal needs of the community. Through sheer dedication and campaigning, the BCLC was born.

Stormanstown House in Coolock was the centre's first home, until Dublin City Council gave the centre the keys of the door to its own flat on Shangan Road, Ballymun, in August 2003.

Attendees heard of tales of triumph over adversity and heart-warming initiatives, such as the Law Club run in Trinity Comprehensive School, which works with TY students to give them a better understanding of law. Community outreach and engagement is pivotal in spreading the word of these much-needed legal services.

During the anniversary event, the energy was palpable and embodied the collective spirit of those who have been touched by the centre's work.

Words into action

Gary Lee, chair of the Law Society's Human Rights Committee, was the head of the BCLC for five years. He told the *Gazette*: "I volunteered for a while after serving as managing solicitor, and recently joined the Ballymun Community Law Centre board.

"Before the centre opened in 2002, there were no solicitors in Ballymun – yet it has a core population of 22,000! The centre deals with housing, welfare and health. We get great support from the solicitors' profession and have a panel of barristers.

"There are three aspects in supporting the community – legal, education, and alternative dispute resolution. I believe access to justice is a fundamental right in a democracy," he said.

The centre has come a long way, navigating the twists and turns of the community's challenges. But it's the people, their resilience, and the shared commitment to justice that have brought it to this point.

Ripple effect

Many individuals face barriers when seeking legal assistance, ranging from financial constraints to a lack of information about their rights. This hinders their ability to navigate the legal system.

In a world where access to justice should not be a privilege, but rather a right, relentless advocates of access to justice are stepping up to make a difference. The alternative dispute-resolution service offered by BCLC is crucial in ensuring that the under-served receive the representation and support they deserve.

The volunteers passionately believe in the importance of justice for all. The mediators dedicate their time to guiding clients through conflicts and disputes. Their contributions are invaluable in bridging the justice gap. The collaborative approach empowers clients to actively

Members of the Ballymun Community Law Centre team: Gary Lee (chair, Law Society's Human Rights Committee), Frank Murphy, Paula Reynolds, Catherine Hickey, Rose Wall, Claire McSweeney, and Antoinette Doyle

participate in finding fair and just outcomes for all involved.

Access to justice

Community solicitor Paul Dornan expressed his thanks to Roderic O'Gorman (Minister for Children, Equality, Disability, Integration and Youth) and to all the attendees for helping the centre mark its 21st anniversary.

"We welcome many residents – including those who have taken one of our legal-education courses, former clients, as well as representatives from community organisations and elected representatives," he said.

The minister reflected on his time collaborating with BCLC on public legal education and the impact this had on his own understanding of the vital nature of access to justice.

Law Society support

During his presentation, Law Society President Barry MacCarthy congratulated the law centre for its work in ensuring access to justice for all.

BCLC relies heavily on donations to sustain its legal services, and receives voluntary contributions from many Law Society members. They have the option to financially assist the centre's work by ticking the relevant box when filling out their practising-cert renewal forms – and have been doing so since 2007.

Paul Dornan said: "We are grateful to have President Barry MacCarthy with us, as the Law Society has been such a long-standing supporter of the centre."

Community hero

Geoffrey Corry (mediator and dialogue facilitator) discussed the establishment of the community mediation service, while Alice Walsh (High Court registrar and barrister) shared her experiences of being from Ballymun and working in law.

Board members Gary Lee and Catherine Hickey highlighted the importance of BCLC in helping people realise their rights and entitlements. They also remembered their former colleague, BCLC legal executive Christina Beresford, who passed away in July 2022. Christina had served the centre since its inception.

Chair of the BCLC committee Catherine Hickey recalled Christina's passion. "She stood out as a dedicated advocate and champion of the Ballymun community," she said, "and even won 'Legal Executive of the Year' at the Dye and Durham Awards in 2013. She played a crucial role in the centre's success over the course of 20 years."

The success of the centre would not have been possible without the selfless dedication of its volunteers, Catherine said. "Legal professionals and volunteers have played an integral role in advancing the centre's mission, embodying the

LAW SOCIETY PROFESSIONAL TRAINING

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DATE	EVENT	CPD HOURS AND VENUE	FEE	DISCOUNTED FEE*
IN-PERSON AND LIVE ONLINE				
08 February	**FinTech and the Law**	1.5 general (by eLearning) - Zoom webinar	€125	€110
13 February to 12 March	**Commercial & Complex Property Transactions Masterclass 2024**	13 general (by eLearning), 5 general (by group study) - Law Society of Ireland - hybrid	€520	€495
20 February to 05 March	**Planning & Environmental Masterclass 2024**	8 general and 2 professional development and solicitor wellbeing Total 10 CPD hours (by eLearning) - Zoom webinar	€425	€350
01 March	**Coaching Skills for Leaders & Managers Masterclass**	6 professional development and solicitor wellbeing (by group study) - Law Society of Ireland	€280	€230
05 March	**Personal Injury Litigation in Europe: examining a factual scenario**	1.5 general (by eLearning) - Zoom webinar	€125	€110
07 March to 21 March	**Environmental, Social & Governance ESG Masterclass**	6 general and 3.5 professional development and solicitors' wellbeing - Law Society of Ireland	€375	€350
07 March to 02 May	**Interpersonal Skills for Leaders and Managers**	See website for details - Law Society of Ireland – online or in-person	€475	€450
20 March to 18 December	**Diploma in Legal Practice Management**	Full CPD hours for 2024 - Law Society of Ireland - hybrid	€2,350	€1,950
21 March	**Probate and Tax Update 2024**	3 general (by e-learning) - Zoom webinar		
10 April to 21 June	**Certificate in Professional Education 2024**	See website for details - Law Society of Ireland	€1,950	€1,550
SAVE THE DATE				
01 May	**In-house & Public Sector Panel Discussion**			
02 October	**In-house & Public Sector Annual Conference 2024**			
03 October	**Younger Members Annual Conference 2024**			
16 October	**Business Law Update Conference 2024**			
17 October	**Property Law Annual Update Conference 2024**			
23 October	**Litigation Annual Update Conference 2024**			
06 November	**Employment & Equality Law Annual Update Conference 2024**			
03 December	**Time Management for Lawyers**			
04 December	**Client Care Skills for Lawyers**			
06 December	**Family & Child Law Annual Conference 2024**			

*Discount fee is: This Law Society Skillnet discount is applicable to all practicing solicitors working in the private sector

Law Society President Barry MacCarthy speaks at the 21st anniversary of Ballymun Community Law Centre

commitment to *pro bono* work."

Centre manager Claire McSweeney spoke about how BCLC has become central to the fabric of Ballymun by providing an essential lifeline for local residents who require the legal services on offer.

Funding strain

In 2018, over 456 people engaged with the centre in the form of legal representation and other services.

Gary Lee explains: "Funding was cut from the regeneration fund. Despite that, there's a lot of support from solicitors in private practice – that's the legal side of it. Through pro bono work, we can and do refer clients.

"But it's not just locals – organisations in the community are legally supported by the centre, too. Despite the funding cuts and offering a free service, we don't provide any less of a service. We strive to provide the best service to the client," he concluded.

As Ballymun Law Centre commemorates its 21st anniversary, the journey continues with a renewed commitment to addressing emerging legal challenges. The centre remains steadfast in evolving its services to meet the dynamic needs of the community, with a vision to create a more just and equitable society for all residents of Ballymun and beyond.

Sarah Barrett is public relations executive at the Law Society of Ireland.

> DESPITE THE FUNDING CUTS AND OFFERING A FREE SERVICE, WE DON'T PROVIDE ANY LESS OF A SERVICE. WE STRIVE TO PROVIDE THE BEST SERVICE TO THE CLIENT

Roderic O'Gorman (Minister for Children, Equality, Disability, Integration, and Youth)

BALLYMUN COMMUNITY LAW CENTRE

The Ballymun Community Law Centre was established in 2002 to tackle unmet legal need in Ballymun. The centre seeks to empower individuals experiencing disadvantage and to give people in the community access to justice by providing quality free legal advice, information and legal representation.

It has been granted independent law-centre status by the Law Society and is a member of the Independent Law Centres Network. It provides legal advice on all areas of law through its free legal-advice clinics. It also offers legal representation and advocacy, including court and tribunal representation in areas of law not covered by the civil legal-aid scheme.

BCLC provides a legal education programme, a mediation service, and training in mediation skills.

New year, new scheme, new regime!

The Law Society has introduced a revised CPD Scheme, effective from January 2024, with a central focus on client care, professional standards, and solicitor wellbeing

> A CLIENT IS ENTITLED TO KNOW THAT THE SOLICITOR THEY HAVE RETAINED HAS THE REQUISITE UP-TO-DATE KNOWLEDGE TO REPRESENT THEM IN THAT PARTICULAR YEAR

Continuing professional development (CPD) is an essential feature of any professional's career. It involves continuous learning and development of knowledge, skills, and expertise to enable a practitioner to remain up-to-date in an ever-evolving and changing legal landscape.

A client is entitled to know that the solicitor they have retained has the requisite up-to-date knowledge to represent them in that particular year. Additionally, the practice of solicitors has now expanded beyond that of the traditional private practice to those now fulfilling roles in-house, in State service, education, and beyond.

Given such diversity of practice, the Law Society has endeavoured to create a scheme that enables solicitors to keep up-to-date with developments in the law and their chosen area of practice – but with a central focus on client care, professional standards, and solicitor wellbeing. In encouraging solicitors' commitment to professional and personal development, in addition to protecting clients and continuing to raise standards within the legal profession, the Law Society has introduced a revised CPD Scheme, effective from January 2024.

What's new?

The new CPD Scheme continues with a structured approach, requiring solicitors to complete a specific number of hours within the practice year. The annual CPD requirement has increased for the first time since 2017, to reflect the critical role that continuous development of professional knowledge and skills play in ensuring solicitors remain competent and up-to-date in their practice area, in protecting clients, and also aiding in reducing complaints about standards of service.

While the subject matters that a solicitor may use for their CPD requirements are as varied as the areas of practice of solicitors, the one common theme is that all solicitors must complete minimum requirements in the new mandatory categories of 'professional development and solicitor wellbeing' and 'client care and professional standards'.

If a solicitor fulfils the role of a sole practitioner or a compliance partner and/or an anti-money-laundering compliance partner, they must also complete mandatory training in 'accounting and anti-money-laundering compliance'. Once the minimum requirements of

the mandatory categories have been met, solicitors are then free to choose a wide variety of topics for their balance of CPD requirements.

Mandatory category

The first mandatory category of CPD is 'professional development and solicitor wellbeing', which encompasses various subject matters, including financial and business management, practice management, solicitor wellbeing, and language enhancement.

As we are all aware, work-related stress, anxiety, and depression are major causes of illness in the workplace. Stress places immense pressure and strain on physical, psychological, and emotional health and wellbeing, with a

resulting effect on performance, relationships, and behaviour.

A healthy mind is an asset

The new scheme continues to reflect an ongoing awareness of the high levels of stress and pressures solicitors continue to practice under by placing an emphasis on solicitors' wellbeing and positive psychological and emotional health, by making it a regulatory obligation to complete a specified number of hours in the mandatory category of 'professional development and solicitor wellbeing'.

It is important that solicitors are mindful of the impact their job has on their own psychological wellbeing. In certain areas of practice, solicitors are often exposed to situations that involve a myriad of emotions and, consequently, are at particular risk of vicarious trauma. It is important for you to know how to support yourself if you are in these circumstances, and how to practice in a trauma-informed way. The new scheme enables solicitors to claim suitable training in such areas and in promoting solicitors' wellbeing to go towards the annual CPD requirement.

The Law Society remains cognisant of the importance of diversity, inclusion, and implementing and maintaining good working relationships, behaviours and habits. Consequently, the new scheme provides that training and activities that contribute to dignity at work and a positive workplace culture may also be claimed under the category of 'professional development and solicitor wellbeing'.

Professional standards

The second mandatory category of CPD is 'client care and professional standards', which focuses on the professional standards required and expected of practitioners, in addition to the regulation of solicitors. It also encompasses required standards of client care and the management of the solicitor/client relationship. Matters that fall within this category also include professional conduct, best practice in complying with regulatory obligations, anti-money-laundering, and risk management.

Solicitors should ensure that, at all times, a thorough and committed focus remains on client care, and that the necessary standards of professional conduct are upheld at all times. In addition to this mandatory category encompassing regulatory obligations, it also places professional conduct and ethics centre stage. It is imperative that solicitors regularly check and ensure that they are behaving in an appropriate, ethical manner when dealing with all work-related and professional matters.

No time like the present

The start of a new year brings with it new resolutions for many people. Solicitors are encouraged to take the time to carefully consider where there may be gaps in their knowledge

and skill-set, and to put in place a plan in order to address and overcome any shortfalls by undertaking the necessary training.

CPD should not be seen as merely a 'tick-box' exercise to be undertaken with the sole aim of complying with your regulatory requirements. While undertaking CPD is a regulatory obligation, it doesn't have to be an onerous one.

The scheme requires solicitors to attend group-study training for a minimum of five hours per year, and up to 80% of the CPD requirement can be completed online, enabling sufficient flexibility for solicitors to complete the annual CPD requirement. The Law Society provides complimentary online courses through the professional-training section, in addition to the Diploma Team's popular MOOC programme, allowing solicitors to access up-to-date, high-quality training at a time that suits.

The new scheme in more detail

The revised CPD Scheme is set out clearly in the updated CPD Scheme booklet, but an outline of the changes introduced is set out in the panel (*below*).

New CPD requirements (from 1 January 2024)	Previous CPD requirements
25 hours	20 hours
Senior practitioners: eight hours	Senior practitioners: three hours
Five hours of 'professional development and solicitor wellbeing'	Three hours of 'management and professional development'
Three hours of 'client care and professional standards'	Two hours of 'regulatory matters'
One hour of 'accounting and anti-money- laundering compliance' (as part of the 'client care and professional standards' component) for a solicitor who is a sole practitioner or a compliance partner and/or an anti-money-laundering compliance partner	Two hours of 'accounting and anti-money-laundering compliance' (as part of the 'regulatory matters' component) for a solicitor who is a sole practitioner or a compliance partner and/or an anti-money-laundering compliance partner
Minimum five hours/20% must be completed in group study format; and a maximum of 20 hours/80% of the annual requirement (modified or otherwise) may be completed by e-learning	Maximum 50% of the annual requirement (modified or otherwise) may be completed by e-learning

Modifications of the annual CPD requirement continue to be permitted for those newly admitted to the Roll of Solicitors and those on maternity/paternity, adoptive, parental, or carer's leave, in addition to those who have taken leave due to unemployment or illness. In all instances of a modified pro-rata requirement, it may not, in any circumstances, be reduced to less than a minimum of three hours of 'client care and professional standards'.

However, if such a solicitor seeking a modification fulfils the role of a sole practitioner or a compliance partner and/or an anti-money-laundering compliance partner, then their modified CPD requirement may not be reduced to less than eight hours, to include a minimum of five hours of 'professional development and solicitor wellbeing' and a minimum of three hours of 'client care and professional standards' (including a minimum of one hour 'accounting and anti-money laundering compliance').

Proof of compliance

So, you have done your hours, you have your CPD record card completed, and have retained your CPD proofs – how do you prove this to the Law Society?

Under the CPD Scheme section of the practising-certificate application form, solicitors will be asked to verify to the Law Society their compliance with the scheme,

THE FIRST MANDATORY CATEGORY OF CPD IS 'PROFESSIONAL DEVELOPMENT AND SOLICITOR WELLBEING', WHICH ENCOMPASSES VARIOUS SUBJECT MATTERS, INCLUDING FINANCIAL AND BUSINESS MANAGEMENT, PRACTICE MANAGEMENT, SOLICITOR WELLBEING, AND LANGUAGE ENHANCEMENT

as outlined in the regulations. When this information is sent back to the CPD team in the Law Society, the audit phase of the CPD cycle in question will begin.

If a solicitor states that they *have* complied with the scheme, the solicitor may be chosen as part of the random audit that will take place over the course of the following number of months. Those chosen as part of the random audit review process will receive a letter from the CPD Scheme Unit, asking the solicitor to submit their completed record card, in addition to proofs of CPD for all training events detailed on the record card for the relevant CPD cycle. If a solicitor is claiming a modified CPD requirement, verification from the solicitor's employers of such working arrangements must also be submitted. Once the review is completed by the CPD Scheme Unit, and if all is in order, a letter will issue stating that the solicitor is deemed to be in compliance with the scheme.

If a solicitor states that they *have not* complied with the full CPD requirement for a particular cycle, the solicitor will be automatically audited. Generally speaking, the solicitor will be given further time for compliance during the following cycle of CPD. This, in effect, means that a solicitor will be asked to 'make up the hours' during a specified number of months over the next cycle of CPD. They will also be referred to the Education Committee, in the first instance. If a solicitor refuses or fails to respond in a timely manner to the Law Society's audit correspondence, the CPD regulations enable the Law Society to require payment of up to €300 by way of contribution towards costs. If a solicitor continues to ignore the CPD Scheme, or if a solicitor fails to comply with a direction of the Education Committee, the committee may refer the practitioner to the disciplinary tribunal.

Further information and clarification on all aspects of the new CPD Scheme are provided in the new scheme booklet, which is available from the CPD Scheme section on the Law Society's website. g

TIPS TO HELP YOU GET CPD RIGHT – FIRST TIME

- Keep your CPD record card as you go along – it's easier to refer to your record than to try and compile it possibly a year later.
- Keep a tally of what type of CPD you have completed. You could have 50 hours of very useful general CPD, but you won't be fully compliant without the specified mandatory hours.
- Remember that a minimum of five hours' group- study training must be completed.
- Be aware that a maximum of 80% of your CPD requirement may be completed online.
- Join your local bar association. This is useful, not just for CPD points, but also as a useful networking opportunity with colleagues.
- Remember to 'tick the box'! Failure to certify that you have completed your CPD requirements on your practiscing-certificate application form may lead to audit.
- Make sure you get certificates of attendance for every seminar or training event you attend, and/or online course you complete. No certificate = no CPD.
- All certificates must have the following information:
  - Headed notepaper,
  - Your name,
  - Date of training,
  - Subject matter of training,
  - Type of CPD claimed,
  - Number of hours of actual training (excluding breaks and/or registration times),
  - Signed by the course provider.

For any queries about the scheme, please contact Anthea Coll, CPD executive, at cpdscheme@lawsociety.ie.

Finance function fighting fit

The Law Society's finance function has identified efficiencies through 'Project Elevate' that will be implemented throughout 2024. Andrew Fanning reports

'FUTURE STATE' MAPS WERE DEVELOPED AND COMPARED WITH THE 'CURRENT STATE' IN ORDER TO SHOW HOW EACH PROCESS COULD WORK MORE EFFICIENTLY

The Law Society says that a review of its finance function has led to "numerous benefits" from the initial stages of 'Project Elevate'. The project is aimed at identifying ways of improving efficiency and encouraging innovation within the finance division.

Leading Edge Group was asked to facilitate the project through the application of 'lean' methodology. 'Lean' is a management framework aimed at making the best use of staff, resources, and energy to improve efficiency and the quality of service. It emphasises the synergy between individuals, operational processes, and technology in order to achieve successful transformations.

Key objectives

'Project Elevate' had five objectives:

- Improving financial reporting using dashboards and key performance indicators,
- Creating the best possible structure for the finance team,
- Reviewing all systems and processes to identify opportunities for efficiency, enhancement, and innovation,
- Implementing an automated expense system, and
- Beginning to work towards a culture of continuous improvement and innovation at the Law Society.

The project involved three key elements:

- The documentation and mapping of core finance processes and associated systems,
- A review and analysis of the Finance Department – in particular, structure, financial planning and reporting processes, and
- 'Lean Green Belt' training and certification for staff members.

Leading Edge's approach involves coaching and enabling experts within the team to develop their own solutions, while also putting the customer at the centre of all decisions made about the services provided.

Its approach is also data-driven to ensure that the best solutions are adopted – and that gains are measurable and sustainable.

Collaboration

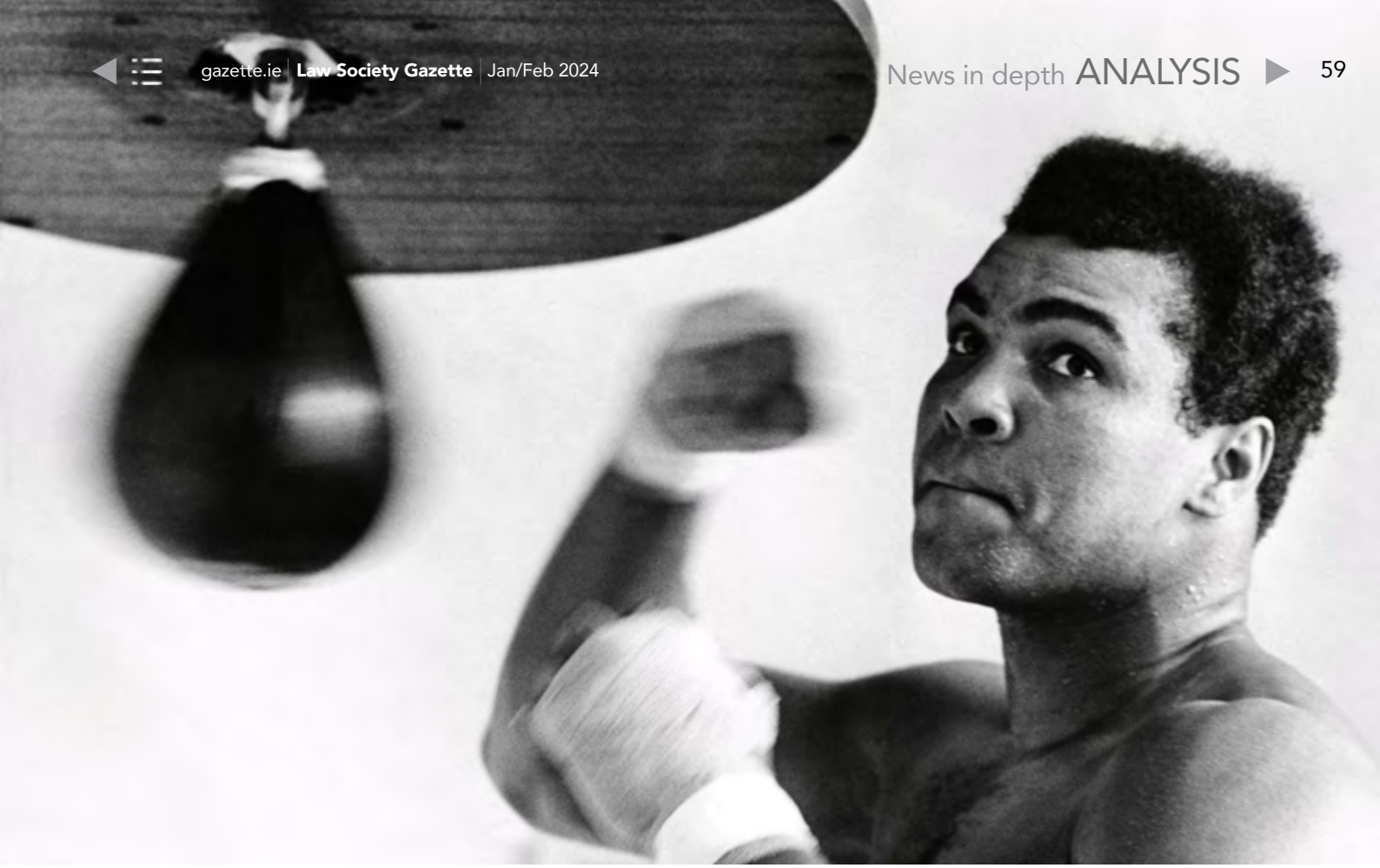
The approach centred on collaboration between staff and management – specifically in problem-solving and creating a dialogue about 'the right thing to do', rather than a debate about 'who owned what'.

In order to improve operations in the Finance Department, Leading Edge targeted eight common forms of waste:

1) Defects – errors in the outputs of processes that need to be corrected through rework,
2) Over-production – producing more than the internal or external customer needs,
3) Waiting – wasted time waiting for the next step in a process to occur,
4) Non-utilised skills – staff performing functions that are better suited to other grades of staff,
5) Transportation – unnecessary movement of inventory, materials, equipment, supplies, and products,
6) Inventory – keeping excessive inventory and products that are not being processed, tying up money, and reducing available space,
7) Movement – unnecessary movement of staff members in order to complete their daily work activities, and
8) Excessive processing – work that a customer does not need and consumes resources.

Mapping processes

The project 'mapped' 35 different processes within the department. 'Current state'



maps showed the number of steps, elapsed time in days, and task time in hours for each process.

'Future state' maps were then developed and compared with the 'current state' in order to show how each process could work more efficiently.

The potential improvements identified were:

- A 32% reduction in the number of steps in the business process,
- A 45% reduction in the time taken to complete each process, and
- A 32% reduction in task-time hours.

The feedback from all involved was that the 'future state' would make their work less stressful. Through the review and analysis of the department, key recommendations were made on the following:

- Corporate structure – does it reflect the business of the Law Society today?
- Management information, financial calendar, format, content, and preparation,
- Structure of the Finance Department,
- Systems and processes in use,
- Budget and reforecasting process, and
- Procurement processes and controls.

Lean and green

In parallel with the mapping process, eight members of the finance team took part in a six-day 'Lean Green Belt' training programme to develop an understanding of the 'lean' methodology and its application in the organisation, specifically how applying lean principles can make a real difference to managing day-to-day activities.

The programme also developed participants' ability to independently lead improvement initiatives in the workplace.

Participants completed a mentored in-house project, where the aim was to focus on an area within their organisation and use several of the concepts, tools, and practices taught in the programme to initiate and implement quantifiable improvements.

The areas of focus identified and selected, based on the outcomes of the mapping stage of the project, included:

- Reconciling weekly payrolls,
- Streamlining student refunds,
- Streamlining contributor-payment processes, and
- Enhancing accounts-payable processes.

Next steps

The Law Society says that the Finance Department has begun to see numerous benefits from adopting the lean thinking encapsulated in Project Elevate. These include:

- Increased efficiency,
- Reduced bottlenecks,
- Better and faster systemic adaptation,
- Stakeholder visibility and strong customer relationships,
- A continuous-improvement mindset, and
- Increased team engagement.

Feedback from the staff involved has been highly positive. Participants said that they appreciated the opportunity to take a step back and observe elements of their work that they had never considered previously. Staff also commented that they found the process "immersive, engaging, insightful, tactful, and beneficial".

The process revealed "an underlying desire for change and ongoing innovation and enhancement" at the Law Society. As a result, the recommendations and identified improvements through Project Elevate are set to be fully implemented during 2024. g

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Andrew Fanning is a freelance journalist for the Law Society Gazette.

Reach for the sky

Law Society Psychological Services has turbocharged its 'LegalMind' service by partnering with the Clanwilliam Institute to offer attractively subsidised psychotherapy and counselling for solicitors. Sorcha Corcoran reports

> THE SESSIONS ARE NOT NECESSARILY ABOUT FIXING SOMETHING, BUT RATHER TO HELP SOLICITORS TO UNCOVER WHAT THEY WANT TO KNOW ABOUT THEMSELVES AND WHAT KIND OF PROFESSIONAL THEY WOULD LIKE TO BE

Law Society Psychological Services has partnered with the Clanwilliam Institute to introduce an enhanced LegalMind service for solicitors as part of its continuing efforts to integrate psychological thinking and practices into the profession.

With this refreshed, independent service, the aim is to mirror the remarkable cultural change that has happened in the Law School and replicate it within the wider profession, says Antoinette Moriarty (head of Psychological Services at the Law Society).

Over the past nine years, psychological development has been integrated into the Professional Practice Course curriculum through the 'Complete Lawyer' module, and trainees have been able to access an accompanying suite of free time-concentrated therapy sessions.

"The idea that psychological strength is part-and-parcel of being a good professional is well established among our trainee and recently qualified solicitors," Moriarty notes. "The Law School at the Law Society is a leader in this space. Our director of education, TP Kennedy, had the wisdom to financially support psychological development at a time when this was unheard of elsewhere. Now, other professions and jurisdictions are looking to us for ideas on how to support strong psychological health throughout people's careers."

Being smart

"Just over half of all trainees engage in free, time-concentrated therapy sessions. Far from being hidden, this is something that is now considered smart. You'll often hear a student openly say: 'I'm just off to my counselling session!'

"We want established solicitors to know that this type of support has been tried and tested by their younger peers – and that it really works as a meaningful and powerful way of maintaining effectiveness – in both their professional and personal lives."

Available since 15 January, LegalMind clients can avail of eight 55-minute therapeutic sessions per calendar year, heavily subsidised by the Law Society. The first appointment is free and, after that, there is a reduced fee of €30 plus VAT (that is, €34.50) per session. The Law Society pays the balance of €100, plus VAT (that is, €113.50) per session for the LegalMind client.

Easy and timely access

Once solicitors make initial contact by phone or email, you will be offered an appointment within ten working days. One of the Clanwilliam Institute's 40 qualified therapists around the country will be assigned to you, based on the information you have confidentially shared. Whether the sessions are delivered face-to-face or online will depend on their availability, and your particular circumstances.

An important enhancement to the service offering is the possibility for face-to-face clients to avail of couple and family therapeutic work, where appropriate. There's also the opportunity to gift LegalMind sessions to a family member living with you.

In existence over 40 years, the Clanwilliam Institute is a registered charity dedicated to providing safe and confidential psychotherapy services for individuals, couples and families. It's a training institute for systemic psychotherapy and all of its therapists hold a master's in this field, as well as being accredited/registered with the Family Therapy Association of Ireland and the Irish Council for Psychotherapy. In Dublin, it has a base on the Malahide Road and in Stillorgan.

Systemic psychotherapy looks at how we communicate in relationships – personal and professional. It can transform a person's understanding of themselves as embedded in a social and emotional world in which we are influenced by and, of course, influence others.

Suited to solicitors

Katrina McLoughlin (clinical manager at the Clanwilliam Institute) believes that this


PIC: SHUTTERSTOCK

approach is "incredibly suitable" for solicitors: "It gives clients the opportunity to really sit with themselves within the context of all of their relationships – both in their personal life and the workplace, as well as in the wider public-facing legal system," she explains.

"How we view this support is one experienced professional speaking to another, who is looking at things through a different lens. It's collaborative and conversational. In essence, it's about providing a reflective space where the therapist can join the dots for the client and work on their blind spots.

"Exploring themes and connections between relationships – past and present – helps the client to understand what is happening to them at the moment. For example, something in their family-of-origin story might resonate if they have a dilemma or they're feeling provoked or perturbed by a certain case or individual."

The LegalMind service is there for solicitors who want to discuss specific issues, including stress and anxiety, bereavement and loss, family conflict, and coping mechanisms. While some people might need continuity of care to work through such issues, others might find that they only need one session with a neutral person to talk about something that's bothering them.

"Our therapists are all very competent in complex pieces of work. You couldn't shock us with anything you want to discuss, as we've seen a lot of life," says McLoughlin. These sessions can also be used as a 'check-in' every few months when you don't have anything in particular going on. It's not about something being wrong with you; it's just two professionals sitting down, having a chat, and seeing where that takes us."

Any information shared in psychotherapy appointments is confidential (within statutory limits) and cannot be shared with anyone or any other organisation outside of the LegalMind service.

Finding the balance

Antoinette Moriarty advises that there's no need to wait until you're in the middle of a crisis or feeling burnt out to engage with LegalMind.

"Curiosity is a great starting point because psychotherapy can help us to understand what's going on in our personal and professional relationships and how we can make the most of the stage of life we're at. It is particularly helpful in creating ease and balance in our relationships, behaviour, and communication," she says.

"Intense relationships at work might mean solicitors are depleted and have nothing left in the tank for personal relationships, or perhaps they're relying on unhealthy habits to manage stress. This new approach with LegalMind will help people to make sense of how they find themselves in the position they're in – and give them hope, choices and a renewed sense of their own value.

"The sessions are not necessarily about fixing something, but rather to help solicitors to uncover what they want to know about themselves, and what kind of professional they would like to be. We would love to see more solicitors avail of the service and carve out this space for themselves."

Moriarty is keen to point out that LegalMind should not be viewed in isolation – it is only one part of a plethora of initiatives and offerings aimed at optimising performance and instilling healthy cultural practices in the legal profession.

For example, Law Society Psychological Services recently partnered with the corporate law firm RDJ LLP to pilot a new way of working, using psychological thinking and practices to enhance equality and diversity in the workplace, and build high-impact habits.

"The improved LegalMind service is not a standalone product but is part of a cultural revolution," says Moriarty. "The more we reflect and the better we know ourselves, the better service we can give to our clients, as we are enabled to see their struggles differently."

LegalMind provides confidential, independent, and subsidised support for legal professionals. All enquiries to LegalMind are fully confidential to Clanwilliam Institute (the Law Society's partner provider). To engage with LegalMind and be swiftly assigned a therapist, email legalmind@clanwilliam.ie or call 01 205 5010 from 9am to 5pm, Monday to Friday. For more information, visit www.lawsociety.ie/legalmind. g

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Sorcha Corcoran is a freelance journalist.

A game of two halves

In a major setback for FIFA/UEFA, objections to the proposed European Super League have been found to be illegal. Cormac Little puts one in the top corner

> THE COURT HELD THAT FIFA/UEFA HAVE A DOMINANT POSITION IN THE EU MARKET FOR THE ORGANISATION AND MARKETING OF INTERNATIONAL FOOTBALL COMPETITIONS

In a decision dated 21 December last, the Court of Justice of the EU (CJEU) held that FIFA/UEFA's opposition to the proposed European Super League (ESL) was in breach of EU competition rules. Notably, the court's judgment in Case C-333/21 *European Superleague Company SL (ESLC) v FIFA and UEFA* fails to follow the opinion of its advocate general.

Kick-off

The early 2021 announcement of the ESL took the world of soccer by surprise. This tournament was set to consist of 20 of Europe's top clubs, with the 12 founding members (including Manchester United, Real Madrid, and Juventus) guaranteed participation, notwithstanding their on-field performances. In response, FIFA (the governing body of world football) and UEFA (the governing body of European football) publicly announced their intention not to recognise the ESL, while also stipulating that participating teams would be prevented from playing in their respective domestic leagues, plus participating players could not represent their national sides in tournaments such as the World Cup or European Championships.

Under their individual statutes, FIFA and UEFA have given themselves the exclusive power both to grant prior approval to the establishment of international club soccer tournaments in Europe, and to sanction clubs and footballers playing in any such unauthorised competitions. That said, FIFA/UEFA have not made available the criteria (if any) by which either body will consider whether to approve new tournaments, nor have they adopted a transparent process under which any such application should be made.

The widespread and robust public opposition to the ESL quickly led to nine of the dozen founder members renouncing their planned participation. However, focus soon turned to the case lodged by ESLC, the company seeking to manage and promote the ESL, with the Madrid Commercial Court claiming that FIFA/UEFA's statutes/actions infringe EU law. In April 2021, this court referred various questions to the CJEU for preliminary ruling under article 267 of the *Treaty on the Functioning of the EU* (TFEU).

The offside rule

ESCL's challenge to FIFA/UEFA's opposition to the ESL primarily rests on EU competition rules contained in articles 101 and 102 of the TFEU. The former provision generally prohibits arrangements between undertakings, decisions by associations of undertakings, and concerted practices that have the object or effect of restricting competition while affecting trade between EU member states. However, restrictive arrangements may be exempted, provided the four cumulative criteria contained in article 101(1) are satisfied.

Separately, article 102 prevents the abuse of a dominant position in the EU (or in a substantial part of it). Dominance is not illegal *per se*, but dominant undertakings are under a special responsibility not to prevent the development of genuine, undistorted competition. However, a dominant undertaking may argue that its allegedly abusive conduct is objectively justified.

Yellow card

In his 15 December 2022 opinion, Advocate General Rantos paid close attention to the special position of sport enshrined in article 165(1) of the TFEU. This provision states that the EU should contribute to the promotion of the so-called 'European sporting model' (ESM), which promotes key values, such as open competition and financial solidarity.

Regarding whether there had been an object breach of article 101, the advocate general noted that FIFA/UEFA measures combatting dual membership of an international tournament (such as the ESL) and domestic leagues (for example, Spain's LaLiga or Italy's Serie A) do not represent an object

infringement of article 101(1), since the relevant rules do not prevent the establishment of a football tournament outside of FIFA/UEFA's remit.

In terms of a potential effects breach, Advocate General Rantos stipulated that, provided this is done proportionately, pursuing the objective of ensuring open competition within the ESM through the relevant prior approval/participation/disciplinary rules falls outside of article 101. Separately, he acknowledged that, although FIFA/UEFA have a dominant position in the market for the organisation and exploitation of international interclub competitions in the EU, their refusal to approve or their opposition to the ESL (since it is based on their legitimate sporting objectives) is not abusive.

Second half

The bulk of the CJEU's 45-page judgment addresses whether, coupled with their much-publicised firm opposition to the ESL, FIFA/UEFA's underlying rules on both the prior approval of international club tournaments and the participation of clubs/footballers in any unauthorised competitions under threat of sanction, infringe articles 101 and/or 102 of the TFEU.

Anti-competitive arrangements: the CJEU found that FIFA/UEFA's rules, implemented directly or indirectly through their member national football associations, are decisions of an association of undertakings within the meaning of article 101.

The court then considered whether these rules, allied to FIFA/UEFA's opposition to the ESL, have an anti-competitive object. In doing so, the CJEU noted that these rules allow FIFA/UEFA to make it difficult to establish alternative interclub football competitions in the EU. In addition, they prevent teams and players from participating in those tournaments, while depriving fans of the chance of attending games or watching broadcasts. This anti-competitive situation is only enhanced by the vulnerability of clubs/players to sanction by FIFA/UEFA should they participate in an unapproved tournament.

The CJEU emphasised that FIFA/UEFA have neither adopted transparent, objective, and precise substantive criteria, nor a detailed transparent and non-discriminatory procedural regime regarding prior approval, participation, and disciplinary measures. Accordingly, FIFA/UEFA's conduct poses a sufficient degree of harm to competition and, therefore, constitutes an object infringement of article 101(1).

The CJEU continued by examining whether the actions of FIFA/UEFA may benefit from an exemption under article 101(3). In this regard, these governing bodies must show that, notwithstanding the harm caused to third parties, such as clubs, players, and spectators, their rules have, overall, a favourable impact on the relevant stakeholders.

While it is ultimately for the Spanish court to decide whether an exemption is warranted, the CJEU did give some guidance regarding the potential application of article 101(3). Indeed, the CJEU noted that it will be up to FIFA/UEFA to

demonstrate that their objective of upholding the values of professional football – such as open/meritocratic competition – translates into real efficiencies, while also compensating for any anti-competitive harm caused.

Abuse of a dominant position: turning to article 102, the court held that FIFA/UEFA have a dominant position in the EU market for the organisation and marketing of international football competitions. While both governing bodies may lawfully adopt common rules for the organisation of such competitions for the purpose of promoting merit-based opportunity, the fact that they themselves organise international interclub tournaments, such as the Club World Cup and the Champions League, requires them to adopt a transparent regime by which decisions on approval of/participation in rival competitions will be made. The absence of either a framework of substantive criteria or detailed procedures is, therefore, anti-competitive. Moreover, the potential sanctions under FIFA/UEFA rules are also anti-competitive due to their discretionary nature.

The CJEU found that, although neither FIFA nor UEFA has a legal monopoly, it is – given their dominant position on the relevant market – almost impossible to establish an international club tournament outside their remit, given the control both governing bodies exercise over clubs, players, etc.

Although it will be up to the Madrid court to apply the CJEU's reasoning, the *ESLC* judgment stipulates that the relevant criteria/process should be adopted by FIFA/UEFA in advance. Moreover, for same to be considered as non-discriminatory, these rules should, bearing in mind that FIFA/UEFA also organise their own international club tournaments, not be excessively difficult for third-party organisers to satisfy. Moreover, any sanctions must be proportionate to the nature, duration, and gravity of the relevant breach.

In short, the court held that FIFA/UEFA rules on prior approval and participation in the ESL, on pain of disciplinary action, given the lack of either pre-determined substantive criteria or procedural rules for the implementation of such criteria, constitute an abuse of a dominant position under article 102.

The CJEU then considered whether FIFA/UEFA might be able to show that their conduct is objectively necessary and/or benefits the consumer overall. Firstly, the court found that, given the lack of a substantive framework governing the decisions of both governing bodies on prior approval/participation/sanctions, it is very difficult for them to argue that either regime is objectively necessary. Second, it is for FIFA/UEFA to produce convincing arguments/evidence that, notwithstanding their exclusionary effect, the relevant rules give rise to efficiencies.

Final whistle

FIFA/UEFA rules allow both governing bodies to control the principal sources of revenue (that is, all financial, broadcasting, and other key commercial rights) regarding the interclub competitions organised by them. In other words, these rights are removed from the control of the participating football clubs, which are, therefore, prevented from selling rights to matches in which they play. The court noted that these rules undermine both horizontal (between the professional soccer teams) and vertical (for example, vis-à-vis the engagement between the clubs and the downstream broadcasters). Indeed, the concern that FIFA/UEFA might charge excessive prices for broadcast/other rights is exacerbated by their dominant position.

The court, therefore, found that these rules were both an object breach of article 101 of the TFEU, and also an abuse of a dominant position under article 102. It will be up to FIFA/UEFA to gather sufficient evidence that the positive consequences of such rules (such as a 'trickle-down' effect on smaller professional and amateur soccer clubs) outweigh their anti-competitive harm in order to benefit from either an article 101(3) exemption and/or an objective justification under article 102.

Injury time

While the CJEU also found that FIFA/UEFA's rules are likely to infringe article 56 of the TFEU – outlawing restrictions on the freedom to provide cross-border services in the EU – the primary focus of the December 2023 judgment is on the anti-competitive activity of both governing bodies. Accordingly, it is important to consider the differing approaches of the court and its advocate general. The latter heavily relied on the 'quasi-constitutional' recognition of the ESM in article 165 of the TFEU in finding that the effects provision of article 101(1) does not apply to FIFA/UEFA's rules, provided the latter pursue the legitimate objective of open competition in a proportionate manner.

By contrast, the CJEU downplayed the importance of article 165, finding that this provision does not allow for the special treatment of sport. Accordingly, professional football should not be treated any differently to any other economic activity.

Separately, Advocate General Rantos noted that the relevant rules were not an object breach of article 101(1), since FIFA/UEFA do not seek to prevent the establishment of the ESL, merely to prevent its participant clubs from also fielding a team in their respective domestic leagues. Instead, the CJEU, in finding an infringement, focused on the barriers to entry faced by the ESL (or other rival football competitions) in attracting clubs and players, given that both cohorts will likely be subject to sanction by FIFA/UEFA.

In considering that their conduct was not abusive, the advocate general championed the right of FIFA/UEFA to target their legitimate sporting aims. However, in finding that the relevant conduct did breach article 102, the court was again persuaded by the lack of stated criteria/process by which FIFA/UEFA would review the establishment of any proposed rival tournaments.

One immediate likely consequence of the ESLC judgment is that FIFA/UEFA should carefully review their respective rules in light of the CJEU's findings. Indeed, given that the economic aspects of professional football are clearly subject to the full force of EU competition rules, the governing bodies of other sports may be well-advised to review their own internal arrangements. g

Cormac Little SC is head of the competition and regulation department at William Fry LLP, and a member of the Law Society's EU and International Affairs Committee.

SOLICITORS DISCIPLINARY TRIBUNAL

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

In the matter of Michelle Cronin, a solicitor practising as Michelle Cronin Solicitors, Kennedy Buildings, 24 Main Street, Tallaght Village, Dublin 24, and in the matter of the *Solicitors Acts 1954-2015* [2021/DT05]
Law Society of Ireland (applicant)
Michelle Cronin (respondent solicitor)
On 12 October 2023, the tribunal found the respondent solicitor guilty of misconduct in that she:

1) Failed to register her client's title to her property, purchased in 2011, in a timely manner or at all,
2) Failed to respond to letters from the Law Society, of the following dates, in a timely manner or at all: 30 July 2019, 13 August 2019, 11 September 2019, 1 October 2019, 11 November 2019, 21 January 2020, 2 June 2020, 25 June 2020, 22 July 2020, 16 September 2020, 18 November 2020, 20 January 2021, and 2 March 2021,
3) Failed to respond to correspondence from her former client's new solicitors, including their letters of 15 February 2021, 16 March 2021, and 31 March 2021,
4) Failed to refund fees paid by her client, as directed by the Complaints and Client Relations Committee at its meeting on 21 July 2020 and further directed at its meeting on 13 October 2020 in a timely manner or at all,
5) Failed to transfer the file.

The tribunal ordered that the respondent solicitor:

1) Stand censured,
2) Is directed to pay a sum of €3,000 to the compensation fund,
3) Is directed to pay a sum of €5,774.85 as restitution or part restitution to her former named client, without prejudice to the legal right of such party,
4) Is directed to pay the sum of €4,274 towards the whole of the costs of the applicant.

In the matter of Myles D Gilvarry, a solicitor practising as Gilvarry and Associates, Solicitors, at Unit 9, N5 Business Retail Park, Moneen Road, Castlebar, Co Mayo, and in the matter of the *Solicitors Acts 1954 -2015* [2022/DT02]
Law Society of Ireland (applicant)
Myles Gilvarry (respondent solicitor)
On 3 October 2023, the tribunal found the respondent solicitor guilty of misconduct in that he:

1) Failed in progressing the estate of a named individual who died on 18 November 2007 in a timely manner,
2) Failed to provide administration accounts for the estate of the named deceased to the Complaints and Client Relations Committee, despite being required to do so at its meeting of 2 March 2021.

The tribunal ordered that the respondent solicitor:

1) Stand censured,
2) Is directed to pay a sum of €2,115.50 to the compensation fund,
3) Is directed to pay a sum of €7,884.50 as a contribution towards the whole of the costs of the applicant.

GUIDANCE NOTES

CONVEYANCING COMMITTEE

VACANT HOMES TAX

● *This note is for information purposes only. Vacant Homes Tax is* ***not*** *a charge on property, in contrast to Local Property Tax. Compliance with the requirements of the VHT legislation is not a matter of title. An investigation of title need not extend to the question of whether or not Vacant Homes Tax has been paid.*

Vacant Homes Tax (VHT) is an annual self-assessed tax that applies to vacant residential properties, liable to LPT, that have been occupied for less than 30 days in a 12-month chargeable period. VHT was introduced by section 96 of the *Finance Act 2022* and is contained in part 22B of the *Taxes Consolidation Act 1997* (TCA 1997). An exemption may be available in certain circumstances. Any liability to VHT is in addition to a liability to Local Property Tax (LPT).

For a step by guide, see revenue.ie/en/property/vacant-homes-tax/index.aspx. Revenue has also published a tax and duty manual, titled *Vacant Homes Tax – Part 22B-01-01*. The manual outlines in detail when VHT applies, when properties are outside the scope of the tax, the obligations on chargeable persons, Revenue powers, and certain exemptions that can be claimed.

Each chargeable period commences on 1 November and ends on 31 October of the following year. Owners of vacant properties are required to self-assess their liability to VHT by looking back over the previous chargeable period to determine if their property was liable in that chargeable period. Where a property has been occupied for less than 30 days, a return must be filed electronically within seven days of the end of the relevant chargeable period, that is, by 7 November. The first chargeable period for VHT commenced on 1 November 2022 (the 'initial chargeable period'), with the first VHT return to be submitted to Revenue by 7 November 2023, seven days following the 1 November liability date.

VHT is charged annually, with a rate for the initial chargeable period at three times the base LPT rate (the rate excluding any local adjustment factor), increasing to five times from November 2023, following Budget 2024, on the value of liable residential properties.

Even if the taxpayer has assessed that VHT does not apply to a property, Revenue may still ask for confirmation of the status of the property and for the submission of a VHT return. To confirm the status of the property, evidence must be provided that, during the chargeable period, the property has been occupied, sold, or subject to a qualifying tenancy.

A register of vacant homes and their associated chargeable persons is being established by Revenue and will be continually updated as necessary. The legislation provides for the exchange of information between the Revenue Commissioners and other bodies, such as local authorities, for the purposes of administering the tax and maintaining the register. VHT will operate on a self-assessment basis. The legislation also provides for penalties, interest, and a late filing surcharge to be applied in cases of non-compliance, setting out in detail the circumstances surrounding the unavailability of the relevant document. This affidavit should also state that all reasonable efforts have been made to locate the document.

Stamping and registration of deed in the Registry of Deeds: As with all applications before the Land Registry, evidence will be sought that the lost/mislaid deed was originally stamped and registered in the Registry of Deeds. Unless it is evidenced that stamp duty was duly paid on the original deed, stamp duty must be paid on the copy tendered as if it were an original.

Title insurance: When presented with a title-insurance policy for the purposes of addressing some title issues, practitioners should request a copy of the proposal form and associated documents for the title insurance policy to identify the nature and extent of the cover, the exclusions, conditions, and limits of the policy. In addition, practitioners should assess whether the definition of the 'insured' includes all successors in title, any mortgagee, chargee, TE, and the State.

Practitioners will be mindful that most title insurers require that the existence of the policy is not disclosed to any third party, including TE, without the relevant bond-holder's prior consent.

TE's requirements and guidelines in considering title insurance: The Conveyancing Committee consulted with TE in the preparation of this practice note. TE's stated basic requirements are:

- The title bond presented should be subject to the laws of Ireland,
- The title bond should cover TE and the State from any losses arising as a result of effecting the registration,
- The term of cover should be clearly set out, and should not be contingent on another act occurring, for example, a company going into liquidation or the property no longer being in use by the parties,
- The title bond should not contain exclusion clauses that directly conflict with TE performing its normal duties (for example, serving notices on third parties),
- Applications that include a statutory declaration/affidavit that is drafted in accordance with TE's practice direction, and which contains an indemnity from the applicant/deponent, are likely to be considered more quickly than applications with title bonds, since the review of title bonds involves significantly more time to review and consider, given the variety of bonds, exclusions, caveats, etc, and
- A considerable number of queries are often being raised on these applications by TE, as these title bonds regularly fall short of the requirements, as set out in TE's practice direction.

CONVEYANCING COMMITTEE

UPDATE: RESIDENTIAL ZONED LAND TAX

● The Conveyancing Committee wishes to advise practitioners that it was announced in Budget 2024 that the Residential Zoned Land Tax (RZLT) be deferred by one year.

RZLT was due to take effect from 1 February 2024. This deferral means that the first liability date will instead be 1 February 2025.

Should a practitioner be instructed in the purchase or sale of lands that may be serviced and zoned for residential development, then the practitioner should advise their client accordingly.

The committee's previous guidance note to practitioners, titled 'Reminder: Residential Zoned Land Tax (RZLT)', can be found in the Practice Notes section at www.lawsociety.ie.

GUIDANCE NOTES

LITIGATION COMMITTEE

NON-JURY AND JUDICIAL REVIEW LIST

● Please note that Ms Justice Hyland has recently amended the directions to practitioners in respect of the lodgement of papers and correspondence with registrars in the Non-Jury and Judicial Review List. The directions came into effect last November and are published at the top of the online list.

Please note that papers must now be lodged in the List Room on the preceding Tuesday, rather than Thursday; and that papers are no longer required for case management and for matters listed for mention. If necessary, papers may be handed into the court on the day.

1) Papers for hearings in Non-Jury, Judicial Review and Asylum Lists must be lodged in the List Room no later than the *Tuesday* of the week prior to the hearing date. Papers for hearings will not be returned and will be shredded. They must be re-lodged prior to any new hearing date.
2) Any application for late lodgement of papers must be made to the list judge at the callover on the Thursday of the week prior to the hearing date.
3) The callover takes placed on a hybrid basis and begins at 10am. Parties must also indicate at the callover whether the hearing will be physical, hybrid, or remote. If no preference is given, the hearing will be physical. If there is no attendance at the callover, the hearing will be struck out.
4) Correspondence to the registrars/mailbox/judicial assistant seeking permission for the late lodgement of papers, requests to change the mode of hearing, or applications to reinstate hearings that have been struck out will not be acknowledged. No additional/missing documents will be accepted by email. Any further applications must be made to the court at the end of the list, any day.
5) Lodgement of papers in advance is no longer required for case-management hearings. If there are papers that the parties wish to bring to the attention of the court, these may be handed in by the solicitor when the matter is called.
6) Papers for Judicial Review *Ex Parte* Applications listed in the Monday Judicial Review *Ex Parte* List and the Monday Asylum *Ex Parte* List must be lodged in the List Room no later than the Monday of the week prior to the list (that is, no later than seven days before the listing). Due to capacity issues in the List Room, papers can only be accepted from a fortnight before the listing date, up until the Monday of the week prior to the listing.
7) If the court directs that an application for leave to seek judicial review is to be made on notice, the applicant/applicant's solicitor must liaise with the solicitor for the respondent prior to the return date to ascertain if the leave application will be contested. If the leave application will not be contested, the applicant/applicant's solicitor must hand in a copy of the Statement of Grounds to the judge in court. If the leave application is contested by the respondent(s), a hearing date will be given, and papers must be lodged in the List Room prior to the hearing, in accordance with item 1 above.
8) Papers are not to be lodged in the List Room for matters listed for mention. If there are papers that the parties wish to bring to the attention of the court, these are to be handed in when the matter is called.
9) The non-jury and judicial review mailbox (nonjuryjudicialreview@courts.ie) should primarily be used to send in terms of orders or to request that certified actions are listed for mention to get a hearing date. The most efficient way of raising queries is to mention your query to the non-jury and judicial review registrar before the list or at the end of the list on Tuesday to Friday inclusive. Most other requests to list matters for mention can be mentioned to the judge at the end of the list on Tuesday.
10) Once the Certificate of Readiness has been filed in the Central Office, please email nonjuryjudicialreview@courts.ie along with a soft copy of the certificate. The action will be listed for mention on the next available Wednesday.
11) Consent applications in the Non-Jury and Judicial Review Lists will be taken by the registrar on Tuesday, Wednesday, and Friday from 10.15am. On Thursdays, consent applications will be taken at the end of the callover of hearings.

WILLS

Bailey, Louise (otherwise Mary Louise Bailey) (née Hannigan) (deceased), late of 4 Old Road, Kilcarn Bridge, Navan, Co Meath, who died on 25 October 2022. Would any person having knowledge of any will made by the above-named deceased please contact Newman Doyle Solicitors by email: smitchell@newmandoyle.ie

Cooney, Mary (deceased), late of 4 Bailean Aoife, Leycesters Lane, Montenotte, Cork, who was born on 30 July 1923 and who died on 3 January 2023. Would any person having knowledge of a will executed by the above-named deceased please contact O'Dowd Solicitors, Crestfield Centre, Glanmire, Cork; email: regina@odowd.ie

Conroy, Breda (deceased), late of 19 Cedarwood Close, Finglas, Dublin 11, who died on 7 October 2023. Would any person or firm having knowledge of the whereabouts of any will made or purported to have been made by the above-named deceased please contact David R Fowler Solicitors, Tramway Cottage, 19 Rathfarnham Road, Terenure, Dublin 6W; tel: 01 490 0020, email: info@davidrfowler.com

Coyne, Oliver (deceased), late of 48 Ginnell Terrace, Mullingar, Co Westmeath, who died on 22 May 2021. Would any person having knowledge of the whereabouts of a will made by the above-named deceased please contact Buckley & Co, Solicitors, 14 St Loman's Terrace, Mullingar, Co Westmeath; tel: 044 934 7655, email: info@buckleyandco.ie

Dunne, Gráinne (deceased), late of 7 The Glen, Glenageary Road Lower, Dun Laoghaire, Co Dublin, formerly of 'Dunoon', Trees Avenue, Mount Merrion, Co Dublin; Wöhlerstrasse 4, 30163 Hannover, Germany; 35 Goatstown Road, Dublin 14; and 10 Proby Square, Blackrock, Co Dublin, who died on 4 July 2023. Would any person having knowledge of the whereabouts of a will made by the above-named deceased please contact Gleeson McGrath Baldwin Solicitors, 29 Anglesea Street, Dublin 2; tel: 01 474 4300, email: solicitors@gmgb.ie

Farrelly, Christine (deceased), late of 347 Kildare Road, Crumlin, Dublin 12, who died on 10 August 2000. Would any person having knowledge of the whereabouts of a will made by the above-named deceased please contact Bourke Solicitors LLP, 167-171 Drimnagh Road, Walkinstown, Dublin 12; tel: 01 456 1155, email: info@bourkesolicitors.com

Feeney, Micheál (deceased), late of Sellerna, Cleggan, Co Galway. Would any person having knowledge of the whereabouts of any will made by the above-named deceased, who died on 29 June 2023 in Stockholm, Sweden, please contact Gwen Bowen, Bowen & Co, Solicitors, Pound Street, Sixmilebridge, Co Clare; tel: 061 713 767, fax: 061 713 642, email: gwen@bowensolicitors.ie

Handibode, Paul (deceased), late of 206 Ballymun Road, Ballymun, Dublin 9, who died on 1 October 2011. Would any person holding or having knowledge of a will made and executed by the above-named deceased please contact McGrady & Co, Solicitors, 28 Drogheda Street, Balbriggan, Co Dublin; DX 96005; tel: 01 841 2966, email: info@mcgrady.ie

Hayes, Michael (deceased), late of 21 Killala Road, Cabra West, Dublin 7, who died on 27 November 2023. Would any person holding or having knowledge of a will made by the above-named deceased please contact Seamus Ennis, French Kenny Solicitors, Unit U, Northside Shopping Centre, Coolock, Dublin 17; tel: 01 874 7652, email: seamus@frenchkenny.ie

Hegarty, John (otherwise Jack) (deceased), late of Shambo, Navan, Co Meath (otherwise Rath Na Riogh, Leighsbrook Lane, Navan, Co Meath), who died on 30 August 2023. Would any person having knowledge of a will executed by the above-named deceased please contact Paul Brady & Co, Solicitors LLP, 3 Railway Street, Navan, Co Meath, tel: 046 902 8011, email: info@paulbradysolicitors.ie

Hurst, Eugene (deceased), late of Kishawanny, Edenderry, Co Offaly, who died on 14 April 2023. Would any person having knowledge of the whereabouts of any will made by the above-named deceased, or the whereabouts of the title deeds relating to the property known as Kishawanny, Edenderry, Co Offaly, R45 H791, please contact O'Shaughnessy Bairead, Solicitors, 1 Fr McWey Street, Edenderry, Co Offaly; DX 158003 Edenderry; tel: 046 973 2315, email: marc@osbsolicitors.ie

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%)
- **Employment/miscellaneous** – €163 (incl VAT at 23%)

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

ALL NOTICES MUST BE PAID FOR PRIOR TO PUBLICATION. ALL NOTICES MUST BE EMAILED TO catherine.kearney@lawsociety.ie and PAYMENT MADE BY ELECTRONIC FUNDS TRANSFER (EFT). The Law Society's EFT details will be supplied following receipt of your email. **Deadline for March 2024 *Gazette*: 9 February 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*.

Kennedy, Martin (deceased), late of 33 Tuscany Downs, Raheny, Dublin 5, and formerly of Abbey Road, Clonmel, Co Tipperary, and 43 Springfield, Silversprings, Clonmel, Co Tipperary, 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 John Shee & Co, Solicitors, 1 Old Waterford Road, Clonmel, Co Tipperary; DX 22010 Clonmel; tel: 052 612 2900, email: admin@johnshee.com

Kinnear, Agnes (née Phelan) (deceased), late of 82 Glenshesk Road, Dublin 9, D09 VF65, who died on 13 March 1989. Would any person having knowledge of the whereabout of any will made by the above-named deceased please contact Gaffney Halligan, Solicitors, 413 Howth Road, Raheny, Dublin 5, tel 01 831 4133, email: mcrawford@gaffneyhalligan.com

Kinnear, Anthony (deceased), late of 82 Glenshesk Road, Dublin 9, D09 VF65, who died on 4 December 2021. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Gaffney Halligan, Solicitors, 413 Howth Road, Raheny, Dublin 5; tel: 01 831 4133, email: mcrawford@gaffneyhalligan.com

Manley, Joseph (deceased), late of 66 St Eithne Road, Cabra, Dublin 7, who passed away on 22 November 2019. Would any person having knowledge of the whereabouts of a will of Joseph Manley please contact Siobhan Purcell, O'Hanrahan Gallogly, Solicitors, 54 Fairview Strand, Dublin 3; tel: 01 836 3106, email: legal@ohgsolicitors.ie

Mooney, John Anthony (deceased), formerly of 7 Raymonds Court, Newbridge, Co Kildare, W12 YE81, and previously of 4 Dodsborough Rd, Doddsborough, Lucan, Co Dublin, K78 R2W0. Would any person having knowledge of the whereabouts of any will made by the above-named deceased, or if any firm is holding same or was in recent contact with the deceased regarding his will, please contact his son, Graham Ó Maonaigh, at 2B Bessboro House, Terenure Road West, Dublin, D6W FY52; tel: 086 838 1556, email: hello@grahamomaonaigh.com

Moran, Molloy Loretta (deceased), late of 44 Blackfort Manor, Castlebar, Co Mayo. Would any person having knowledge of any will executed by above-named deceased, who died on 18 September 2023, please contact Denis M Molloy, Solicitors, Bridge Street, Ballina, Co Mayo; DX 14002 Ballina; tel: 096 70660, email: denismolloylaw@gmail.com

Nika-Terber, Helga (deceased), late of Drumboarty, Letterbarrow, Co Donegal, and Hermann-Hesse-Strasse 14, 71717 Beilstein, Germany, who died on 25 November 2022. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Con O'Leary & Co, Solicitors, 6 The Mall, Leixlip, Co Kildare; tel: 01 424 4820, email: info@conolearyandco.ie

Quirk, Derek (deceased), late of Meadowview, Peamount Hospital, Peamount Road, Newcastle, Co Dublin, who died on 16 February 2023. 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 Malcolm Murphy, Murphy & Co, Solicitors, Abbeyleix, Co Laois; tel: 057 873 1211/873 1592, email: info@murphycosolicitor.ie

TITLE DEEDS

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* – lands comprising Drumcondra House, Blackrock Road, Cork

Any persons having an interest in the freehold or intermediate estates in the above property: take notice that Kurland Properties 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 any superior interest in the property are called upon to furnish evidence of title to the premises to the below named.

In particular, any persons having an interest in a lease for the term of 999 years agreed between the said Joseph Nagle and the said Jonathan Busteed, to run from 29 March 1731; a lease or sublease for the term of 900 years agreed between the said Jonathan Busteed and Timothy Hughes, to run from 29 September 1777; a lease or sublease for the term of 897 years agreed between the said Sir Thomas Deane and George Sherlock, to run from 8 October 1832; a lease or sublease for the term of 897 years agreed between the said Sir Thomas Deane and George Sherlock, to run from 2 November 1832, should provide evidence of their title to the below-named solicitors. Further, any persons having any estate or any interest superior to that of the grantors of the said leases as aforesaid and any of them, and/or the fee simple interest in the above properties, should provide evidence of their title to the below-named solicitors.

In default of any such information being received, the applicant intends to proceed after the expiry of 21 days from the date of this notice with the application before the county registrar for the county of Cork to purchase the fee simple and any intermediate interests in the said properties and for such directions as may be appropriate on the basis that the person or persons entitled to the superior interests, including the freehold interest, in the said property are unknown and unascertained.

Date: 9 February 2023

Signed: O'Donovan Murphy & Partners (solicitors for the applicant), The Quay, Bantry, Co Cork

In the matter of the *Landlord and Tenants Acts 1967-2019* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of the Workshop and Yard at 408 Clonard Road, Kimmage, Dublin 12: an application by John Dunning

Take notice any person having any interest in the freehold estate or any intermediate interest in the property known as the 'Workshop and Yard' at 408 Clonard Road, Kimmage, Dublin 12, which property forms part of a larger property known as 408 Clonard Road, Kimmage, Dublin 12, which was demised by an indenture of lease dated 30 July 1936 made between John Thomas Wilkinson of 44 Brian Avenue, Marino, of the first part and Patrick Brennan of 120 Sundrive Road, Kimmage, of the second part, for the term of 299 years from 1 August 1936 and subject to a yearly rent of £10 thereby reserved, and therein described as a plot or parcel of ground situate at the corner of Poddle Park Road and a new road, in the parish of Crumlin, barony of Uppercross, and county of the city of Dublin, and measuring on the north and south sides, 36 feet, and on the east and west sides 120 feet, together with a premises erected thereon known as Brennan's Shop, Poddle Park Road, which property also forms part of a larger property demised by an indenture of lease dated 31 December 1935 made between Francis Leo Perry of the one part and John Thomas Wilkinson of the other part.

Take notice that John Dunning (the applicant) intends to submit an application to the county registrar for the county/city of Dublin for acquisition of the freehold interest and any intermediate interests in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid premises (or any of them) are called upon to furnish evidence of 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 applicant intends to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the county/city of Dublin for directions as may be appropriate on the basis that the persons beneficially entitled to the superior interest including the freehold reversion in each of the aforesaid premises are unknown or unascertained.

Date: 9 February 2024

Signed: Nelson & Hearst (solicitors for the applicant), Templeogue Village, Dublin 6W

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 the premises known as 'The Old Schoolhouse', Lispatrick Lower, Old Head of Kinsale, in the county of Cork: an application by Rev Patrick Pierse, Rev Joseph O'Reilly and Rev James Browne (the applicants)

Take notice any person having any interest in the freehold estate or any superior leasehold estate of the following property: all that and those the lands, hereditaments, and premises situate in the townland of Kilpatrick Lower, parish of Ringrone, barony of Courceys, and county of Cork, known as 'The Old Schoolhouse', the Old Head of Kinsale, Co Cork, comprised in a lease dated 31 January 1899 and made between Mary Daly and Elizabeth Bolton (the lessors) of the first part, William Daly of the second part, Thomas O'Callaghan, Richard McCarthy, and Sylvester Cotter (the lessees) of the third part, and the Commissioners of National Education of the fourth part, as more particularly described on the map attached thereto whereby the said premises were demised by the lessors unto the lessees for the term of 900 years from 31 January 1899 in consideration of an initial payment of a fine in the sum of £100, 16 shillings (then currency), and thereafter at the yearly rent of one penny (then currency), subject also to the other covenants and conditions set out therein.

Take notice that the applicants, being the persons entitled to the lessees' interest created by the lease, namely Rev Patrick Pierce of Doire na hAbhann, Tickincor Lower, Clonmel, Co Tipperary; Rev Joseph O'Reilly of Clonturk House, Drumcondra, Dublin 9; and Rev James Browne of the Parochial House, Ballyneale, Carrick-on-Suir, Co Tipperary, intend to submit to the county registrar for the county of Cork at Cork Courthouse, Washington Street, in the city and county of Cork, for the acquisition of the freehold interest in the aforesaid premises, and any party asserting that they hold a superior interest, including the freehold reversion in the aforesaid premises (or any of them), are called upon to furnish evidence of title to the applicants' below-named solicitors within 21 days from the date of this notice.

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

Date: 9 February 2023

Signed: Henry Shannon & Co (solicitors for the applicants), Kickham Arch, Davis Road, Clonmel, Co Tipperary.

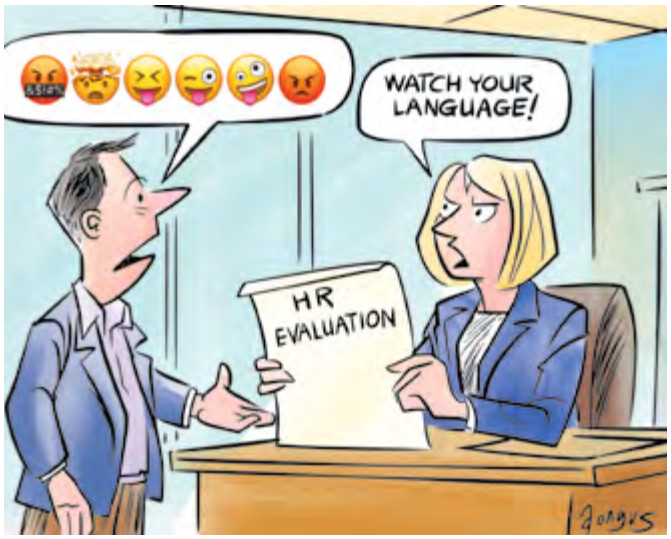
PRO BONOBO

Thank you for sharing

● Apparently, swearing has become more widely acceptable over the past two decades. That's because it is increasingly used for other purposes than to insult people, linguists say.

The Guardian reports that the two most commonly used swearwords in Britain – which we shall not repeat here, but you can take a guess – are generally used to emphasise a point in conversation or to build social bonds, rather than with the specific intent to cause offence.

We look forward to trying this out at our next HR evaluation.



'Flamin' Nora!' – spicy snacks spark safety complaint

● A 'Flamin' Hot' seasoning for Doritos and Cheetos snacks has sparked a workplace safety complaint in Australia, RTÉ reports.

Workers at the Smith's Snackfood Company factory in Adelaide say that the spicy seasoning is causing sneezing, coughing, eye and skin irritation, and even "difficulty breathing", according to a report by the United Workers Union.

A "seasoning machine" disperses the ingredient across the factory every couple of weeks, the union said in a complaint this month to the regulator, which is currently considering the complaint.

The union said it had interviewed 13 workers on one shift, 11 of whom reported ill effects.

Raising the bar on Colombian wreck

● The Colombian government has announced that it will attempt to raise objects from the 1708 shipwreck of the galleon *San José*, which is believed to contain a cargo worth billions of dollars, *The Guardian* reports.

The 300-year-old wreck, often called the "holy grail of shipwrecks", has been controversial, because it is both an archaeological and economic treasure. The ship is believed to hold 11 million gold and silver coins, emeralds, and other precious cargo from Spanish-controlled colonies.

Culture minister Juan David Correa said that the first attempts will be made between April and May, depending on ocean conditions in the Caribbean. He pledged it would be a scientific expedition: "This is an archaeological wreck, not a treasure. This is an opportunity for us to become a country at the forefront of underwater archaeological research."

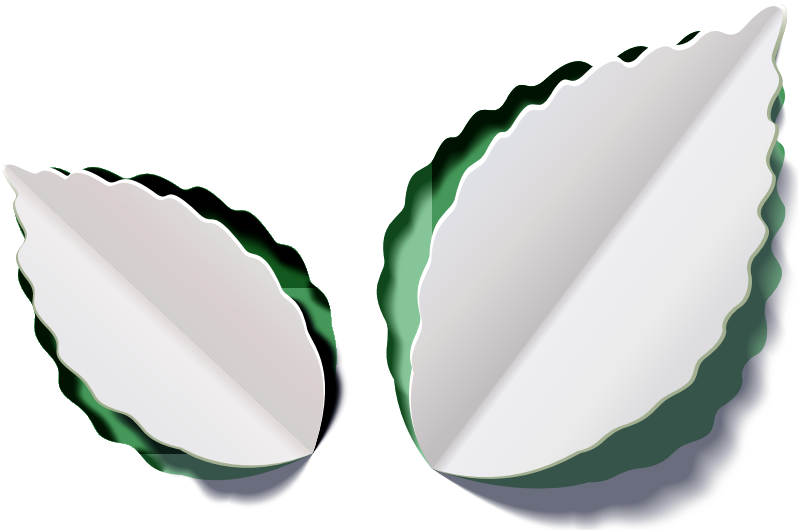
Jack-o'-lantern sheds light on Reese's pieces

● A Florida woman is suing chocolate manufacturer Hershey for "false representation", according to npr.com.

The woman says that she bought the company's "cute looking" Peanut Butter Pumpkins with a jack-o'-lantern wrapping in October, believing that the candy in question would match the picture. Alas, she was disappointed.

"This is a class action against Hershey for falsely representing several Reese's Peanut Butter products as containing explicit carved-out artistic designs when there are no such carvings in the actual products," the lawsuit states.

Cynthia Kelly is seeking at least $5 million in damages. And her lawyer is no stranger to the auld hyperbolics: "Today, it's a $2 item – tomorrow, it's your vehicle; the next day it's your home," Antony Russo said. "It could be your life savings or your nest egg that you're saving for your retirement. It could be anything if it is not kept under control." g



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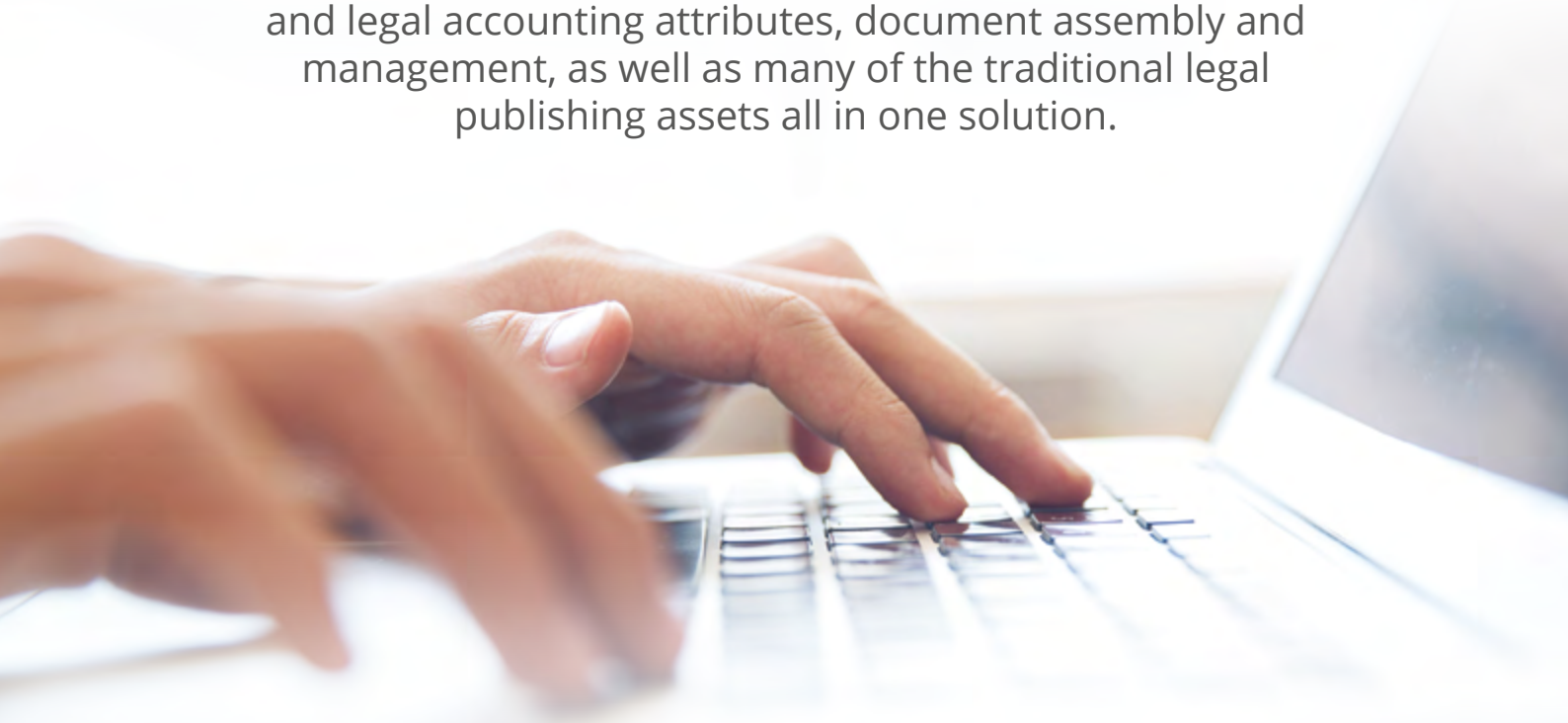

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