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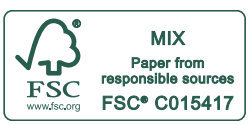


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## FEATURES



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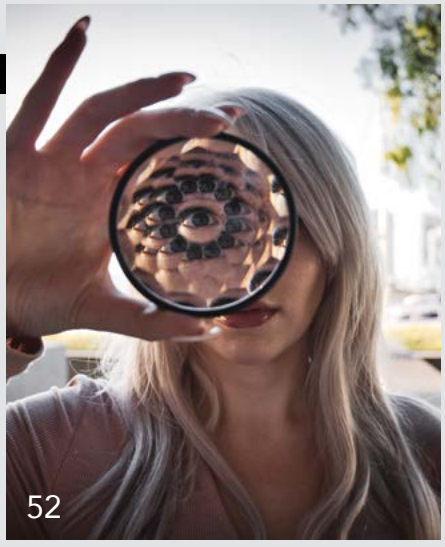



# Supporting small practices

As we know, the sustainability of small practices nationwide is key to ensuring access to justice for all, but they are finding it increasingly difficult to compete, particularly in regional areas.

I also recognise that, while some issues may vary, it is likely that we share some common challenges with other jurisdictions. For these reasons, I am delighted to announce that we have agreed with the law societies of England and Wales, Northern Ireland, and Scotland to set up a collaborative group for sharing best practice and developments, so that current and future members in smaller practices can be supported. I will keep you posted on developments.

## AI and the rule of law

I attended the European Presidents' Conference in February, which was hosted by the Austrian Bar Association. It was a unique opportunity to meet with leaders from Europe's legal organisations, the judiciary, politics, and universities from 40 countries.

This annual conference has a reputation for discussing the current issues related to the rule of law and fundamental rights, and the 2024 theme was on artificial intelligence (AI). Having heard from a range of speakers on this hot topic, including lawyers, a journalist and university professors, I came away with the clear message that AI is improving and is here to stay. As lawyers, we need to learn to embrace it. AI will not do away with the need for lawyers, but it may do away with lawyers who don't learn how to deal with it. This is a topic that the Law Society is studying closely, with a view to providing support to practitioners on the potential pitfalls, but also recognising that AI will present opportunities to help us work better.

## Proactive representation

The Law Society has been continuing to proactively represent the profession in the justice-and-law-reform space, which is at the centre of everything we do.

Following its submission in January on the general scheme of the *Garda Síochána (Recording Devices) (Amendment) Bill 2023*, director general Mark Garrett and Criminal Law Committee member Aimée McCumiskey attended the Joint Oireachtas Committee on Justice on 13 February. They shared some of the Law Society's reservations about the legislation. Weaknesses in terms of privacy, data protection, the right to non-discrimination, and the right to a fair trial, as well as concerns about biometric identification, with a recommendation for judicial oversight, were just some of the issues flagged at the hearing.

Other recent submissions dealt with reform of the Coroner Service, and third-party funding in response to the Law Reform Commission, which could prove to be a transformative area for litigation in Ireland and allow greater access to justice.

You may have seen coverage in the media of the Justice and Law Reform Forum hosted by the Law Society, which I opened on 1 February last and which discussed the upcoming family and care referendums. With speakers from both sides of the campaign, including Minister Roderic O'Gorman, it led to a lively and informative debate on the issues, expertly moderated by director general Mark Garrett. The Law Society's Justice and Law Reform Series provides us with the opportunity to facilitate discussion and contribute to the national conversation on important matters in the public interest.

## More inclusive legal sector

Gender equality, diversity, and inclusion (GEDI) has an impact on everything we do in our workplaces. The Law Society set up a charter in 2020 to invite firms to commit to taking the necessary steps to promote GEDI in our profession by signing this charter.

In line with this policy, I am happy to say that I have signed the pledge on behalf of the Law Society to become an ally of the disAbility Legal Network, so we can continue to work towards a more inclusive legal sector.

LAW SOCIETY OF IRELAND

> AI WILL NOT DO AWAY WITH THE NEED FOR LAWYERS

BARRY MacCARTHY,
PRESIDENT

# THE BIG PICTURE

## FLOSSING BEAVER

"I can't get enough of beavers. They're just so dam cute!" This image, titled 'Flossing beavers', was taken by Jorn Vangoidtsenhoven and was a finalist in the Comedy Wildlife Photography Awards 2023

PIC: JORN VANGOIDTSENHOVEN, COMEDY WILDLIFE PHOTOGRAPHY AWARDS 2023

# Annual dinner welcomes special guests

At the Law Society's Annual Dinner on 22 September 2023 were (l to r): Barry MacCarthy, Maura Derivan (then president), Mairead McGuinness (EU Commissioner), and Mark Garrett (director general)

Paddy Derivan and Maura Derivan

Judge Eugene O'Kelly, Ms Justice Marguerite Bolger, and Sara Phelan SC (Chair of the Bar of Ireland)

Attorney General Rossa Fanning, Ms Justice Eileen Roberts, and Eamonn Conlon SC

Frances Fitzgerald (MEP) and Maura Derivan

Lieutenant General Seán Clancy (Defence Forces Chief of Staff) and Maura Derivan

Emma Meagher-Neville (president, SLA) and Maura Derivan

PICS: CIAN REDMOND

Charlie Flanagan TD and Maura Derivan

Ms Justice Patricia Ryan and Maura Derivan

Mr Justice Gerard Hogan (Supreme Court) and Maura Derivan


Images of the first 100 female solicitors were projected onto the walls of the Presidents' Hall to mark the centenary of women in the profession

Diane McGiffen (CEO, Law Society of Scotland), Sheila Webster (president, Law Society of Scotland), Maura Derivan (then president, Law Society of Ireland), and Ken Dalling (past-president, Law Society of Scotland)

Michele O'Boyle (past-president), Maura Derivan (then president), and Geraldine Clarke (past-president)

Maura Derivan delivers her speech at the annual dinner at Blackhall Place

Brian Archer (president, Law Society of Northern Ireland) and Maura Derivan

# Having a ball at Clontarf Castle!

The Education Centre's PPC Connect Committee organised a highly successful Christmas Ball at the Clontarf Castle Hotel on 28 November 2023: Sarah O'Flynn, Ross Deegan, and Omone Ayaya

Fearghal Heffernan, Jack Gannon, Rory Langan, and Shane O'Hanlon

Natalie Vernon in conversation with a friend

Eleanor Brennan, Niall Quinlan, and Adam Scanlon

Clara Burlacu, Mark Gilsenan, and Kitty Ryan

Rebecca Burke and Emma McGuire

Robbie O'Leary and Ruairi McCabe

PICS: CIAN REDMOND

Aaron Rock, Eleanor Brennan, Aoife Duggan McSweeney, Sarah Jane Hackett, and John Healy

Niall Quinlan, Sean Kelly, and Roisin O'Donoghue

Jack Magee and Eva Glynn

Sean Kennedy and Adam O'Shea

Sarah O'Flynn, Sarah White, and Lucy McCarthy

Luke Haugh, Elizabeth Ring, and Rebecca Talbot

Thomas Martin and Sophie Goulding

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# Diploma Centre 2023 conferrals

PICS: CIAN REDMOND

Attending the 20 November 2023 conferral ceremony were Richard Hammond SC (chair, Education Committee), Judge Catherine Hayden, Sandra Meade (vice-chair, STEP Ireland), Judge Shalom Binchy, and Mr Justice Liam Kennedy

Aisling Pearse (prizewinner, Diploma in Regulation Law and Practice) and Mr Justice Barry O'Donnell

Diploma in Trust and Estate Planning conferees Patrick O'Driscoll and Jacinta Lynch

Diploma in Law conferee Jude Chukwu Ikerionwu with family members

Diploma in Healthcare conferee Gillian Morrison with her mother Teresa

Diploma in Aviation Leasing and Finance conferees Lester Almojuela and Sultan Asiri

Attendees at the 23 November event

Diploma in Aviation Leasing and Finance conferee Koki Nakada with Maria McElhinney (partner, A&L Goodbody)

Roisin O'Brien (prizewinner, Diploma in Employment Law) with Ms Justice Bronagh O'Hanlon (retired judge of the High Court)

Conferees and guests at the conferral event on 20 November

# DG flags concerns to Oireachtas committee

● Law Society director general Mark Garrett told a hearing of the Oireachtas Joint Committee on Justice on 13 February that several possible weaknesses had been identified in the *Garda Síochána (Recording Devices) (Amendment) Bill 2023*.

Joined at the hearing by Aimée McCumiskey of the Criminal Law Committee (who is a partner at MacGuill & Company Solicitors), the director general said that the Law Society was sharing its views on the bill in a spirit of constructive and positive civic engagement, given the strong feelings the proposed legislation had aroused.

## Frontline solicitors

Mr Garrett said that solicitors working on the frontline of the justice system knew that law enforcement needed the tools and technology to deter and detect crime. Solicitors were also very much attuned to the need to respect, protect, and enforce the rights and civil liberties of individuals, he added.

He outlined the bill's potential weaknesses, as set out in a Law Society submission made to the committee last month, which included concerns about privacy rights, data protection, non-discrimination, and the right to a fair trial.

For these reasons, the Law Society believes that further tests of necessity and proportionality are required for the introduction of biometric identification in the Irish context. Stronger safeguards and oversight relating to the use of biometric ID may also be warranted, as well as external monitoring of its use

## Biometric concerns

The director general set out concerns that, although the general scheme of the bill excluded gathering data on physical features, such as height or build, it should be made more explicit that the legislation would apply only to facial images.

He added that, while the bill permitted the gardaí to process and store images legally provided by other national or international organisations, it should name these bodies specifically. The bill should also place an onus on gardaí to use only images legally obtained by outside organisations to avoid tainting the process and, thereby, failing in attempts to secure convictions, the director general said.

More clarity was needed on the criteria senior gardaí would use to assess whether the use of biometric identification was both necessary and proportionate, Mark Garrett said.

# Ex-solicitor jailed for five-and-a-half years

● Former solicitor Michael Lynn has been jailed for five and a half years, having been found guilty of stealing just over €18 million from six financial institutions during the 'Celtic Tiger' era.

Sentencing Lynn on 19 February, Judge Martin Nolan set a sentence of 13 years and gave Lynn seven-and-a-half years' credit for the time he had spent in prison in Brazil, which the judge described as "onerous", though he noted: "To some degree, he could have resolved his difficulties by agreeing to come home."

Lynn and his wife Brid Murphy, who was in court for the sentence, made no visible reaction when the sentence was handed down.

Lynn (55) was found guilty by a jury of ten of the 21 counts against him following a Dublin Circuit Criminal Court trial last year. The jury was unable to agree on the remaining 11 counts before the court.

## Second trial

It was the second trial in the case, after the jury in his first trial – which ran for 16 weeks in 2022 – was unable to agree on any verdicts.

Lynn, of Millbrook Court, Redcross, Co Wicklow, had pleaded not guilty to 21 counts of theft in Dublin between 23 October 2006 and 20 April 2007, when he was working as a solicitor and property developer.

He has no previous convictions and has been in custody since he was convicted of the ten counts just before Christmas. He was extradited from Brazil in 2018 after spending four and a half years in a "hellhole" prison there.

The court heard that Lynn had obtained multiple mortgages on the same properties in a situation where banks were unaware that other institutions were also providing finance. These properties included 'Glenlion', Lynn's €5.5 million home in Howth, and multiple investment properties.

## Jury verdicts

The financial institutions Lynn was found guilty of stealing from were National Irish Bank, Irish Life and Permanent, Ulster Bank, ACCBank, Bank of Scotland Ireland, and Irish Nationwide Building Society.

The jury was unable to reach a verdict on the single count relating to the Bank of Ireland, which had alleged that €2.7 million had been stolen from it. It was also unable to reach verdicts on ten counts in relation to Irish Nationwide, from which Lynn was accused of stealing €7.4 million. He was convicted on a single count of stealing €508,000 from that institution.

When Lynn took the stand, he told his trial that the banks were aware he had multiple loans on the same properties, and that this was custom and practice among bankers in Celtic Tiger Ireland.

After the sentence was handed down, the court heard that an application would be made for the confiscation of assets pertaining to Lynn, in the form of "real properties and bank accounts". This matter was set down for mention on 16 April.

# Justice Roberts joins LRC

Ms Justice Eileen Roberts

**● The Government has appointed Ms Justice Eileen Roberts as a member of the Law Reform Commission.**

**Ms Justice Roberts, who will serve in a part-time capacity, is a graduate of Trinity College Dublin and was admitted to the Roll of Solicitors in 1991. She worked as a solicitor with A&L Goodbody, specialising in commercial litigation, and became head of litigation and chair of the firm.**

**Ms Justice Roberts was appointed as a judge of the High Court in July 2022. She sat in the chancery division, before being assigned to the Commercial Court in October 2023.**

**She will be replacing Ms Justice Niamh Hyland, a commissioner since May 2021, who will step down in February.**

**The commission's president, former Chief Justice Frank Clarke, welcomed the appointment, stating that Ms Justice Roberts' experience in commercial law would be of great benefit to the commission in its work programme.**

# ENDANGERED LAWYERS

**On 19 January, it was reported that the well-known Kurdish lawyer and women's rights activist Golaleh Vatandoost was sentenced to six years, seven months, and 20 days in prison by the judicial system of the Islamic Republic of Iran.**

**According to a report obtained by the Hengaw Organisation for Human Rights, Vatandoost faced charges such as "propaganda against the regime", "action against national security", and "membership in opposition groups". She was sentenced at the end of September last year. The sentence has been referred to the Court of Appeal of Kurdistan (Sanandaj) Province for review.**

**Vatandoost was arrested on 3 October 2022 during the Jin, Jiyan, Azadi (Woman, Life, Freedom) movement by security agencies in Sanandaj city. After some time, she was released on bail. She reportedly endured numerous summonses, interrogations, and threats from security agencies in recent years. As a lawyer and activist, she was actively engaged in promoting women's and children's rights and was working to establish an organisation to focus on women's rights.**

**The UN Special Rapporteur on the situation of human rights in Iran, in a report published in January 2022, noted that lawyers in Iran face an unpredictable and repressive environment. Golaleh Vatandoost is one of many Iranian lawyers who continue to advocate for justice despite facing legal challenges due to their activism.**

**The 'Day of the Endangered Lawyer' was marked internationally on 24 January, and this year focused on the situation of lawyers in Iran (population 90 million). The 'Lawyers for Lawyers' website recently summarised the situation: "The situation of Iranian lawyers today is extremely dire. Iranian law undermines the independence of the legal profession through restrictive procedures that prevent the issuance of lawyers' licences and by allowing the government to conduct background checks on lawyers who stand as candidates for the Iranian Bar Association. Iranian law also restricts the right to have a lawyer of one's choice, as well as the right to have adequate time to consult with one's lawyer, including for those facing the most serious punishments. In practice, there are also interferences with the principle of lawyer/client confidentiality. The control of the Supreme Leader over the judiciary and the appointment process for judges contravenes international law, as well as impacts lawyers' professional activities."**

*Alma Clissmann is a retired member of the Law Society's Human Rights and Equality Committee.*

# Law Society team wins major mediation prize


**Clíodhna McHugh (Arthur Cox), Eoin Doyle (A&L Goodbody), and Aoife O'Carroll (Arthur Cox)**

A team of three Professional Practice Course students took the crown for Ireland by winning the International Chamber of Commerce's (ICC) International Mediation Competition in Paris.

The Law Society team comprised Aoife O'Carroll (Arthur Cox), Eoin Doyle (A&L Goodbody) and Clíodhna McHugh (Arthur Cox), and was coached by course manager John Lunney.

The week-long competition involved 48 teams from 31 countries.

This was the 19th year of the competition, which is the largest and most prestigious student-mediation competition in the world. A recording of the final round can be viewed on Youtube.com

# Library adds AI to its subject guides

The Law Society Library is to add artificial intelligence to the list of subject guides currently available.

The library launched its guides last year to highlight subject-specific resources and information in different areas of law. The publication of the AI guide was planned for 29 February through the weekly LawWatch library newsletter. The subject guides currently available are conveyancing; employment; probate, wills and succession; family and child law; environmental and planning; criminal law; and in-house lawyers.

The library describes these guides as an excellent starting point for users wishing to improve their knowledge of a legal subject, or those seeking to access recommended resources in their particular areas of practice. Members and students can access relevant precedents, practice notes, books, e-books, journal articles, case law, and legislation via the subject guides.

# CnaM centre opens as DSA era begins

Jeremy Godfrey, executive chair of Coimisiún na Meán

The body that regulates broadcasters and online media has opened a contact centre to provide users of online services with advice on their rights under new EU rules.

The EU's *Digital Services Act* (DSA) came fully into force in Ireland and across the EU on 17 February. Coimisiún na Meán (CnaM) has welcomed the imminent application of the DSA, which sets out new rules for how online services deal with illegal content or apply their own rules.

The watchdog says that the DSA, the *Online Safety and Media Regulation Act 2022*, and the EU *Terrorist Content Online Regulation* will coalesce to form its overall online safety framework. The framework is aimed at making digital services accountable for how they protect people, especially children, from harm online.

Executive chair Jeremy Godfrey said: "We will enforce the DSA, so that platforms are accountable for protecting users online, minimising children's exposure to harmful content and upholding fundamental rights – including freedom of expression."

CnaM is responsible for regulating services that have their EU headquarters in Ireland, and the European Commission plays a role in overseeing the largest platforms and search engines.



# IRLI IN AFRICA

Ms Justice Mary Rose Gearty, Ms Justice Aileen Donnelly, Judge Geoffrey Miller KC, and Anne-Marie Blaney at the IJA in Lushoto, Tanzania

**Irish Rule of Law (IRLI) is a collaborative effort of the Law Society of Ireland, the Bar of Ireland, the Law Society of Northern Ireland, and the Bar of Northern Ireland. With the backing of the Department of Foreign Affairs, it aims to advance the principles of human rights and the rule of law across various countries, including Malawi, Zambia, and Tanzania.**

**In Tanzania, IRLI's programme is centred on institutional partnership-building within the criminal justice systems of Ireland, Northern Ireland, and Tanzania. At the moment, there is a strong emphasis on policing and judicial relationships, with a particular focus on the promotion of victim-centric approaches in the handling of child sexual-abuse cases.**

**As part of this work, we recently facilitated a visit of the judiciary from Ireland and Northern Ireland to Tanzania. Ms Justice Aileen Donnelly (Supreme Court), Ms Justice Mary Rose Gearty (High Court), and Judge Geoffrey Miller KC (Northern Ireland Crown Court) travelled to deliver a 'training of trainers' programme on the subject of avoiding re-traumatisation to judicial counterparts at the Institute of Judicial Administration in Lushoto.**

**The training was a great success, with 17 judges, registrars, and resident magistrates completing the programme. The Institute of Judicial Administration now plans to deliver 'cascade training' on the same important theme across Tanzania. It is hoped that this will help improve court management of child sexual-abuse cases in a victim-centric manner, and provide improved access to justice for victims and survivors of child sexual abuse and gender-based violence more broadly.**

**The training would not have been possible without the support of the Irish Embassy in Tanzania, as well as the Irish and Northern Irish judges who shared their time and expertise so freely. We also bear a debt of gratitude to Women in Law and Development in Africa (WiLDAF), for its support in highlighting the victim's perspective. Through the training, our relationship with our Tanzanian colleagues – and the IJA in particular – has been strengthened, and we look forward to extending it as a key part of our work across 2024.**

*Anne-Marie Blaney is programme manager, Tanzania and Zambia, Irish Rule of Law International.*

# ‘Time for working groups and reports is over’

A report by the Office of the Inspector of Prisons has found that the treatment needs of mentally-ill prisoners are not currently being met, and that their safety and dignity are not being respected.

The report has called for closer cooperation between the Department of Justice and the Department of Health to tackle what it describes as “the fundamental issues” identified in the report.

*Thematic Inspection: An Evaluation of the Provision of Psychiatric Care in the Irish Prison System* is based on an inspection carried out at seven prisons during February and March 2023. It was submitted to the Minister for Justice last August.

The report finds low – “sometimes critically low” – numbers of specialist mental-healthcare staff in the prison system. It calls for urgent action to improve access to psychiatrists, specialist mental-health nurses, psychologists, occupational-therapy staff, and other relevant staff.

The report also recommends more training for prison officers, and a wider system of staff supervision and support.

Overall, the report finds a “long-standing under-resourcing” of mental-healthcare services in prison, “as well as an apparent lack of consistent system-wide political will, prioritisation, accountability, and governmental drive to fundamentally address the relevant failings effectively and assertively”.

The report states: “The time for working groups and reports alone must draw to a close; action is now required.”

The Irish Prison Service developed an action plan last August in response to the report. It has accepted all of its recommendations that fall within its scope, but adds that others are the responsibility of the Department of Health.

# Return of the run

● The Calcutta Run will take place on Saturday 25 May at Blackhall Place. The organisers hope to see as many members of the profession as possible, running or walking to raise vital funds to support those experiencing homelessness. So save the date, spread the word among friends, family and colleagues, and get training!

The run will be followed by the infamous Finish Line Festival, with food, music, kids' zone, and more.

Over 1,500 participants took part in 2023 across a suite of events, including the Dublin and Cork runs, golf and tag rugby, collectively raising an incredible €300,000. The Law Society team and Calcutta Run Committee are planning to deliver an even better series of events in 2024 and to surpass last year's achievements.

None of this would have been possible without the fantastic fundraising efforts of firms, solicitors and trainees, our valued sponsors, and the hard work and dedication of over 200 volunteers and staff, to whom the organisers expressed their thanks.

## Tag rugby fundraiser

The Calcutta Run Tag Rugby Fundraiser will return to Blackhall Place and TUD. No tag experience is required and the event is open to all legal practitioners across the country. On the day, there will be food, drinks, and music – with some fun and friendly competitive tag rugby on the side.

After two incredibly successful events in 2022 and 2023, the Calcutta Run Golf Classic tournament will also return in 2024 – the organisers hope to see as many law firms as possible getting involved and entering teams.

The Cork Calcutta Run also returns in 2024 and provides a convenient opportunity for solicitors in the south of the country to get involved.

# Diploma course shortlisted

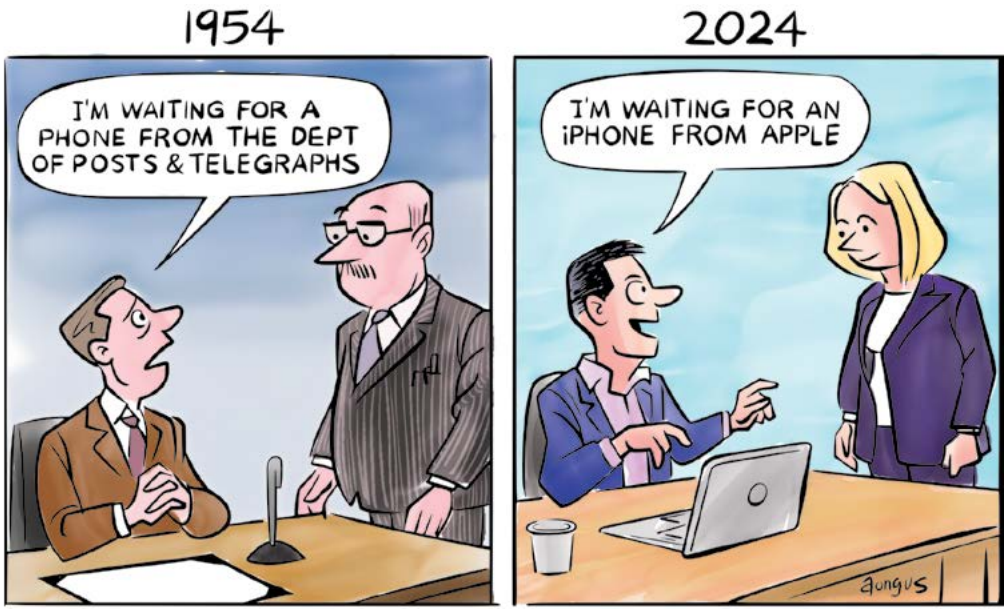
● A course run by the Law Society's Diploma Centre has been chosen as a finalist in the ICE (Irish Construction Excellence) 2024 Awards.

The Diploma in Construction Law is among four courses chosen in the 'Best Third Level Course or CPD' category. The winners will be announced at an event in the Convention Centre Dublin on 24 May.

The Diploma Centre will offer the Diploma in Construction Law again in autumn 2024. Details will appear on the centre's webpage shortly.

# Seán celebrates platinum jubilee

*Cormac Ó Ceallaigh, Cormac Ó Ceallaigh & Co, North Circular Road, Phibsborough, Dublin 7*




● Congratulations to my father, who celebrates 70 years qualified and practising as a solicitor this year (in more recent years as a consultant), having qualified in Trinity term 1954. He was a keen debater and won many medals for Irish and English debating with the Solicitors' Apprentices' Debating Society of Ireland (SADSI).

He won the silver medal in the preliminary exam. The gold medal was won by his friend Paul Callan SC who, at the time, was training to be a solicitor before he switched to the Bar. (Goodness! How barren our jurisprudence would be had Paul continued as a solicitor! We would have had no *Crotty v Ireland*, *Coughlan v Ireland*, nor *McKenna v Ireland*, to name just a few.)

He did his BA and LLB in UCD, which was in Earlsfort Terrace at that time, and remembers getting the bus out to the countryside that was then Belfield. He did his apprenticeship with his uncle Martin Kelly of Fitzgerald & Kelly in Kilkenny, before establishing his own practice in Phibsborough, Dublin.

There have been big changes since 1954 – there were only four High Court judges when he qualified, as against 51 today. He can only recall one female during his time in SADSI, and only a handful of female solicitors. Today, the majority of the profession is female.

When he started in Phibsborough in 1957, he had no phone for some time, and clients would call a phone in the shop across the road. The lady who owned the shop used to cross the road to inform him he had a phone call. I believe she became one of his first clients after getting knocked down while crossing the road!

My father is no relation to Sean T Ó Ceallaigh (who served as the second President of Ireland from 1945-59) – many people ask. But my mother, who came first in Ireland in Irish shorthand, got a job as a secretary to Sean T Ó Ceallaigh and was based in Áras an Úachtaráin. She ended up meeting and marrying a different Seán Ó Ceallaigh! My father got a motion passed at one of the Law Society's AGMs seeking to have the Irish language used more in Law Society matters.

Much has changed in 70 years. My father never used a calculator, and I can still see him doing VAT calculations in his head and totting them up on a page. I have learned a lot from my father. For him, it has always been about the clients and seeking to look after them, get them justice, and go the extra mile.

The vicissitudes of life have been many, but my father's philosophy and approach is best summed up in the words of the prophet Amos: "… but let justice roll down like waters. And righteousness, like an ever-flowing stream." (*Amos* 5:24)

# Warm thanks for celebration of Nuala's life

*Fiona Hoey, (née Redmond), Rochestown, Cork*

● I want to thank everyone who was involved with the preparations for my sister Nuala's funeral on Saturday 10 February. Please pass on my heartfelt thanks to all. There aren't enough words to express just what it meant to us – Nuala's family – that the celebration of her life took place at the Law Society. It was very special to bring Nuala back to the place and people she loved. Indeed, the whole day was very healing to our broken hearts. Nuala would have loved the idea of it! It meant so, so much to her son Cian, too.

Flying the flag at half-mast was so respectful and took our breath away when we learned of it. Thank you for providing the space for us all afterwards too. Everyone at the Law Society has been so generous and kind, both to us and to Nuala, during the past eight months following her cancer diagnosis. She spoke so often of you all. g

# 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.**

# Women leading women

In celebration of International Women's Day on 8 March, we welcome the opportunity to highlight the talented and inspiring women taking part in the Law Society's 'Women in Leadership' mentoring programme. This member service programme was established in collaboration with Law Society Skillnet to empower and support women in the legal profession seeking to advance their careers to a senior level.

The programme matches mentors and mentees based on key criteria, and is designed to allow participants to share learning and distinctive experiences in a structured environment over an eight-month period from October to May. Mentees may have concerns about how to progress to their next role, may need help to develop a new skill that they find difficult, or simply require guidance while navigating these changing times. Mentors share their experience and knowledge in a structured setting. They have found it to be an extremely rewarding experience and a great way to give back to others in the legal profession.

## First-hand view

Aoife McNicholl is a mentee on the Law Society's Women in Leadership Programme and a senior associate in a criminal-defence law firm. She is also the chair of the Irish Women Lawyers' Association. She shares her views on the programme below.

*What motivated you to take part in the programme?*
"I saw it as a fantastic opportunity to learn from an experienced woman lawyer working in my area of practice, and to gain really valuable advice from a woman who has gone before me and faced similar challenges."

*How have you found being part of a group of leading female lawyers?*
"Really powerful and inspiring. In particular, I get great confidence from my mentor – knowing that another woman, who is exceptionally talented and wise, faces similar issues helps me keep perspective and gives me confidence."

*Any insights or guidance that you found important?*
"Reflection is important! If in doubt, take a break."

*Has the relationship with your mentor shaped your perspective of yourself as a leader?*
"That is a work in progress! It is certainly true that, if you see it, you believe you can be it. With my mentor's assistance, I am working to develop leadership skills and the confidence to back myself as a leader."

*How has the programme influenced your professional/personal practice?*
"I have been given some very practical guidance on how to manage workload and approach difficult situations."

## Professional support

We remind Law Society members, PC holders, and post-PPC trainees of the professional and wellbeing support available via LegalMind – an independent and subsidised psychotherapy service designed to support the specific needs of solicitors. Find full details at lawsociety.ie/legalmind.

If you are interested in learning more about the Women in Leadership programme, email Shane Farrell at memberservices@lawsociety.ie. Applications for the 2024 programme, which opens from April, as well as full details of the programme, can be found at lawsociety.ie/member-services/professional-personal-support/careers/women-in-leadership. g

*Confidential, independent, and subsidised support is available through LegalMind for legal professionals. All enquiries to LegalMind are fully confidential to the Clanwilliam Institute (the Law Society's partner providers). All therapy sessions are conducted by highly trained professionals in a confidential forum. Email: reception@clanwilliam.ie; tel: 01 205 5010 (9am to 5pm, Monday to Friday); web: lawsociety.ie/legalmind.*

# Win/win

**Mediation is a way of ending litigation privately, more quickly, and at far less cost – both in terms of money and stress – than litigating the dispute to the point of either winning or losing. Michael Peart encourages solicitors to get up to speed on their obligations in this regard**

MEDIATION IS A WAY OF ENDING THE LITIGATION PRIVATELY, MORE QUICKLY, AND AT FAR LESS COST, BOTH IN TERMS OF MONEY AND STRESS, THAN LITIGATING THE DISPUTE TO THE POINT OF EITHER WINNING OR LOSING

The distinguished mediator, speaker, author, and expert on all aspects of mediation, Kenneth Cloke, states in one of his many books, *The Dance of Opposites*: "A greater victory is achieved when it ends in nobody's defeat."

This is absolutely true in the context of mediation, and it is what a settlement achieved through mediation can offer.

Mediation should not be seen as an alternative to litigation. In truth, they are complementary. Mediation is a way of ending the litigation privately, more quickly, and at far less cost, both in terms of money and stress, than litigating the dispute to the point of either winning or losing.

There are many reasons why a party may feel that it must commence court proceedings, and yet retain the hope that both parties will agree to mediate at some later stage. It may, for example, be the type of dispute where expert reports must first be obtained before any attempt at settling the claim can be responsibly undertaken. In such a case, a plaintiff must issue the proceedings in order to ensure that the limitation period for issuing proceedings under the *Statute of Limitations 1957* does not expire.

Nothing is lost in such circumstances by issuing the proceedings and postponing any decision on whether to try and settle matters through mediation. It must also be borne in mind that, if mediation takes place at some stage after commencement of proceedings, it will always be without prejudice to the litigation.

If the parties agree to mediation but it fails to result in a settlement of the claim, the parties can continue with the litigation, and everything that has occurred at mediation remains confidential and cannot be disclosed or otherwise deployed in court. Mediation is without prejudice to the litigation.

## Mediation mainstream

While mediation has been around for many decades in one form or another as a means of trying to achieve a consensual settlement, it is something that occurred quietly, behind the scenes. The success of mediation has been more widely recognised over the last ten years. Judges have been heard to encourage parties to go to mediation rather than fight it out in court. Court time is a scarce resource, and it makes sense that judges would try and preserve it for cases that really need a full hearing.

During the COVID-19 pandemic, when the courts were closed, mediation became a real option for clients seeking finality in their disputes. These mediations took place in person, provided that the necessary precautions were taken, or through virtual platforms such as Teams and Zoom.

Since the end of the pandemic, in-person mediations have continued to be a popular and successful way to try and bring litigation to an end. It is speedy, cost-effective, and confidential. The vast majority of mediations are successful. I ask, rhetorically, why would a party choose to unnecessarily spend perhaps three precious years of their life in the litigation process, where perhaps the same dispute could be concluded by agreement in, say, six months, and at far lower cost?

PIC: SHUTTERSTOCK

## Six years on

The Minister for Justice commenced the *Mediation Act 2017* on 1 January 2018. This act moves mediation to centre-stage as a means of alternative dispute resolution. It recognises its unique qualities in assisting parties in dispute to resolving their disputes without having to incur the unnecessary costs and delay in going to court. It recognises that mediation can lead to better outcomes for both parties than does litigation, where, for the most part, there can only be winners and losers. Certain provisions of the act should be noted.

Section 2 defines mediation as "a confidential, facilitative and voluntary process in which the parties to a dispute, with the assistance of a mediator, attempt to reach a mutually acceptable agreement to resolve the dispute".

It is worth noting with some emphasis that the definition makes clear that it is the parties themselves who resolve their dispute, albeit with assistance from the mediator. In other words, at the end of the day, it is the parties who are in control of the process, unlike in a court, where the judge controls the process and imposes a result on the parties. Indeed, section 6(9) is very specific in this respect: "It is for the parties to determine the outcome of the mediation."

GIVEN THE MANDATORY REQUIREMENT NOW UPON SOLICITORS TO ADVISE THEIR CLIENTS IN ADVANCE OF THE COMMENCEMENT OF ANY PROCEEDINGS OF THE BENEFITS OF MEDIATION, SOLICITORS THEMSELVES NEED TO BE AWARE OF THE BENEFITS OF MEDIATION

Section 6 emphasises the voluntary nature of mediation and provides that it can be resorted to at any point – even after court proceedings have been commenced. The voluntary nature of mediation is underpinned by section 6(2), which provides that either party may withdraw from the mediation at any stage, be accompanied by any person,

LITIGATION IS A PROCESS ONE ENTERS AS A PIG AND EMERGES AS A SAUSAGE

including a lawyer, or obtain independent legal advice at any time during the mediation. It is worth noting, also, that section 6(6) requires both the mediator and the parties to make every reasonable effort to conclude the mediation "in an expeditious manner which is likely to minimise costs".

Section 14(1) of the act is, perhaps, the most important section that solicitors in particular should be aware of, and ensure it has been complied with, before any proceedings are commenced. It is mandatory in its terms. Briefly summarised, section 14(1) requires that, prior to the commencement of court proceedings, the solicitor acting *shall* do the following:

1) Advise the client to consider mediation as a means of resolving the dispute,
2) Provide the client with information in respect of mediation, including the names and addresses of mediators,
3) Provide the client with information about:
   - The advantages of resolving the dispute other than by court proceedings, and
   - The benefits of mediation,
4) Advise the client that mediation is voluntary,
5) Inform the client that, if court proceedings are to be commenced, the solicitor must make a statutory declaration (to accompany the originating document) evidencing (if such be the case) that the solicitor has complied with the provisions of section 14(2) of the act.

Solicitors should note also that section 14(3) provides that, where such statutory declaration has not accompanied the originating summons when it was issued, "the court concerned shall adjourn the proceedings for such period as it considers reasonable in the circumstances to enable the solicitor concerned to comply with subsection (1) or, if the solicitor has already complied with subsection (1), provide the court with such declaration".

## Personal Injuries Board

Further support by the Oireachtas for the efficacy of mediation as a dispute-resolving process can be found in section 9 of the *Personal Injuries Resolution Board Act 2022*, which was commenced by the Minister for Justice on 14 December 2023 (SI 626 of 2023). Section 2 of the act (commenced on 13 February 2023 – SI 28 of 2023) provides that, thenceforth, the body hitherto known as the Personal Injuries Assessment Board (PIAB) would be renamed

the Personal Injuries Resolution Board (PIRB).

While that name change may seem somewhat inconsequential in any real sense, it does nevertheless serve to emphasise that the body's objective is to resolve personal-injury claims, rather than just give its assessment of the appropriate damages the claimed injury should attract.

In furtherance of that worthy objective, section 9, which amends the *Personal Injuries Assessment Board Act 2003* by the insertion of new Chapter 1A therein, now gives the PIRB the power to invite the parties to consider mediation as a means of attempting to resolve the claim. It obliges the PIRB to provide the parties with information about the objectives and benefits of mediation, thus mirroring to a large extent the obligations placed upon solicitors under section 14 of the act of 2017.

Clearly, the Oireachtas – by enacting the *Mediation Act 2017* and section 9 of the 2022 act – is recognising the important role that mediation now can play in seeing as many disputes as possible resolved through mediation. Given the mandatory requirement now upon solicitors to advise their clients in advance of the commencement of any proceedings of the benefits of mediation, solicitors themselves need to be aware of the benefits of mediation for their client.

Clearly a solicitor cannot properly explain and fully advise his/her client of the benefits of mediation without himself/herself knowing what these are. I hope that what appears in the panel *(left)* is of assistance to solicitors in this regard (though the list is not necessarily exhaustive).

| Benefits of mediation | Litigation, by contrast |
|---|---|
| No delays | Significant delays |
| Reduced stress/anxiety | Significant stress/anxiety |
| Lower cost | Significant cost |
| Confidential private process | Public arena/publicity |
| Focus is on the future | Focus on the past |
| Focus is on the parties' interests | Focus is on the parties' fixed positions |
| Parties control the process/outcome | Judge controls process/outcome |
| Flexibility – win/win | Binary outcome – win or lose |
| Private, non-adversarial process | Public and adversarial |
| No evidence/cross-examination | Evidence and cross-examination |
| Parties choose the mediator | No choice of judge |
| Relationships can be preserved | Relationships often severed |
| Eliminates the risk of an appeal | Appeal always a possibility |

SECTION 14(1) OF THE ACT IS, PERHAPS, THE MOST IMPORTANT SECTION THAT SOLICITORS IN PARTICULAR SHOULD BE AWARE OF, AND ENSURE IT HAS BEEN COMPLIED WITH, BEFORE ANY PROCEEDINGS ARE COMMENCED

During my time as a solicitor, and later as a judge of the High Court and Court of Appeal, I have seen many lives and businesses destroyed by the pursuit of litigation to the bitter end, and where neither party has emerged as a winner in any real way. That experience leads me to agree wholeheartedly with the American journalist and satirist, Ambrose Bierce, when he included the following definition of litigation in *The Devil's Dictionary*: "Litigation is a process one enters as a pig and emerges as a sausage."

The emotional and financial toll on the parties involved in litigation can be immense, and both should and can be avoided by them being encouraged to attempt to resolve the dispute through mediation. It is worth bearing in mind, also, that the vast majority of proceedings that are commenced eventually end up being settled at some point – perhaps 'at the door of the court', when the majority of the litigation costs have already been incurred. I have long thought that this point of settlement should be brought forward to a much earlier stage in the process in order to avoid the unnecessary costs associated with getting ready for trial. Mediation provides a convenient, risk-free, speedy and cost-effective method of achieving this for clients.

*Michael Peart is a mediator, arbitrator, and former judge of the Court of Appeal. His main priority is resolving conflicts and client disputes through expert mediation, using his legal expertise, impartiality, and independence – see michaelpeart.ie.*

## LOOK IT UP

**LEGISLATION**

- *Mediation Act 2017*
- *Personal Injuries Resolution Board Act 2022*
- *Statute of Limitations 1957* (as amended)

PIC: ADOBE FIREFLY

# THE DOMINO EFFECT

A recent Supreme Court decision represents a welcome clarification of the test for 'employee' status. Maeve Regan pays cash in hand


Domino's
Pizza
The Pizza Delivery Experts™
Domino's

**In October 2023, the Supreme Court** delivered its decision in *Karshan (Midlands) Ltd t/a Domino's Pizza v The Revenue Commissioners*. The question before the Supreme Court was whether delivery drivers engaged by Domino's Pizza were 'employees' or independent contractors for the purposes of the *Taxes Consolidation Act 1997*. The act does not contain a definition of 'employee'.

The 'gig economy' – where workers, such as the drivers in this case, are providing their work intermittently – has posed difficulties in ascertaining the true employment status of such workers. While the relevant contract might state that such workers are 'independent' contractors, they may in fact be very 'dependent'.

Karshan contended that drivers who provided delivery services for its pizza business were engaged as independent contractors. Revenue contended that they were employees. The Tax Appeals Commission (TAC) had determined that the drivers were employees. The High Court upheld the TAC decision. The Court of Appeal reversed the High Court decision.

Revenue appealed to the Supreme Court. The Supreme Court noted that "the issue presented in this appeal is one of considerable importance to those involved in the provision of a range of services in our economy, and indeed those who hire them". In a lengthy and detailed decision, the court has provided welcome clarification on the test to be applied to determine whether a person is an employee.

## Deep pan

The question of who is an 'employee' defines the parameters of employment law. There is no comprehensive statutory or common-law definition of the term. Over the years, the courts have set out various tests for the definition of 'employee', with the tests evolving to reflect the continuously changing nature of working life.

Employment legislation – which, in general, establishes a floor of employment rights – provides definitions of 'employee' that are frequently wider than that at common law, including, for example, agency workers. However, independent contractors, by their nature, are outside the fold of employment-law rights and obligations. The distinction between 'employee' and 'independent contractor' is fundamental to the limits of the application of employment law.

The tests of employment that the courts have established are:

- *The control test* – whether the employee is "subject to the command of his master as to the manner in which he shall do his work" (*Yewens v Noakes*),
- *The integration test* – whether the work in question was an integral part of the business, or whether the work was not integrated into the business, but was only accessory to it (*Re Sunday Tribune Ltd*),
- *The multi-factorial or mixed test* – an examination of all of the features of the work relationship, including the extent of control and integration (*Ready Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance*),
- *The enterprise test* – whether the person is engaged in business on his or her own account (*Henry Denny & Sons (Ireland) Ltd v Minister for Social Welfare*).

In *Nethermere (St Neots) Ltd v Gardiner*, the UK Court of Appeal described 'mutuality of obligation' – the obligation to offer work and the obligation to accept the work – as an "irreducible minimum" for the existence of a contract of employment.

This test was applied by the High Court in *Minister for Agriculture and Food v John Barry & Ors*. In the Court of Appeal decision in *Karshan*, the court endorsed 'mutuality of obligation' as an 'irreducible minimum' to the existence of an employment contract.

## Five toppings

The Supreme Court in *Karshan* reviewed these tests and the role of 'mutuality of obligation' within those tests.

The court set out and applied a five-stage test. It said that this test is simply "a reduction of the existing case law" for the sake of clarity, as cases have made it clear that, at times, there are issues as to the application of the tests:

1) *Does the contract involve the exchange of*

THE SUPREME COURT LEFT OPEN THE QUESTION AS TO WHETHER 'EMPLOYEE' IN EMPLOYMENT LEGISLATION COULD BE INTERPRETED PURPOSIVELY – THAT IS, TO ACHIEVE THE PURPOSE OF THE LEGISLATION

*wage or other remuneration for work?* The court said that this question addressed the matter of consideration for the contract. The court found that the agreement between Karshan and the drivers was capable of being an employment contract as, for at least the periods during which they worked, there was an exchange of labour and work.

2) *Personal service* – is the agreement one under which the worker is agreeing to provide their own services, and not those of a third party, to the employer? This, the court said, is "the essence of an employment agreement". It also said that "some degree of limited substitution is permissible". The court found that the right to substitution here was limited. A driver could only substitute another where he had agreed to be rostered and was unavailable to work at short notice. The driver could only substitute another driver who had signed up as a driver with Karshan.
3) *Control* – does the employer exercise sufficient control over the putative employee to render the agreement one that is capable of being an employment agreement? The court found that Karshan exercised the necessary control over the drivers. Factors pointing to this included the fact that Karshan had control over the manner in which the drivers dressed, the time the drivers were there, the number and extent of deliveries the drivers were to undertake, the fact that some drivers when at the premises were directed to make up pizza boxes, and that a failure to comply with that requirement entitled the manager to send the driver home for the remainder of the shift.
4) *All the circumstances of employment* – the court described the first three questions as filters. If any of those three questions could be answered negatively, there could be no contract of employment. If the arrangement passed the first three questions, then all of the circumstances must then be considered. The court said that this meant: (a) the contract must be interpreted in light of the factual matrix in which it was concluded; (b) the actual dealings of the parties must be taken into account; (c) this requirement is free standing, in that no presumption can be drawn from the answers to the first three questions. The onus of proof is the ordinary one on the party who asserts any proposition of fact, law, or mixed fact and law; and (d) if the contract is not of employment, it is something else. To resolve the question of whether it is an employment contract, the answer must be established as to what kind of contract it actually is – for example, independent contractor, partner, licence agreement, etc.

   It would be appropriate to consider the question of control again at this stage. These factors were among those that indicated that the drivers were not independent contractors: they did not take calls from customers, did not employ or have the right to employ their own labour to undertake the tasks, they took no credit or economic risk, they worked exclusively from Karshan's premises, and their ability to maximise their own profits was very limited and constrained by the control exercised by the on-site managers. The Supreme Court said that single stints of work are capable in law of comprising contracts of employment. Therefore, the fact that the overarching contract – the contract that applied between assignments of work – did not, itself, provide for any ongoing right to work was not relevant.
5) *The legislative context* – finally, the court said that it should be determined whether there was anything in the particular legislative regime under consideration that required the court to adjust or supplement any of these considerations. The court considered that this question was not relevant in this case. It said it could see no basis upon which it might be said that the language of the *Taxes Consolidation Act* required any modification to the standard approach, and that neither party had suggested that there was.

The Supreme Court upheld the TAC's decision that the drivers were employees.

## Wood fired

The Supreme Court considered that the concept of 'mutuality of obligation' has "generated unnecessary confusion". It held that the term simply describes the consideration – the exchange of wage or other remuneration for work – that must be present before a working arrangement is capable of being categorised as an employment contract. It said that, to be classified as an 'employee', it is not necessary for the worker to have an ongoing right to be offered work into the future.

However, where there is intermittent work, the question may arise of whether, during the periods where the person is not working, the person is an 'employee'. The Supreme Court said that the question of what consideration must be the basis of such an overarching contract, or whether it is possible for an overarching contract to be an employment contract without such promises of wage/work, must await a case in which that issue actually arises.

The Supreme Court left open the question as to whether 'employee' in employment legislation could be interpreted purposively – that is, to achieve the purpose of the legislation. This approach has been adopted in Britain in, for example, *Uber BV and others v Aslam and others* and in *Autoclenz Limited v Belcher and others*.

In *Uber*, the UK Supreme Court had to determine the employment status of taxi drivers who provided their services through the Uber smartphone app. The drivers claimed that they came within the definition of 'workers' as contained in legislation relating to minimum wage, annual paid leave, and certain other protections, and so were entitled to those protections. That definition of 'worker' includes those employed under a contact of employment, and also extends to some individuals who are self-employed. Irish employment-protection legislation does not contain this concept of 'worker'.

The UK Supreme Court upheld the drivers' claim and held that they were 'workers', and so entitled to those protections. The court noted that the purpose of including 'workers' within the scope of the legislation was to extend the benefits of protection to workers who are in the same need of that type of protection as employees. It noted that, once this is recognised, it can be seen that it would be inconsistent with the purpose of the legislation to treat the terms of a written contract as the starting point in determining whether an individual falls within the definition of 'worker'.

In *Karshan*, the Supreme Court noted that the UK Supreme Court in *Autoclenz* decided that it could disregard the terms of a written contract, and not simply the description of the legal effect, and, in an appropriate case, should do this. The Supreme Court said: "This court has never adopted this position." It said that the question of whether there was a similar principle in Irish law would "have to await a case in which that properly arises".

## Stone baked

This Supreme Court decision leaves open two important questions for consideration in an appropriate case:

- When is an overarching contract for intermittent work an employment contract?
- Does Irish law have a principle of purposive interpretation of 'employee' for the purposes of employment legislation?

It also remains to be seen whether our definition of 'employee', as contained in protective legislation, is wide enough to protect dependent workers. In *Karshan*, features such as very limited substitution powers, and extra duties such as packing of pizzas, pointed towards 'employee' status. Other 'dependent' workers without such controls might well still fall outside of the limits of the 'employee-status' definition and be out of the reach of employment law designed to protect such workers.

Revenue has announced that, in light of this Supreme Court decision, it will produce an updated *Code of Practice in Determining Employment Status*. This will be a very welcome, practical clarification of the factors to be considered in answering this question.

For now, this Supreme Court decision has given a welcome clarification of the approach to the definition of 'employee'. For basic employment-law rights to apply to those in need of that protection, how the term continues to develop will be very important. g

*Maeve Regan is a consultant solicitor in employment law and human-rights law, and consultant editor and co-author of* Employment Law *(Bloomsbury Professional, 2009 and 2017).*

## LOOK IT UP

**CASES:**

- *Autoclenz Limited (appellant) v Belcher and others (respondent)* [2011] UKSC 41
- *Commissioners for His Majesty's Revenue and Customs (respondent) v Professional Game Match Officials Ltd (appellant)* (case ID 2021/0220) [2021] EWCA Civ 1370
- *Henry Denny & Sons (Ireland) Ltd v Minister for Social Welfare* [1997] IESC 9; [1998] 1 IR 34
- *Independent Workers Union of Great Britain (appellant) v Central Arbitration Committee and another (respondents)* [2023] UKSC 43
- *Karshan (Midlands Ltd) t/a Domino's Pizza v The Revenue Commissioners* [2022] IECA 124 (Court of Appeal decision); [2023] IESC 24 (Supreme Court decision)
- *Minister for Agriculture and Food v John Barry & Ors* [2008] IEHC 216; [2008] 1 IR 215
- *Nethermere (St Neots) Ltd v Gardiner* [1984] ICR 162
- *Re Sunday Tribune Ltd* [1984] IR 505
- *Ready Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance* [1968] 1 All ER 433
- *Uber BV and others v Aslam and others* [2021] UKSC 5
- *Yewens v Noakes* (1880) 6 QBD

# BACK IN BLACK

We pay tribute to the *Gazette's* designer, Nuala Redmond, who died on 6 February having worked on the magazine for 27 years

When I entered the *Gazette* office for the first time on 13 September 2005, had I not previously known the magazine's designer Nuala Redmond, I probably would have been as intimidated as hell!

Bolshy and confrontational, the girl in black was donning her trademark red Doc Martins and sported a vermilion-red streak in her otherwise dark hair. Hers and deputy editor Garrett O'Boyle's first action when I entered the office was to push me into the office of deputy director general Mary Keane. They sat me down in *her* chair and took photos that would be used to introduce the new *Gazette* editor to the world. 'Bossy' wasn't the word for it!

And just like Ken Murphy believed that he was in charge as DG at that time, I too thought I was *il duce* in the *Gazette* office. Nuala quickly disavowed me of that notion. I realised that I would need to be five steps ahead of her if I were going to earn her respect. It stood me in good stead when dealing with 'Bossy-boots Nuala'! Her best means of defence was attack – *mine* was confusion!

I subsequently discovered in Nuala a Putinesque desire for control. When she was going through a particularly creative phase, her hair would be dyed totally red – something Putin might have admired – but then again there's red, and there's red!

## Red wine and whiskey

Nuala and Garrett were a double act – I'm conscious of the great love and respect that Nuala held for Gar, right up to her death. She phoned him the day before she slipped into unconsciousness – five days before she lost her gutsy battle – asking him to play a sentence game. She needed a good laugh, she said, and knew that Gar would deliver. She opened with the words: "Inside I'm dancing…".

I won't repeat Gar's hilarious riposte, which was utterly and totally inappropriate, but which elicited a joyful cackle from Nuala! I, for one, am going to miss those irreverent exchanges between them. Nuala and I had our disagreements from time to time – chiefly with amicable outcomes. One of those uncontested issues we agreed on, however, was that we had the most professional and wittiest sub-editor working for the *Gazette*. The standard of excellence displayed in Gar's editing – and his repartee – saved him from Nuala's ire on multiple occasions.

## The red and the black

Creative tension was always simmering, bubbling, or boiling over in the *Gazette* – mostly with positive outcomes. There were times when things went too far, of course, and the editor would have to step in firmly, stating: "We're not having *that*!" At other times, of course, Nuala might disagree vehemently with me and retort, much like Meatloaf, "I won't do *that*!"

> THAT WAS THE BEAUTY OF THE *GAZETTE* WITH NUALA IN IT – WE WEREN'T AFRAID TO CHALLENGE EACH OTHER, TO EXPERIMENT, AND TO FAIL. IF IT WORKED, GREAT; IF IT DIDN'T, WE WERE OUR OWN CRITICAL JUDGES, QUICKLY BINNING AN UNWORKABLE IDEA AND BRAINSTORMING SOME MORE

That was the beauty of the *Gazette* with Nuala in it – we weren't afraid to challenge each other, to experiment, and to fail. If it worked, great; if it didn't, we were our own critical judges, quickly binning an unworkable idea and brainstorming some more.

More often than not, the results were genius. In order to "import some funk" into the legal profession (as Mary Keane so aptly put it during her recollection of Nuala and the *Gazette* during the memorial service at Blackhall Place on 10 February), we greatly enjoyed grafting popular culture onto legal


Cian – the apple of Nuala's eye


Nuala's creativity was constantly on show in her award-winning covers and cool design concepts

concepts in order to make them more digestible – and, dare I say it, funny.

And years before it became a staple of social media, readers of the *Gazette* were treated to our love affair with furry animals – monkeys, cats (lots of cats), badgers and weasels, to name just some of the menagerie that have featured in the most incongruous of places in the 'Glorious *Gazette*' (as Nuala fondly referred to it). Beavers were a whole other *Gazette* taxonomy – regularly appearing under the desks in adverts for the Law Society's library or in the windows of Blackhall Place.

## Place your hands

Sometimes it was just plain silliness. This is how former director general Ken Murphy came to feature in a *Gazette* photo going over the Berlin Wall in 1989. Garrett and Nuala had contrived to replace the head of an East German escapee with Ken's head when we were illustrating an article on international human rights. His place in history was assured.

Popular culture and sci-fi series were, and continue to be, a staple of the *Gazette* – *Star Trek*, *Star Wars* (we're chiefly 'Trekkies', by editor's diktat), vast arrays of Marvel characters, Batman, and numerous B-movie tropes. The 'King of the Monsters' featured on the cover of the recent December issue with a rather pointed 'The END is nigh' headline. Nothing whatsoever to do with Nuala's cruel diagnosis, which would come in January – but rather with the gripping legal subject of 'Established Non-conforming Developments' (with apologies to the conveyancing solicitors among our loyal readers). The 'END' acronym led to the *Gazette's* inevitable brainstorming session. Nuala's imagination did the rest, bringing our ideas to life. It was hers and Gar's ability to bring chaos to our editorial meetings that led to lots of fun, our brains taking a saunter on the wild side, and churning out brilliant cover and feature concepts.

## Celebrate

We have former *Gazette* editor, Conal O'Boyle, to thank for Nuala coming to the Law Society in 1997. Her impact was immediate, with the magazine taking an *Irish Independent*/Communicators in Business Award the same year. This was followed in 2001 with a PPAI award for 'Customer Magazine of the Year'.

From 2005, Nuala's creativity and attention to detail played a major role in the *Gazette*'s many subsequent awards, including 'Magazine of the Year' (four times) and 'Cover of the Year' (three times), among many other successes. Her greatest personal achievement was in winning 'Designer of the Year 2017' at the Irish Magazine Awards, when the *Gazette* also took the award for best cover.

## For whom the bell tolls

Nuala always wore her heart on her sleeve. If you made a friend in Nuala, you made a friend for life. Her loyalty was unswerving, her dedication nothing less than 100% in everything she did – and woe betide anyone who did not deliver in equal measure!

When she 'Facetimed' Garrett and me last April to tell us about her diagnosis of pancreatic cancer – I still marvel at her courage that day – she tackled that problem like she did everything else. Whether it was working, boating, or partying, it was always 100% of 'pure Nuala'. She was adamant that, regardless of her failing health, she would not be defined by her illness. She insisted on designing the magazine right up to the recent Jan/Feb issue, of which she had designed more than one-fifth before her ill-health got the better of her. She never said it, but we knew it kept her sane through those 'dark nights of our soul' – and we were so happy to facilitate her in every way we could.

I wish to acknowledge the wonderful efforts and dedication of the entire *Gazette* team during this very difficult period. Each one has been an amazing colleague whose first wish was to assist Nuala to keep going for as long as possible – and to ease her burden when the time came for her to put away her keyboard on Tuesday 30 January.

That morning, the news wasn't good. Nuala had suffered a fall at a friend's home. During her phone call to me that morning, she was still trying to resolve the 'temporary' design setback by involving her sister Maeve, also a graphic designer. That night, she phoned me to say that the fall had been the result of a mini stroke. Reality bit hard when she announced: "I've designed my last *Gazette*. Of course, you know I won't be designing another *Gazette*?" She spoke about the last pages she had designed for the magazine – 'Lost in the woods' on pages 42 and 43 – how proud she was of it, but how totally 'peed' she was that she wouldn't be able to finish that feature.

In her brutally realistic way, Nuala was finally facing up to the inevitable – and allowing me to take brief control of the tiller she had held for 27 years. In her way, she was saying:


"Now my watch is ended – over to you."

Nuala was a total pro – she was our colleague and our dear friend. In desktop-design parlance, it's not 'control alt delete' as we say farewell, but 'control s' as we think back on so many fond memories of her. Nuala will always be remembered as an integral member of the *Gazette* team.

We are devastated by her loss – she is irreplaceable in so many ways. Yet Nuala's design legacy will continue to live on in future evolutions of the magazine, which has her design concepts at its core.

## Ride on

It is appropriate here to thank all the members of the Law Society staff and our wonderful team for everything they did for Nuala following her diagnosis last April. I am so proud to work alongside each of you: Garrett O'Boyle, Catherine Kearney, Mary Hallissey, and Seán Ó hOisín; to our freelance journalists and sub-editors Andrew Fanning, Catherine Dolan, and Sorcha Corcoran; and our freelance designers, Eugenea Leddy and Elizabeth McLoughlin. Elizabeth went above and beyond in 'taking the baton' and completing the Jan/Feb *Gazette* to 'Nuala' standard!

We send out sincere condolences to her dear son Cian – the one true love of her life – and his partner Padraig Guilfoyle, to Nuala's partner Peter Power, and her siblings Barry Redmond, Deirdre McNinch, Maeve Kelly, and Fiona Hoey. g

*Ar dheis Dé go raibh a h-anam dílis*

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*Mark McDermott is editor of the* Law Society Gazette.

# TICKING TIMEBOMB!

'Warehoused' Revenue debt is a ticking timebomb for company directors, with over €2.1 billion due to fall for collection on 1 May. Mark Woodcock and Ciara Gilroy weigh up directors' options

**It appears that the anticipated rise in** corporate insolvencies in the wake of the COVID-19 restrictions is now on our doorstep. There is over €2.1 billion of warehoused Revenue debt due to fall for collection on 1 May 2024. This is an enormous figure, and one that will have huge implications for thousands of companies and the economy as a whole.

Now that there is clear visibility on the May deadline, directors of companies with warehoused debt should be considering their options as a matter of priority. Directors should be mindful of their statutory duties, not just to their company and their shareholders, but to the creditors, and particularly the Revenue Commissioners, and they should seek advice on the options available to them, given the looming Revenue claims.

## Duties on insolvency

Directors of a company who believe, or have reasonable cause to believe, that their company is, or is likely to be, unable to pay its debts as they fall due are obliged under the *Companies Act 2014* (CA2014) to have regard to:

a) The interests of the creditors,
b) The need to take steps to avoid insolvency, and
c) The need to avoid deliberate or grossly negligent conduct that threatens the viability of the business of the company (see section 224A(1) of CA2014).

In practical terms, the implications of this provision is that, where directors know or ought to know that their company is insolvent, their responsibility in managing the company's affairs shifts from running the company for the benefit of their shareholders to running the company in the best interests of their creditors.

This onerous responsibility is particularly acute where directors are aware of the level of warehoused debt, and have from now until 1 May to agree an affordable repayment arrangement with the Revenue Commissioners.


PIC: SHUTTERSTOCK

## Potential consequences

Directors should be mindful that they can be penalised for any breach of their statutory duties to creditors. They may be subject to restriction (see section 819 CA2014) or disqualification (section 842) orders and can, in certain cases, be made personally liable for some or all of the debts of their company. Consequently, it is imperative that directors are aware of their duties and obligations under company law.

An information note has been issued by the Corporate Enforcement Authority, which advises company directors to seek advice from their professional advisor at the earliest available opportunity if they have concerns that the company is facing financial difficulties (see Information Note 2023/1). Directors who have warehoused Revenue debt should consult their accountants or auditors now to properly assess what the company can afford as regards a payment arrangement with Revenue.

If it appears that an acceptable repayment arrangement cannot be reached with Revenue, the directors should meet with an experienced insolvency practitioner (solicitor and/or accountant) to discuss whether a restructure of company debt could be achieved and, ultimately, increase the company's chances of survival.

## Options for directors

In terms of taking steps to avoid a liquidation scenario, the earlier that a company can identify its financial difficulties and take the appropriate action, the higher the probability of success of a restructuring process.

There are a number of restructuring rescue processes available to Irish companies. The size of the company and the level of liabilities will determine which process is most appropriate. Informal restructuring can take place by negotiation and agreement between a company and its creditors to find a mutually agreeable solution. However, it can often prove

THERE IS OVER €2.1 BILLION OF WAREHOUSED REVENUE DEBT DUE TO FALL FOR COLLECTION ON 1 MAY 2024. THIS IS AN ENORMOUS FIGURE, AND ONE THAT WILL HAVE HUGE IMPLICATIONS FOR THOUSANDS OF COMPANIES AND THE ECONOMY AS A WHOLE

difficult to reach a consensus agreement with all creditors. Alternatively, there are three formal statutory processes available to directors attempting to restructure debt: the examinership process, the Small Company Administrative Rescue Process (SCARP), and schemes of arrangement.

## Examinership

This process is available to an insolvent company that has its centre of main interests in Ireland and is deemed to have a reasonable prospect of survival. The directors must obtain a report from an independent accountant confirming that, although insolvent, the company has a reasonable prospect of survival, provided certain conditions are met. The directors make an application to court relying on this report and, if successful, the court will grant protection from creditors for 70 days (extendable to a maximum to 100 days) and appoint an examiner.

The examiner's role is to advise the directors who retain executive control of the company, but also to identify an investor for the company. The funds raised by the examiner are used to formulate a scheme of arrangement with creditors. The distinguishing feature of this scheme is that creditors are paid a dividend, which is less than their debt but more than they would receive in a liquidation. In this way, the creditors are not considered "unfairly prejudiced" by the scheme (see section 541(4)(b)(iii) CA2014). This is a key provision, since, if the examiner cannot put a scheme in place, the company will go into liquidation. The examiner convenes meetings of different classes of creditors and, if the support of one class of impaired creditors is obtained, the examiner may apply to court for approval of the scheme.

All dissenting creditors are on notice of the application, but if the court is satisfied that the requisite support for the scheme has been obtained and none of the dissenting creditors have been "unfairly prejudiced" – that is to say, that they will achieve a higher return on their debt through the scheme than they would in a liquidation – the scheme can be imposed on all of the creditors of the company, whether they voted in favour of it or not.

The process must be completed within 70-100 days. The primary benefit of the examinership process is that the company has court protection from creditors for this period. If a scheme of arrangement is confirmed by the court, the company will exit the process debt free, with every prospect of survival as a going concern. This is a difficult pill to swallow for creditors, but the greater economy benefits from ongoing employment and trade.

## SCARP

The Small Company Administrative Rescue Process was introduced by the Government in November 2021 to assist with the restructuring of small companies in the wake of the COVID-19 restrictions. Small or medium-sized companies eligible to avail of SCARP must have a turnover of less than €12 million, a balance-sheet total of no more than €6 million, and have less than 50 employees.

It effectively applies to about 98% of companies in Ireland and was specifically designed to assist companies to restructure debt in a way that is less formal and less expensive than examinership. The distinguishing feature of SCARP is that it is an out-of-court process that significantly reduces the time and costs associated with corporate restructuring.

An insolvency practitioner is appointed a 'process advisor' by way of a resolution. Where SCARP is an administrative out-of-court process, there is no immediate protection from creditors and from enforcement of debts, as there is in examinership. However, protection can be sought from the court, if required.

The process advisor drafts a scheme of arrangement that involves a dividend to creditors, which is less than their debt but more than they would receive in a liquidation. The scheme is put to the creditors for support and must be accepted by a 60% in numbers of an impaired class of

# FOCAL POINT

## DEBT WAREHOUSING AMENDMENTS

On 5 February, the Minister for Finance announced that the interest rate applicable to warehoused debt will be reduced to 0%. Revenue has confirmed that it will operate the reduced interest rate on an administrative basis pending the legislative change. Revenue will also issue refunds of any interest at 3% already paid by businesses on warehoused debt.

Businesses availing of the warehousing scheme have until 1 May to either:

- Pay their warehoused debt in full, if they can, or
- Engage with Revenue on addressing the debt, including arranments for a phased payment arrangement.

Businesses will be provided with every possible flexibility in managing the payment of their warehoused debt. This includes:

- The level of down-payment, if any, to commence the payment arrangement,
- An extended payment duration, and
- The availability of payment breaks and payment deferral if temporary cash-flow difficulties arise during the arrangement term.

It is essential that you keep up to date with current returns and payments and engage with Revenue about dealing with your warehoused debt.

To remain in the debt warehouse, you must:

- Continue to file your current tax returns, and
- Pay the current liabilities as they fall due.

By remaining in the warehouse, you will benefit from the 0% interest rate and flexible payment options available in respect of your warehoused debt. If you do not continue to meet these conditions, you will be removed from the debt warehouse. Where you are removed from the warehouse, periods that had been warehoused:

- Will become payable immediately,
- May be subjected to debt-collection enforcement action, and
- Will be subject to interest charges of 8% or 10% per annum.

PIC: ALAMY

creditors of the company. This 60% represents a majority of value of the claims of the creditors within that class, and it can be difficult to achieve without a high level of consensus. The timeframe within which the SCARP procedure must complete is 49 days, with a further 21-day 'cooling-down' period. If no objections are raised by day 70, the rescue plan is put into effect.

SCARP is particularly appropriate for the vast majority of companies facing the Revenue debt-warehousing deadline of 1 May 2024. However, it is worth noting that the Revenue Commissioners have a statutory right to opt out of a scheme if the eligible company has failed at any time to comply with a requirement relating to tax imposed.

# Succession Planning

The two Partners of this long established and successful practice wish to make provision for their intended retirement. They will, if required, stay involved after retirement to assist the succession.

While the practice is general, it is very strong in the areas of conveyancing (both commercial and residential), company acquisition, landlord and tenant, probate, chancery litigation, plaintiff litigation with a significant claims administration and defence work section. Its annual turnover is circa €1.5-1.7 million.

The practice is based in modern high-profile offices in Dublin, 2 which can be vacated without penalty. There is a staff of 14 including 3 Senior Associates and 1 Assistant Solicitor. In 2023 the practice completely updated its IT systems which has led to significantly improved efficiencies.

Expressions of interest are invited. Initially please send these to Robert J. Kidney & Company, Accountants, 11 Adelaide Road, Dublin, 2.

DIRECTORS SHOULD BE MINDFUL THAT THEY CAN BE PENALISED FOR ANY BREACH OF THEIR STATUTORY DUTIES TO CREDITORS. THEY MAY BE SUBJECT TO RESTRICTION OR DISQUALIFICATION ORDERS AND CAN, IN CERTAIN CASES, BE MADE PERSONALLY LIABLE FOR SOME OR ALL OF THE DEBTS OF THEIR COMPANY

## Schemes of arrangement

A scheme of arrangement is a statutory procedure whereby a company may negotiate either:

- The rearrangement of its capital structure with its members, or
- The rearrangement (including a compromise) of its obligations and liabilities to its creditors (part 9, CA2014).

This process is not a court-led process either, and so there is no statutory deadline. Furthermore, there is no requirement that the company is insolvent, and so the process can be utilised at an earlier stage.

Directors can engage insolvency practitioners (solicitors and/or accountants) to prepare a scheme of arrangement that, again, is a proposal to creditors for the payment of a dividend that is less than their debt, but more than they would receive in a liquidation. If the scheme is approved by a 'special majority' (meaning a majority in number representing at least 75% in value of the creditors or class of creditors or members or class of member), an application can be made for court approval that will make it binding on all of the company's creditors/members. The High Court will only approve the scheme if the scheme's proposals are fair, reasonable, and represent a genuine attempt to reach agreement between a company and its creditors or members.

Significantly, all three formal restructuring processes allow for 'cross-class cramdown' of debts. This means that where the requisite support for a scheme is obtained, it may be confirmed and become binding, despite there being one or more classes of dissenting creditors or other adversely affected parties who did not vote in favour.

## Classification of debt

In terms of the classification of debt, creditors are usually classed in order of priority, such as preferential, secured, unsecured, and contingent debt. For example, and key to the timing of this article, the majority of Revenue debt is usually classified as preferential, which means that they must be paid in priority to most other creditors. However, due to the passage of time, a large volume of the warehoused debt may now have become unsecured and does not attract priority status. Accordingly, the Revenue Commissioners will rank with the other unsecured creditors in respect of that debt.

If directors facing significant Revenue debt seek the necessary advice in time, one of the available restructuring processes could be applicable and used to reorganise and, ultimately, save their business.

Directors have two options: they can seek professional advice and take control of the process, or they can run the risk of being pushed into an insolvency process by their creditors.

Early engagement with the Revenue Commissioners is key to the survival of hundreds of companies over the coming months. Start the process now with your clients and experienced insolvency practitioners. g

*Mark Woodcock heads up Fieldfisher Ireland LLP's insolvency and restructuring unit. Ciara Gilroy is an associate in the same unit.*

## LOOK IT UP

**LEGISLATION:**

- *Companies Act 2014*
- *Companies (Rescue Process for Small and Micro Companies) Act 2021*

**LITERATURE:**

- Corporate Enforcement Authority's Information Note 2023/1 – *European Union (Preventive Restructuring) Regulations 2022: Early warning tools and restructuring frameworks*

# TIME KEEPS ON SLIPPING...

The Law Society's Future of Legal Practice Summit examined the virtues – or otherwise – of AI and the value it could add to legal practices. Sorcha Corcoran goes time-travelling

The rising popularity of generative artificial intelligence (AI) tools doesn't mean trainee solicitors' jobs are under threat, but rather that the 'hard slog' will be taken out of their day-to-day work. AI has the capability to take over time-consuming tasks that often fall to junior solicitors, which will allow them to get involved in more strategic, value-adding work.

This was a reassurance given by several speakers at the recent Future of Legal Practice Summit on the campus of the Law Society of Ireland, where attendees were encouraged to become AI-literate and keep abreast of the latest tools and developments.

"The use of generative AI is not as common in the legal sphere as in other sectors, but that is going to change for sure over time. A lot more legal firms want to become AI-literate now and are starting to use enterprise functionality," noted Emma Redmond, who was appointed in July as assistant general counsel for privacy and data protection at OpenAI, and recently joined the Irish Government's AI Advisory Council.

## Simplifying contract reviews

She highlighted IronClad, a tool that uses OpenAI's latest release GPT-4 to simplify contract review, as a prime example of how AI can speed up tedious tasks for solicitors.

"For a lot of contractual agreements, there is very little time to turn them around, particularly when you're working in-house. This tool is life-changing in terms of speeding up contract review. It allows you to 'redline' numerous contracts to align with a company playbook, and will match your requirements to what is set out and show the changes you need to make," she said.

"A big caveat is that any output will

PIC: SHUTTERSTOCK

always have to be reviewed and checked by professionals. This type of tool brings the role of a lawyer into a whole other sphere. It is very much about having the skills in terms of quality input, as well as knowing how to analyse the output for accuracy."

## Leveraging AI

Chris Murnane (legal solutions director at Johnson Hana) said that start-ups were currently trying to leverage AI to compete with IronClad, which is the biggest global player in the area of contract-management software.

He referred to Luminance, which was built out of a proprietary large-language model (LLM) at the University of Oxford. It has developed a fully-automated, AI-powered contract-negotiation tool for non-disclosure agreements, called 'Autopilot', which has featured on BBC News.

> EMOJIS ARE NOW ROUTINELY USED IN THE PROFESSIONAL WORLD, AND HAVE EVEN FOUND THEIR WAY INTO THE COURTROOM. IN ONE RECENT US CASE, A SPECIALIST WAS APPOINTED TO HELP THE JUDGE TO INTERPRET EMOJIS

"A lot of what we have seen so far is technology and AI being used to streamline and amplify what lawyers do. Autopilot is an example of lower-value work being taken off lawyers altogether. Everything below high-level, master service-type agreements in-house is ripe for automation," said Murnane.

Dublin-based Johnson Hana is operating a new outsourcing model that can realise and release more value for lawyers. "It comes from the idea that you can disaggregate legal advice from the process. We look at in-house legal teams – and increasingly law firms – that are spread too thinly and resolve that through bespoke legal solutions," Murnane explained.

## Easy peasy

At the summit, Murnane shared how Johnson Hana used AI to examine around 1,000 contracts for 'repapering' for a corporate client. ('Repapering' involves reviewing and carrying out risk assessment and remediation of contracts and other documents in order to comply with shifting company policies or regulatory changes.) "We ended up negotiating 300 contracts within three months – a process that would otherwise have taken that client a year to do," Murnane said.

Emma Redmond (associate general counsel for privacy and data protection at OpenAI)

A significant development he has observed in the past year is LLMs no longer needing huge datasets to be able to train documents. He cited eBrevia, which can now train on a set of a minimum of seven documents, which means it can be used for a small due-diligence of 20 or 30 contracts, for example.

"It will be up to young solicitors to be early adopters and champions of these types of technologies. Demonstrating the efficiencies they bring to your team may convince partners to use them. This will free you up to do something more exciting, or place you as the tech-savvy lawyer in the team," he said.

Generally, AI tools are geared towards in-house teams but, in Murnane's view, some will be adopted by law firms. "A lot of larger international law firms are developing LLM tools that rely on their own internal datasets. I believe the future in the legal profession is LLM models built on internal knowledge – not pulling data generally from the internet," he predicted.

## Data crunching

Paula Fearon (head of project services at McCann FitzGerald) told the summit that it is actively engaging, piloting, and testing generative AI tools to identify where they can assist the firm in the future. Fearon is part of a specialist group at the firm set up in 2015 to streamline how it deals with big-data projects.

"Unlike previous tools, generative AI has the potential to have application in almost every aspect of our practice. It's not possible to deal with the volume of data that clients are creating in the traditional way, and it's important to stay informed on where we can rely on technology to do the heavy lifting," she said.

"We currently use e-discovery software most often, as it has been around the longest. As it has reached maturity, we have found use cases far beyond what we originally used it for. There is a full range of AI and other tools available now on e-discovery platforms, which allow us to generate a robust and consistent output much faster."

## In the can

One of Fearon's favourites is an image-labelling tool, which scans all of the images and photos in a dataset and names them, based on the AI's interpretation of what's in them. "I haven't seen a dataset yet that hasn't contained holiday snaps or baby pictures. There's a real trend towards professional and personal communications being intermingled. So being able to access tools to identify swathes of irrelevant material is really valuable," she said.

Increasingly, technology is directly having an impact on the types of work McCann FitzGerald is being presented with by clients – which essentially means dealing with a new legal landscape, Fearon noted.

"We're seeing whole businesses being run on TikTok, contracts being concluded on Instagram, and customer service being deployed via FaceTime. Data extracted

from smart devices, such as Alexa, have become part of the evidential pull in cases. Emojis are now routinely used in the professional world, and have even found their way into the courtroom. In one recent US case, a specialist was appointed to help the judge to interpret emojis," said Fearon.

## Eating up the internet

In his presentation, Barry Scannell (consultant at William Fry) told attendees that there was a "huge amount" of copyright-infringement litigation going on at present in relation to AI, particularly in the US.

"We're at the very start of the AI journey, and intellectual property is the biggest issue from a legal perspective. On the input side, where AI is being trained to basically eat up the entire internet, most cases are in the US. All claimants are essentially saying the same thing: that the use of their data in the LLM training was reproduced without permission, and that is copyright infringement," he explained.

"Text and data mining (TDM) often involves copying large amounts of copyright material. The problem with some datasets released through this process is that they have been used for purposes that are 100% commercial. A lot of AI companies are getting themselves into hot water over that," Scannell says.

There are various TDM copyright exceptions around the world that AI companies rely on to avoid litigation, Scannell noted. In Europe, for instance, commercial TDM is permitted under the 2019 *Directive on Copyright in the Digital Single Market*, provided the works are not explicitly restricted by the rights-holders.

## Legislative progress

At the summit, both Scannell and Redmond discussed the status of the EU *Artificial Intelligence Act* and its implications. Political agreement was reached in December that it will be based on a risk-based, tiered system, where high-risk AI systems will face stringent regulations, and that there will be mandatory impact assessments. Non-compliance with the rules could lead to fines ranging from €7 million or 1.5% of global turnover, to €35 million or 7% of global turnover.

"A lot of organisations will have to carry out impact assessments. This will mean strategic shifts for businesses. It is going to increase their operational costs and administrative burden, and there will be massive sanctions for non-compliance – worse than for non-compliance with GDPR," said Scannell.

"Now that political agreement has been reached on the main part of the act, it is going to have to be tweaked to get to the detailed technical requirements."

When asked for her view on the *AI Act*, Redmond said that "so far, it has frankly been a bit of a mess … It has been so stop-start. We were all shocked and surprised when political agreement was reached. There is clarity in relation to certain parts of the text, but the core part covering high-risk models is still up in the air, so I'm on the fence about it. I expect we will have this text this year, and the act may be enforceable in late 2025.

"Europe is aiming to be the first in the world in regulating AI and replicating what happened with GDPR in how it influenced data-protection regulation in other jurisdictions.

"When it comes into effect, the *AI Act* is going to be a total game-changer. The same kind of concept and processes under GDPR will apply, but in a different way.. The high-risk analysis required under the *AI Act* is almost like the GDPR's data-protection impact assessment on steroids."

**Director general Mark Garrett speaks with Rory O'Boyle (Education Centre) about the opportunities and challenges that lie ahead for the legal profession**

*Sorcha Corcoran is a freelance journalist for the* Law Society.

# FOCAL POINT

## IN-HOUSE VERSUS PRIVATE PRACTICE

During a panel discussion on the rise of the in-house function at the Future of Legal Practice Summit, attendees learned about the key differences between working in-house and in private practice.

"When you're in-house, you're part of the business and part of the solution. You get to see things through, from start to finish. In private practice, you have to manage the expectations of lots of clients and make sure you hit targets in terms of billable hours," said Sarah-Jane Clifford (senior legal counsel at the Coca Cola Company), who has experience of both sides.

"You don't have to produce long memos of advice for in-house clients. Speed of response is key. Clients just want you to point out the risks involved so they can make a business decision and move on quickly. Traditionally, in-house lawyers have been generalists, but this is changing as regulation increases. There are now more specialists, in areas such as privacy and environmental law."

# Day of Judgment

**In considering applications to set aside default judgments pursuant to order 27 of the *Rules of the Superior Courts*, the courts will engage in a two-stage process. Peter Shanley is raptured**

On 13 November 2021, order 27 of the *Rules of the Superior Courts* was amended. This introduced significant changes to the pace at which civil litigation can be conducted by providing that judgment in default of defence will be granted on the first return date, except where justice requires an extension of time. Where an extension is granted, the court will make an 'unless order'.

In the context of applications for judgment in default of defence, an 'unless order' means that, unless the defence is delivered and filed within that extended period of time, judgment shall be entered for the plaintiff in the Central Office without any further application to the court.

The wording of order 27, rule 9(1) is prescriptive, and judicial discretion has been removed: on hearing an application for judgment in default of defence, the court "shall" give judgment unless it is satisfied that the interests of justice require that an extension of time for the delivery of a defence is necessary. If so satisfied, the court "shall" make an order (a) extending time for the delivery of the defence, and (b) providing that, unless the defence is delivered and filed within that extended period,

PIC: SHUTTERSTOCK

judgment shall be entered for the plaintiff in the Central Office without any further application to the court.

These rules will be well known to practitioners. Practitioners may be less well-acquainted with the rules that govern the circumstances in which such a default judgment can be set aside.

### *Rules of the Superior Courts*

Order 27, rule 15(2) makes provision for a default judgment to be set aside by the court if it is satisfied that, at the time of the default, 'special circumstances' existed that explain and justify the failure.

The question that then arises is what might amount to 'special circumstances' that can explain and justify the failure to deliver the defence within the extended period. Four cases from last year provide guidance as to what might amount to such 'special circumstances' and also provide an insight as to how the courts approach such applications.

### *O'Brien v McMahon*

In this case, O'Moore J rejected as inadequate the explanations that had been proffered for not delivering a defence: (a) the defendant was hoping to resolve the matter through negotiation and the defendant's solicitor, therefore, did not engage with the litigation in the hope that the negotiations would bear fruit; (b) there was a bald assertion that the defendants did not attend the hearing of the motion for judgment in default of defence "due to the unfortunate circumstances of COVID in our office affecting staff at that time" (the court found that explanation to be "so vague as to be effectively meaningless").

In the premises, the court did not consider that special circumstances had been made out. Additionally, the court was very clearly of the view that the proposed defence was "one which is simply unstateable and, therefore, permitting the defendant to plead it would be pointless". In the circumstances, the court refused the application to set aside the default judgment.

### *De Souza v Liffey Meats*

In *De Souza*, which was a personal-injuries action, the defendants sought to set aside a default judgment on foot of an 'unless order' dated 23 May 2022, which required the defence to be delivered by 31 July 2022. The defence was not delivered until 20 September 2022. The solicitor acting on behalf of the defendant relied on the following matters by way of explanation for the default:

- First, he was not aware that an unless-type order had been made, because the staff member who was dealing with the matter did not understand the nature of an 'unless order',
- Second, when the 'unless order' was sent to him, the solicitor averred that he had not reviewed the order,
- Third, counsel for the defendant had been instructed to finalise a defence, but difficult personal circumstances involving the serious illness and subsequent death of his mother delayed the finalisation of a defence,
- In determining whether 'special circumstances' existed, such as would allow for the setting aside of the judgment, Ferriter J engaged in an extensive analysis, and the following principles emerged from his judgment:
- The test of 'special circumstances' is "generally accepted [as being] a higher test than that of 'good reason', and "while this does not raise the bar to 'extraordinary', it nonetheless suggests that some fact or circumstance that is beyond the ordinary or the usual needs to be present", There was a two-stage test involving whether the court could be satisfied (a) that there were special circumstances, and (b) those special circumstances explained and justified the failure to deliver the defence.

Ferriter J concluded that the inadvertence on the part of the solicitor did not give rise to 'special circumstances'. However, he found that the personal difficulties faced by the defendant's counsel at the relevant time did amount to such special circumstances. He was encouraged in this view by the fact that, prior to these personal difficulties, the defendant's counsel "had dealt with matters with considerable alacrity".

Having found that 'special circumstances' had been made out, Ferriter J turned to the balance of justice, asking whether setting aside of the judgment in default was justifiable. The judge duly found that the circumstances of the case justified the setting aside of the judgment and that the defendants had an arguable defence. Accordingly, Ferriter J set aside the judgment obtained on foot of the non-compliance with the 'unless order'.

> IT IS NECESSARY TO SEE THE RELIEF THAT CAN BE GRANTED PURSUANT TO ORDER 27, RULE 15(2) IN THE WIDER CONTEXT OF THE COURT'S INHERENT JURISDICTION TO SET ASIDE DEFAULT JUDGMENTS GENERALLY

### *Costern Unlimited Company v Fenton*

This case concerned professional negligence proceedings. The plaintiff issued a motion seeking judgment in default of defence. This motion was disposed of in May 2023 by way of an 'unless order'. Ultimately, the defence was not delivered in accordance with the terms of that order.

In discussing the legal principles applicable to the application, O'Donnell J referred to the decisions in *O'Brien* and *De Souza*. He considered that the authorities provided the following guidance, namely:

- The question of special circumstances falls to be addressed principally at the date of judgment by default,
- What amounts to 'special circumstances' must be decided on the facts of a particular case, and it would be unwise to lay down a hard-and-fast rule,
- The court engages in a two-step analysis – first assessing whether there were special circumstances and, second, the analysis of justification that imports consideration of prejudice and the interests of justice,
- Inadvertence or inattention on the part of a solicitor will rarely constitute 'special circumstances'.

O'Donnell J was of the view that, given the status of the solicitor in question as an officer of the court, and the fact that a reasonably detailed explanation was given in his affidavits, he was prepared to accept his evidence of the material events. He found that the defendant's solicitor's reasonable belief that the defence had, in fact, been delivered to the plaintiff in accordance with the terms of the 'unless order' amounted to 'special circumstances' within the meaning of order 27, rule 15(2), which would justify the setting aside of the judgment.

The court then went on to consider whether those special circumstances explained and justified the failure to deliver and file the defence. The judge stated that this "engages questions of hardship, injustice, or prejudice flowing from a decision to set aside or refuse to set aside a judgment".

### Balance of justice

As appears from these three decisions (*O'Brien*, *De Souza*, and *Costern*), in deciding applications under order 27, rule 15(2), the courts have engaged in an analysis of the balance of justice and the merits of the defendant's proposed defence. This goes beyond the test envisaged on the face of the rule, which permits the setting aside of a default judgment by a court "if satisfied that, at the time of the default, special circumstances (to be recited in the order) existed which explain and justify the failure".

It is not unreasonable, therefore, to ask why the High Court in these three cases approached the application by engaging with issues of (a) the stateability or otherwise of the proposed defence, and (b) the hardship, injustice, or prejudice.

The decision of Quinn J in *Everyday Finance DAC and Others v White and Others* articulates clearly why considerations of the balance of justice are engaged in applications to set aside default judgments.

## Everyday Finance

The plaintiff obtained an interlocutory order for vacant possession of a house in Blackrock, Co Dublin. The second defendant successfully appealed this order to the Court of Appeal, which held that it had "reservations about characterising the plaintiffs' case in this regard as a strong one".

Subsequent to the Court of Appeal decision, a motion seeking judgment in default of defence was issued. The grounding affidavit exhibited some, but not all, of the correspondence that had been exchanged between the parties' solicitors. It did not mention that the High Court order granting possession on an interlocutory basis had been set aside by the Court of Appeal.

The motion for judgment in default of defence was returnable for Monday 27 February 2023 and, there having been no appearance by the defendants, judgment in default of defence was granted in favour of the plaintiff.

An application to set aside the judgment was brought on behalf of the defendants by new solicitors retained by them. As far as they could establish, the failure to attend on 27 February 2023 had been an oversight on the part of the previous firm of solicitors. Attention was drawn to a letter dated 24 March 2023 from the defendants' then solicitors to the plaintiffs' solicitors, enclosing the defence and referring to the "motion returnable to 27 April 2023" and then asking the plaintiffs' solicitors to have the motion struck out with costs reserved.

Quinn J stated that it was reasonable to conclude from this that, due to an oversight in the defendants' former solicitors' firm, they had incorrectly thought the motion for judgment was listed for 27 April 2023 instead of 27 February 2023. This subsequently informed the pace at which the defendants' former solicitors had arranged for the defence to be prepared and delivered.

The judge first engaged in the two-stage process, looking at the 'special circumstances' and whether they justified the failure to comply with the order. Then, echoing the approach of O'Donnell J in *Costern*, Quinn J explained that it is necessary to see the relief that can be granted pursuant to order 27, rule 15(2) in the wider context of the court's inherent jurisdiction to set aside default judgments generally.

He reviewed the authorities dealing with the courts' broader jurisdiction to set aside default judgments. From this, he distilled six principles, which he said reflect a coherent body of case law governing how the courts approach the question of whether to set aside a default judgment. Among these principles were that:

- The courts should lean in favour of determining litigation based on the merits, rather than preventing access to the courts to one party for procedural reasons,
- The object of the courts is to decide the rights of the parties, not to punish them for their mistakes, and
- The court has an inherent jurisdiction to set aside a default judgment obtained in default of appearance due to accident, mistake, or inadvertence when "it is just and equitable to do so" and to achieve "justice between parties" – and the *Rules of the Superior Courts* are additional to this and not "substitutive".

## Two-stage process

This case law shows that, in considering applications to set aside default judgments pursuant to order 27, rule 15(2), the courts will engage in a two-stage process. The court must be satisfied that 'special circumstances' exist at the time of the default. Then the court must be satisfied that the special circumstances justify and explain the failure.

In addition, the courts will assess the balance of justice. Some differences in approach can be seen as to what stage of the analysis the court will engage with the balance-of-justice type issues when deciding these applications. Notwithstanding these differing approaches, the judgment of Quinn J in *Everyday Finance* clearly articulates the basis upon which the court will engage in consideration of these broader issues.

It is by reference to the principles gleaned from the jurisprudence relating to the court's general inherent jurisdiction to set aside judgments granted in default, that the issues of prejudice, balance of justice, and the apparent strength of the defence will be considered. This analysis incorporating justice, fairness, and equity ought to be seen as being in addition to, not substitutive of, the express provisions of order 27, rule 15(2). g

*Peter Shanley is a Dublin-based barrister.*

## LOOK IT UP

**CASES:**

- *Costern Unlimited Company v Fenton* [2023] IEHC 552 (16 October 2023)
- *De Souza v Liffey Meats & Ors* [2023] IEHC 402 (11 July 2023)
- *Everyday Finance DAC and Others v White and Others* [2023] IEHC 624 (10 November 2023)
- *O'Brien v McMahon* [2023] IEHC 393 (10 July 2023)

**LEGISLATION:**

- *Rules of the Superior Courts*, order 27

# Getting to grips with coercive control

**Coercive control, prenuptial agreements for farmers, and the *Family Courts Bill 2022* were the hot topics at the recent Family and Child Law Webinar. Sorcha Corcoran reports**

> THIS WAS A REALLY ABUSIVE RELATIONSHIP INVOLVING SERIOUS ASSAULTS. WHILE IN PRISON, KANE MADE NUMEROUS THREATENING PHONE CALLS TO INDUCE THE VICTIM TO WITHDRAW HER COMPLAINT

Coercive control becoming a criminal offence represents real change in the context of domestic-violence legislation in the past number of years but, so far, few cases have come through the courts, a recent webinar has heard.

In her presentation at the Law Society's Annual Family and Child Law Webinar on 1 December, Helena Kiely (chief prosecution solicitor in the Office of the Director of Public Prosecutions) highlighted four recent decisions on coercive control, which has been a criminal offence since 1 January 2019 under section 39 of the *Domestic Violence Act 2018*.

The first was *DPP v Moody*, which came before Dublin District Court in July 2022 and was the subject of the RTÉ documentary *Taking Back Control*, broadcast last December. The accused was charged with criminal damage, assault causing harm, threats, reckless endangerment, and coercive control in respect of his former partner.

"This case was notorious when it was brought before the courts. Ex-garda Paul Moody's behaviour only came to light when he approached a colleague to make a complaint. Looking at his phone and text messages, the gardaí realised the nature of the relationship with the victim and undertook an investigation," said Kiely.

"While the abuse spanned 11 years, the offence of coercive control related only to actions post the inception of the offence, covering the period from January 2019 to November 2020. Moody pleaded guilty to coercive control and was sentenced to three years and three months in prison."

## First appeal case

*DPP v Kane* was the first case relating to coercive control to go to the Court of Appeal, on 30 March 2023, Kiely told the webinar. The accused had been sentenced in November 2020 to ten-and-a-half years, including three years and six months for the coercive-control charge.

"This was a really abusive relationship involving serious assaults. While in prison, Kane made numerous threatening phone calls to induce the victim to withdraw her complaint," Kiely explained. "Judge Isobel Kennedy dismissed the appeal, noting the need for a coercive-control offence 'to capture the emotional and psychological abuse that can occur in the context of an intimate relationship'."

There were reporting restrictions on the third case highlighted by Kiely, where the 17-year sentence, including four years for coercive control, was recently upheld on appeal. Rapes, assaults, and false imprisonment were among the charges the accused was convicted of.

"The victim in this case realised very early on after the accused moved in with her that she was in a dangerous situation. He started controlling her media, communication, and whereabouts. She was raped and locked in the house before the coordinated effort of friends and family released her from the situation after three months," Kiely explained.

Neither could names be divulged in the fourth case referred to by the chief prosecution solicitor, where a vulnerable person met someone on Tinder and was quickly 'love-bombed'. Serious assaults and rape were also part of this case, as well as advertising the victim for prostitution.

"What's interesting about this case is that the victim made complaints over a period of time, initially around assaults and, later, with rapes. It shows how it can take a while for victims to have trust and faith in the system. The first conviction was for coercive control, with a

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sentence of two-and-a-half years and, more recently, the accused was sentenced to 11-and-a-half years for rape."

## Farmers and prenups

In her presentation to the family law webinar, Clare-based solicitor and tax consultant Aisling Meehan put forward a case for a change in the law in relation to prenuptial agreements ('prenups') from her experience of dealing with farmers. At present, courts are not obliged to enforce prenups, but can have regard to them if they're deemed fair and reasonable.

"A prenup has been described as a type of contract. But they were inhibited by article 41 of the Constitution, where the State pledges itself to guard the institution of marriage," she said.

"There has been a departure from this view with the *Family Law (Divorce) Act 1996* and the *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010*," Meehan said.

Under the latter, people can regulate joint financial and property affairs, during and after a relationship, by drawing up a cohabitants agreement – but not if they're married.

"Farmers have been scratching their heads as to why only couples who aren't married can have such an agreement. With the focus on increasing land prices, there is a growing appetite within the farming community to make prenups legally binding. The tide has changed, especially in the

WITH THE FOCUS ON INCREASING LAND PRICES, THERE IS A GROWING APPETITE WITHIN THE FARMING COMMUNITY TO MAKE PRENUPS LEGALLY BINDING

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*The Law Society Skillnet discount is applicable to all practising solicitors working in the private sector.

WHAT'S INTERESTING ABOUT THIS CASE IS THAT THE VICTIM MADE COMPLAINTS OVER A PERIOD OF TIME, INITIALLY AROUND ASSAULTS AND, LATER, WITH RAPES. IT SHOWS HOW IT CAN TAKE A WHILE FOR VICTIMS TO HAVE TRUST AND FAITH IN THE SYSTEM

past year," Meehan told the webinar.

Meehan referred to the Law Society's report *Divorce in Ireland – The Case for Reform*, published in April 2019, which recommended that the law should be reviewed to allow for prenups that are valid and enforceable.

"The report showed that there were no cases where prenups had been presented to the courts for review and/or approval. There should be provision for prenups to be reviewed to be considered favourably by a court – for example where children have been born or there has been a fundamental change, such as critical illness or disability," she said.


### *Family Courts Bill 2022*

The moderator of the annual webinar was Peter Doyle, who is chair of the Law Society's Child and Family Law Committee. Peter encouraged attendees to review and provide feedback to the committee on the *Family Courts Bill 2022*.

"As a committee, we had a very busy agenda in 2023 in terms of reviewing the latest developments in law reform – not least the *Family Courts Bill 2022*, which we have been tracking in the past while," he said. "The bill is very welcome in relation to changes and reform, but some aspects of it are of concern for professionals, as well as the general public."

During the webinar, Keith Walsh (principal, Keith Walsh Solicitors) summed up the problem as he saw it with the *Family Courts Bill 2022* being implemented as it stands: "There is a serious risk that the transfer of cases from the Circuit Court to an already over-busy District Court will lead, not just to a delay for judicial separation and divorce cases, but also to delays in other civil and family-law areas, such as domestic violence, guardianship, custody and access cases, as well as maintenance and childcare cases," he warned.

*Sorcha Corcoran is a freelance journalist for the* Law Society Gazette.

## LOOK IT UP

**CASES:**

- *DPP v Daniel Kane* [2023] IECA 86
- *DPP v Paul Moody* (Dublin Circuit Criminal Court, 2022)

**LEGISLATION:**

- *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010*
- *Domestic Violence Act 2018*
- *Family Courts Bill 2022*
- *Family Law (Divorce) Act 1996*

**LITERATURE:**

- *Divorce in Ireland – The Case for Reform* (Law Society of Ireland, April 2019)
- *Taking Back Control* (RTÉ documentary, broadcast 11 December 2023)

# Leading from the inside out

**Our ability to adapt to uncertainty, make decisions effectively, motivate ourselves, and guide others through change are key elements of self-leadership. Mary Duffy thinks outside the box**

SELF-LEADERSHIP SKILLS ARE INTEGRAL FOR LAWYERS TO DELIVER EXCELLENT CLIENT SERVICES, GROW AND RETAIN TALENT, LEAD TEAMS, AND DEVELOP FUTURE BUSINESS

The way we work is constantly evolving with dynamic work relationships, new technologies, and unexpected global events. To manage these shifts effectively, the development of 'self-leadership' skills is becoming increasingly important. 'Self-leadership' goes beyond the traditional idea of leadership, focused on leading others; instead, this 'reframe' places the emphasises on leaders leading from the inside out.

Our ability to adapt to uncertainty, make decisions effectively, motivate ourselves towards personal and business goals, and guide others through changing times are key elements of self-leadership that enable individuals to sustain high-impact performance.

Linked to cognitive abilities and interpersonal skills, self-leadership skills are integral for lawyers to deliver excellent client services, grow and retain talent, lead teams, and develop future business.

## Distinct talent elements

Extensive research conducted in 2019 by the McKinsey Global Institute, with 18,000 participants across 15 countries, delved into anticipated shifts in essential skills for future employment connected with the rise of automation, artificial intelligence, and robotics. In this large study, four broad skills categories were identified: cognitive, digital, interpersonal, and self-leadership. These categories comprised 56 'Distinct Elements of Talent' (or 'DELTA'), that is, associated skills or attitudes.

Perhaps unsurprisingly, digital-fluency skills were found to be of high relevance. Interestingly, however, self-leadership skills accounted for 25% of skills identified as necessary to thrive in the future workforce. These skills enable people to optimally add value beyond automated systems, to operate in a digital environment, to adapt innovative ways of working, and lead people through uncertain times. Notably, proficiency in two self-leadership DELTAs – 'self-confidence' and 'coping with uncertainty' – ranked among the top three most predictive DELTAs for two out of the three outcomes of job satisfaction and higher income and employment.

## Leading by example

All leadership begins from the inside-out – with self-leadership. To motive, influence, encourage, and inspire others in an authentic way, you must first do this for yourself. Andrew Bryant (founder of Self-Leadership International) describes the practice of self-leadership as continuously developing the 'inner game' (or mindset) and 'outer game' (or action) where the inner game is focused on achieving personal mastery, comprising our intentions (our 'whys'), self-awareness, self-confidence and self-efficacy, while the outer game comprises our influence and impact.

This involves increasing awareness of who you are, your vision for the future and what you can accomplish, while also being in control of your emotions and behaviour in a way that guides you towards success. This greatly influences effective decision-making, which is crucial for lawyers' future success, as it enhances client confidence and professional reputation, builds authentic relationships, and challenges our own biases for more informed decision-making – none of which can be


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replaced with technological advancements.

## Importance of awareness

Self-awareness is the foundation to practising self-leadership. It requires checking in with our emotions and how they might be influencing our thoughts, actions, behaviours, and motivations at any given time.

A conscious slowing down to reflect on our behaviour patterns can serve as one of the most powerful skills to navigate and overcome future personal and professional challenges. We can cultivate greater self-awareness by being curious about our experiences, with a willingness to be open about seeing ourselves in a new light. This awareness leads to greater self-confidence, identifies skills that might need to be strengthened, and builds better relationships.

## Cultivating self-awareness

If your mind often feels distracted or interrupted with racing thoughts, practising self-regulation exercises can help develop a calmer and clearer perspective that will allow space for self-reflection. This allows us to step back from a reactive state to gather information on the situation to choose how we respond. Some of the most effective, yet simple, self-regulation techniques are achievable through breathing and grounding techniques.

The '5-4-3-2-1' grounding exercise serves to reorientate the mind from racing thoughts back into the environment you are in. Simply acknowledge five things you can see, four things you can touch, three things you can hear, two things you can smell, and one thing you can taste.

'Box breathing' is another powerful technique that helps to restore a relaxed breathing pattern, clears your mind, and improves focus, therefore helping to bring awareness back to self. This exercise requires a set equal length of inhalations, exhalations, and breath retention and can be done to a count of four seconds, as follows:

- Inhale for a count of four,
- Hold your breath for a count of four,
- Exhale for a count of four,
- Hold at the end of exhalation for a count of four,
- Repeat the cycle.

## Unleash your potential

Law Society Psychological Services offers a range of member and trainee supports tailored to the specific professional and personal needs of the legal community. LegalMind – a psychotherapy service for solicitors – provides high quality, confidential, and heavily subsidised therapeutic support, operated by the Clanwilliam Institute. Qualified and accredited professionals are available to help you explore ways of gaining great self-awareness to unlock your potential. Full details are available at lawsociety.ie/legalmind.

## High-impact professionals

We will be delving further into the topic of self-leadership on Thursday 21 March during Webinar 4 of the 'High Impact Professional' series. Visit lawsociety.ie/ps for details to register for this online complimentary CPD event.

If you'd like to get in touch with any thoughts or ideas, please email ps@lawsociety.ie.

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*Mary Duffy is psychological services executive at the Law Society.*

# How to commit the perfect merger

**A CJEU judgment in summer 2023 contains some key lessons for EU merger control. Cormac Little meets a stranger on a train**

THE CJEU'S 54-PAGE JUDGMENT CONTAINS CERTAIN KEY LESSONS REGARDING HOW NOTIFICATIONS UNDER THE EUMR WILL BE CONDUCTED BY THE COMMISSION AND, WHERE RELEVANT, REVIEWED BY THE CJEU AND THE GC

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

In a judgment delivered last summer, the Court of Justice of the EU (CJEU) upheld the European Commission's appeal against a 2020 decision of the General Court of the EU (GC) to overturn the 2016 prohibition of the proposed acquisition of the mobile telecommunication services provider O2 UK by its rival, Three. Notably, the court's judgment in Case C-376/20 P *Commission v CK Telecoms UK Investments Ltd* contains some key lessons for EU merger control.

Both EU and Irish merger-control rules apply in the State. The former regime is primarily contained in Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (more commonly known as the *EU Merger Regulation* or EUMR).

## Effective control

The purpose of the EUMR is to provide for the effective control of certain transactions in terms of their impact on the structure of competition in the EU. The EUMR is based on the 'one-stop shop' principle. In other words, if a particular concentration triggers a mandatory notification to DG Competition of the European Commission under the EUMR by meeting one of two alternative jurisdictional tests, there is no need to consider whether a merger filing is necessary in the State or, indeed, in any other country in the European Economic Area.

If a notification to the commission is required, the relevant transaction should not be completed until clearance/deemed clearance is forthcoming.

The EUMR's substantive test is whether a concentration would result in a significant impediment to effective competition in the EU, in particular, because of the creation or strengthening of a dominant position. This test is often referred to as the 'SIEC'.

As recommended in the recitals to the EUMR, the commission adopted guidelines on the assessment of horizontal mergers in 2004 (*Horizontal Merger Guidelines*). Specifically, the guidelines stipulate that transactions in oligopolistic or concentrated markets that eliminate competition between the merging parties while reducing competitive pressure on the third-party firms may, even in the absence of likely coordinated effects, result in an SIEC.

## Three's planned acquisition

Hutchison Whampoa, the Hong Kong-based conglomerate that owns/operates the 'Three' brand of mobile telecommunications businesses, agreed in March 2015 to purchase O2 UK from the Spanish telco giant Telefónica. This proposed acquisition was notified to DG Competition in September 2015. At that time, there were four mobile network operators (MNOs) active in the retail market for mobile telecommunications services in the UK: namely BT/EE (with a market share of 30-40%); O2 (with a market share of 20-30%); in addition to Vodafone and Three (each with a market share of 10-20%).

Post-completion of the proposed acquisition, Three/O2 UK, with a share of 30-40% of the national retail market for mobile telecommunications, would, therefore, become the number one player in the UK. This relevant market is also characterised by the presence of mobile virtual network operators (MVNOs) – namely, businesses like Tesco Mobile and Virgin Mobile, which arrange with MNOs to have access to their networks (for example, by buying minutes) at wholesale prices. Separately,

'I tell you, Alan old boy, it's really quite interesting...' Douglas said half-heartedly

BT/EE and Three on the one hand, and O2/Vodafone on the other, have reached formal agreements to share the costs of rolling out the relevant network infrastructure, while continuing to compete at the retail level.

## Commission's investigation

The commission's investigation focused on three theories of competitive harm. Firstly, DG Competition was concerned that the transaction would lead to an increase in retail prices for mobile telecommunications. Secondly, noting that the combined entity would have network-sharing agreement with each of BT/EE and Vodafone (the two remaining independent UK MNOs), the commission was worried that this concentration would lead to a reduction of investment in mobile communications infrastructure. Thirdly, DG Competition was concerned that MVNOs (and, by extension, their retail customers) would be adversely affected by the reduction in the number of MNOs operating on the wholesale market, from four to three.

While Three offered three successive sets of proposed remedies, DG Competition found that none of these adequately addressed its theories of competitive harm. Accordingly, the commission, in May 2016, blocked the acquisition on the basis that it would give rise to non-coordinated effects resulting in an SIEC.

## Action for annulment

In July 2016, Hutchison Whampoa/Three brought an action for annulment of the commission's prohibition decision before the GC. Specifically, Three challenged the commission's findings

THE COURT THUS FOUND THAT A FIRM IS AN 'IMPORTANT COMPETITIVE FORCE' IF IT HAS MORE OF AN INFLUENCE ON THE COMPETITIVE PROCESS THAN ITS MARKET SHARE OR SIMILAR MEASURES WOULD SUGGEST

regarding each of the three theories of competitive harm. Focusing on the substantive SIEC test, the GC agreed that the commission may block a concentration in an oligopolistic market that does not create or strengthen a single or collective dominant position. However, before adopting such a prohibition, the commission must show that the transaction both involves the elimination of important competitive constraints and, also, that there will be a reduction in competitive pressure on the remaining firms in the relevant market. The GC found that DG Competition did not fulfil both cumulative conditions.

The court also held that the commission did not show "with a strong probability" that Three's acquisition of O2 UK would give rise to an SIEC. The GC also criticised DG Competition's analysis of the likely effect of the acquisition on retail prices.

Separately, the court held that the commission had failed to show that the merger would give rise to an SIEC in either the sharing of network infrastructure or the provision of wholesale network access to MVNOs. On the basis, therefore, that none of the DG Competition's three theories of competitive harm could stand, the GC overturned the commission's prohibition decision in May 2020.

## Appeal to the CJEU

In August 2020, the commission appealed the GC's decision to the CJEU on various grounds. The first alleges that the court erred in law by applying a stricter standard of proof for DG Competition than under CJEU precedent. The commission also argued that the GC misinterpreted how the SIEC test should be applied.

Other grounds of appeal included that the GC erred in law both by misconstruing the concepts of 'important competitive force' and 'close competitors', contained in the *Horizontal Merger Guidelines*, and by requiring the commission to take 'standard efficiencies' into account.

The commission also argued that the GC did not assess all the relevant evidence. Indeed, at least one part of all six of the commission's grounds of appeal was upheld by the CJEU, which set aside the GC's judgment in July 2023.

## Key lessons

The CJEU's 54-page judgment contains certain key lessons regarding how notifications under the EUMR will be conducted by the commission and, where relevant, reviewed by the CJEU and the GC.

In terms of applying the substantive SIEC test, the CJEU found that, since the relevant provisions of the EUMR are symmetrical, whether a transaction should be cleared or prohibited is subject to one and the same standard of proof. Indeed, there is no presumption that a transaction is or is not anti-competitive. The court also found that, while its decisions must be supported by sufficiently cogent and consistent evidence, the

commission's standard of proof remains constant, even where its theory of competitive harm is particularly complex. In addition, the CJEU held that, although the commission has a margin of discretion regarding economic matters and should, of course, carry out its analysis with great care, it does not need to meet a "particularly high standard of proof". Accordingly, the commission is required to apply a "more likely than not" test when considering whether a transaction gives rise to an SIEC. This standard of proof is lower than the "strong probability of the existence of impediments" to competition test adopted by the GC. Clearly, the rejection of the latter standard of proof is, obviously, good news for the commission.

Regarding the potential finding of an SIEC in the absence of the creation or strengthening of a dominant position, the CJEU rejected the GC's finding that the commission must demonstrate that the following two cumulative conditions are satisfied: first, that the transaction would result in the elimination of important competitive constraints that the merging parties had exerted on each other; and, second, that the concentration would reduce the competitive pressure on the other remaining firms in the market. The court strongly suggests that the SIEC test is satisfied if either condition is met. Again, this finding will be welcomed by the commission, as it makes substantiating a theory of competitive harm in unilateral effects situations less challenging.

## 'Important competitive force'

In holding that the GC had misinterpreted the concept of 'important competitive force' outlined in the *Horizontal Merger Guidelines*, the CJEU found that this concept cannot be exclusively applied to those firms whose pricing policy is likely to alter the competitive dynamics in a particular market. Instead, this concept can apply, in differentiated product markets, to businesses that compete on non-price parameters such as quality or innovation. The court thus found that a firm is an 'important competitive force' if it has more of an influence on the competitive process than its market share or similar measures would suggest.

In rejecting the GC's finding that only a concentration between 'particularly close competitors' could give rise to an SIEC, the CJEU again held that the former court had again misunderstood the *Horizontal Merger Guidelines*. The CJEU found that transactions between 'close competitors' can give rise to SIEC concerns. Again, the commission will be happy with these elements of the 2023 judgment, since it will afford DG Competition greater flexibility in conducting its review of EUMR notifications.

As mentioned above, the CJEU held that the GC erred in law by introducing a category of 'standard efficiencies', which is specific to each notified transaction. Noting that there was no support for this concept in either the EUMR or the *Horizontal Merger Guidelines*, the CJEU stipulated that it is for the merging parties to raise efficiency arguments, and for the GC to state otherwise would involve a reversal of the burden of proof.

The CJEU also held that the GC "picked and chose" which elements of the commission's SIEC findings it wished to review. The CJEU noted that, instead, the GC must carry out a full assessment of all the relevant elements of the commission's decision. The CJEU also reaffirmed previous judgments in holding that the concept of *stare decisis* does not apply in merger control. More specifically, the commission's approach in previous EUMR decisions does not serve as precedent and can only indicate how it might review a particular case. (This echoes the practice of other national merger-control authorities in the EU, including the Competition and Consumer Protection Commission.)

The CJEU's judgment certainly represents a significant victory for the commission. However, this is not the final word on the matter, as certain pleas in Three's action for annulment were neither addressed by the GC nor raised before the CJEU. The latter has thus remitted the outstanding issues to the former for a fresh review. 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.*

PIC: ALAMY

# RECENT DEVELOPMENTS IN EUROPEAN LAW

## Child law

**Case C-87/22 TT (*Wrongful removal of a child*), 13 July 2023**

A Slovak couple moved to Austria with their two children. They separated, and the mother moved back to Slovakia with the two children. The father requested a Slovak court, based on the *Hague Convention on International Child Abduction*, to order that they be returned to him in Austria. As custody had been joint, he also requested an Austrian court to grant him sole custody. The mother asked the Austrian court to cede jurisdiction to a Slovak court. The Austrian court granted that request, and the father appealed against that decision.

The Austrian appeal court asked the CJEU to interpret the *Brussels IIa Regulation*. It provides that the courts having jurisdiction to hear a custody dispute are those of the state where the child is habitually resident when the court first heard the dispute. That court is best placed to assess the measures to be taken in the best interests of the child.

If a child is wrongfully removed, the courts of the state where the child was habitually resident immediately before removal retain, in principle, their jurisdiction by way of deterrence.

Courts of a member state retain a discretion under the regulation to transfer jurisdiction to the court of another member state with which the child has a particular connection if that court is better placed to hear the case and the transfer is in the best interests of the child. The question arises in the current case whether that power may also be exercised where a child has been wrongfully removed.

The CJEU replied in the affirmative. In such a case, the child must have a particular connection with the other member state, that other court is better placed to hear the case, and the transfer is in the best interests of the child. The cumulative conditions are exhaustive. When examining the last two conditions, the court must take into consideration proceedings for the return of a child under the *Hague Convention on International Child Abduction*. The court having jurisdiction must consider the temporary impossibility for the courts of the other member state to adopt a decision on the substance of the rights of custody, consistent with the child's interests, before the court of that other member state hearing the application for return of that child has, at the very least, ruled on the application.

# GUIDANCE NOTES

CONVEYANCING COMMITTEE

# LAND REGISTRY PROCESSES AT TAILTE ÉIREANN

● Following the Conveyancing Committee's update of 14 December, the committee is grateful to the many practitioners who have been in contact concerning the new Land Registry processes.

The committee advises that, following consideration of the views of the Law Society, Tailte Éireann has agreed that it will now specify the "first rejectable error identified" on any application that is to be rejected, and so will reverse its earlier practice of rejecting applications with no reason given.

The Conveyancing Committee regards this as a positive step and wishes to advise practitioners that there will be further engagement with Tailte Éireann to express the views of the profession.

The committee notes that Tailte Éireann has published new checklists at tailte.ie/en/registration/application-and-mapping-checklists. Once again, the committee will seek to engage with Tailte Eireann regarding these checklists.The committee encourages practitioners to use the published checklists to assist in their practices and, to the extent that any matter on a checklist is considered incorrect or inappropriate, then this should be raised with Tailte Éireann in the course of the relevant application. Practitioners are also requested to advise the committee of any issues that arise.

The committee restates its reminder to practitioners that if they are satisfied that a rejected application is in order, it should be relodged promptly.

## WILLS

**Agar, Job (deceased),** late of Coolcullen, via Carlow, Co Kilkenny (also Coolcullen, Carlow), who died on 15 December 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 or was in recent contact with the deceased regarding his will, please contact HG Donnelly & Son, Solicitors, 5 Duke Street, Athy, Co Kildare; DX 61002 Athy; tel: 059 863 1284, email: info@hgdonnelly.ie

**Boland, Mary Bridget (otherwise Maura) (deceased),** late of St Joseph's Hospital, Ennis, Co Clare, formerly of Breaffa South, Miltown Malbay, Co Clare, and Breaffa House, Barna, Co Galway. Would any person having knowledge of the whereabouts of any will made by the above-named deceased, who died on 26 June 2023, please contact Deirdre Larkin, Larkin Brophy Gillane Solicitors LLP, The Square, Gort, Co Galway; DX 77001 Gort; tel: 091 631 022, email: dlarkin@larkinsolicitors.com

**Burke, Mildred (deceased),** late of 3 Harvard, Ardilea, Clonskeagh, Dublin 14, who died on 28 March 2023. Would any firm or person having knowledge of the whereabouts of any will made by the above-named deceased please contact O'Connor and Bergin Solicitors, Suite 234-235 The Capel Building, Mary's Abbey, Dublin 7; tel: 01 873 2411, email: info@oconnorbergin.ie

**Callaghan, Brendan (deceased),** late of 18 The Schooner, Alverno Castle Avenue, Clontarf, Dublin 3, who died on 21 March 2023. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact McKenna McArdle Solicitors LLP, One Roden Place, Dundalk, Co Louth; tel: 042 935 9250, email: info@mckennamcardle.ie

**Carew, Anne (otherwise Anne Marie) (deceased),** late of 'Tudor Lodge,' 43 Athlumney Village, Navan, Co Meath (and formerly of 'Fairmeade', Rathdrinagh Cross, Beauparc, Navan, Co Meath), who died on 27 October 2023. Would any person having knowledge of the whereabouts of a will made by the above-named deceased please contact Maurice E Veale & Co, Solicitors, 6 Lower Baggot Street, Dublin 2; tel: 01 676 4067, email: c.keane@vealesolicitors.com

**Dillon, Noreen (otherwise Noreen A) (deceased),** late of 39 St Ann's Apartments, Ailesbury Road, Donnybrook, Dublin 4 (formerly of Sandymount, Dublin 4, and Sydney, Australia), who died on 31 January 2023. Would any person having any knowledge of the whereabouts of any will made or purported to have been made by the above-named deceased, or if any firm is holding same, please contact Liston & Company, Solicitors, Argyle House, 103/5 Morehampton Road, Donnybrook, Dublin 4; DX 226001 Morehampton 2; tel: 01 668 5557, email: bernadette@wtliston.ie

**Duggan, Liam (deceased),** late of 70 The Weir, Castlecomer Road, Kilkenny, and formerly of 27 Ashgrove, Parcnagowan, Kilkenny; 22 Mayfield, Kells Road, Kilkenny; and 24 Roselawn, Bolton Woods, Callan, Co Kilkenny, who died on 23 August 2023. Would any person having knowledge of the whereabouts of any will executed by the above-named deceased please contact Emer Foley, Reidy & Foley Solicitors, Parliament House, Parliament Street, Kilkenny; DX 27004; tel: 056 776 5056, email: efoley@reidyandfoley.com

**Fanning, Una (deceased),** late of 85 Templeville Drive, Templeogue, Dublin 6W, who made her last will and testament on 11 February 2010 and who subsequently died on 18 March 2023. Would any person having knowledge of the whereabouts of the said original will of the above-named deceased, dated 11 February 2010, please contact David M Turner, solicitor, at Turner Solicitors, 32 Lower Abbey Street, Dublin 1, D01 H9T4; tel: 01 878 7922, fax: 01 872 7736, email: info@turnersolicitors.ie

**Farrell, Christopher Anthony (o/w Anthony/Tony Farrell) (deceased),** late of 60 The Dunes, Portmarnock, Co Dublin, who died on 1 February 2024. Would any person having knowledge of the whereabouts of a will made by the above-named deceased please contact Michael Moran Solicitors LLP, Mountain View, Castlebar, Co Mayo; tel: 094 902 1053, email: law@moransolicitors.com

**Hyland, Patrick Darby (deceased),** late of Garryvacum, Ballybrittas, Co Laois, who died on 30 August 2023. Would any person having knowledge of a will made by the above-named deceased, or if any firm is holding same or was in recent contact with

## 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%)

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ALL NOTICES MUST BE PAID FOR PRIOR TO PUBLICATION. ALL NOTICES MUST BE EMAILED TO catherine.kearney@lawsociety.ie and PAYMENT MADE BY ELECTRONIC FUNDS TRANSFER (EFT). The Law Society's EFT details will be supplied following receipt of your email. **Deadline for April 2024 *Gazette*: 8 March 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*.

the deceased regarding his will, please contact Patrick F O' Reilly & Co, Solicitors, 9/10 South Great Georges Street, Dublin 2; tel: 01 679 3565, email: ciaran.oshaughnessy@pforeilly.ie

**Hyland, Paul (deceased),** late of 4 Willan's Green, Ongar, Dublin 15, who died on 23 December 2023. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Carmody Moran Solicitors LLP, 11/12 The Plaza, Main Street, Blanchardstown, Dublin 15; tel: 01 827 2888, email: solicitor@carmodymoran.ie

**Keegan, Treasa (Teresa) Bernaditta (deceased),** late of 119 Roebuck Castle, Clonskeagh Dublin 14. Would any person having any knowledge of the whereabouts of any will made or purported to have been made by the above-named deceased, or if any firm is holding same, please contact Barror & Company, Solicitors, 45 Lower Baggot Street, Dublin 2; tel: 01 661 0677, email: info@barrorandco.ie

**Martin, Jean (deceased),** late of 26 Ross View, Bundoran, Co Donegal, who died on 22 October 2016. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Conor McLaughlin, solicitor, Conor McLaughlin & Associates (Dublin and Donegal), 8 Bayview Terrace, Bundoran, Co Donegal, F94 E2KK; tel: 00353 71 984 1322/00353 1 255 24882, email: conor@cmclassociates.com, web: cmclassociates.com

**Masterson, Rosaline (deceased),** late of 8 Silver Birch Crescent, Millfarm, Dunboyne, Co Meath, who died on 25 November 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 or was in recent contact with the deceased regarding her will, please contact Rennick Solicitors, Suite 1, Bracetown Business Park, Clonee, Dublin 15; DX 182001 Dunboyne; tel: 01 825 1030, email: info@rennick.ie

**O'Reilly, Paul (deceased) and O'Reilly, Mary (née Power) (deceased),** late of Ballask, Kilmore, Co Wexford, who died on 7 September 2023. Would any person having any knowledge of the whereabouts of any will made by either of the above-named deceased please contact Helen Doyle, solicitor, Doyle O'Hanlon Solicitors LLP, 7 Glena Terrace, Spawell Road, Wexford; tel: 053 912 3077, email: info@doylesolicitors.ie

**Shiel, Brid (deceased),** late of 47 Maynooth Park, Maynooth, Co Kildare, who died on 15 September 2023. Would anybody having knowledge of the whereabouts of any will made by the above-named deceased please contact Robert Coonan, Solicitors, Bradfield House, Kilcullen, Co Kildare

**Shields, James (deceased),** late of Rathlohan, Kingscourt, Co Cavan, otherwise Rathlohan, Kingscourt, Co Meath, who died on 31 October 1997. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact MacGuill & Company, Solicitors, 5 Seatown, Co Louth; tel: 042 933 4026, email: reception@macguill.ie

**Ryan, Nora (otherwise Eleanora) (née Flanagan) (deceased),** late of Monaquill, Ballinaclough, Nenagh, Co Tipperary, E45 FA22, who died on 6 December 2023. Would any person having knowledge of the whereabouts of a will made by the above-named deceased please contact Hegarty Horgan Solicitors, Law Chambers, Kinsale, Co Cork; email: info@hegartyhorgan.ie

**Tobin, Michael (deceased),** late of 3 Maurland Estate, Carrigaline, Co Cork, who died on 9 December 2023. Would any person having knowledge of the original will made by the above-named deceased please contact Killian O'Mullane, Eugene Murphy Solicitors, 'Sunville', Cork Road, Carrigaline, Co Cork; tel: 021 437 2425, email: killian@emurphysolicitors.ie





## TITLE DEEDS

***Landlord and Tenant (Ground Rents) Acts 1967-2019*: to any person claiming an interest in those premises known as 3 Clonalour, Tralee, Co Kerry**

Take notice that I, Chen Lin, being a person entitled under the above acts, intend to apply to Kerry Circuit Court, upon the elapse of 21 days from the date of this notice, to acquire the fee simple and any other interests, superior to my own, in said premises. Let any person having or claiming to own the freehold or any other interest in said property appear at said date and/or contact my solicitor, Aidan O'Connell, Bohereencaol, Killarney, Co Kerry

*Date: 1 March 2024*

*Signed: Aidan O'Connell (solicitors for the applicants), Bohereencaol, Killarney, Co Kerry*

**In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of an application by L&S Developments Limited**

Take notice any person having any interest in the freehold estate of the following property: all that and those the property known as 344 South Circular Road in the county of the city of Dublin, demised by the lease and therein described as "all that and those a plot of ground at the east corner of Rehoboth Field, facing on the east Rehoboth Place and on the south the South Circular Road, having a frontage to the South Circular Road of 34 feet and extending along the east side thereof 68 feet, and having a width of 7 and a half feet at the rear, be the said admeasurements more or less which said plot of ground is more particularly described in a map hereon delineated and is situate in the parish of St James and county of city of Dublin".

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

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

*Date 1 March 2024*

*Signed: Eugene Smartt (solicitors for the applicants), Newlands Retail Centre, Newlands Cross, Clondalkin, Dublin 22, DX D22 K590*

**In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of the premises situate at 77 Marlborough Road, Donnybrook, Dublin 4: an application by Philip Ryan and Emerald General Partnear Limited**

Take notice that any person having any interest in the freehold estate of the following premises: all that and those the property at 77 Marlborough Road, Donnybrook, Dublin 4, being the property held under an indenture of lease dated 10 April 1869 and made between Samuel Goodisson of the first part and Maurice Tracey of the other part for the term of 475 years from 24 November 1867, subject to the payment of the yearly rent of four pounds, seven shillings, and six pence sterling.

Take notice that Philip Ryan and Emerald General Partner Limited (the applicants) intend to submit an application to the county registrar for the county/city of Dublin at Áras Uí Dhálaigh, Inns Quay, Dublin 7, for acquisition of the freehold interest in the aforesaid premises, and any party asserting that they hold a superior interest in the aforesaid premises are called upon to furnish evidence of the title to the aforementioned premises to the below-named solicitors within 21 days from the date of this notice.

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

*Date: 1 March 2024*

*Signed: Matheson LLP (solicitors for the applicants), 70 Sir John Rogerson's Quay, Dublin 2*

**In the matter of the *Landlord and Tenant Acts 1967-2008* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of the premises known as 2B Clonskeagh Square, Clonskeagh, Dublin 6: an application by Melcorpo Commercial Properties Unlimited Company**

Take notice that any person having a freehold estate or any intermediate interest in the premises known as 2B Clonskeagh Square, Clonskeagh Road, Dublin 6, held under lease dated 25 September 1987 and made between Dodder Properties Holdings Limited (in receivership) of the first part, Bernard Somers of the second part, Templemoy Limited of the third part, Aremson Limited of the fourth part, Anglo Irish Bank Limited of the fifth part, Irish Bank of Commerce Limited of the sixth part, Hill Samuel (Ireland) Limited of the seventh part and Astra Pumps Limited of the eighth part, for the term of 10,000 years from 1 May 1986, subject to the payment of the rent of £1 (if demanded) and the covenants on the part of the lessee and conditions therein contained.

Take notice that the applicant intends to apply to the county registrar for the city of Dublin for the acquisition of the freehold interest and all intermediate interests in the premises, and any party asserting that they hold a superior interest in the premises is called upon to furnish evidence of title to same to the below named within 21 days from the date of this notice.

In default of any such 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 city of Dublin for such directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interests including the freehold reversion in the lands are unknown or unascertained.

*Date: 1 March 2024*

*Signed: Sheehan & Company LLP (solicitors for the applicant), 1 Clare Street, Dublin 2*

**In the matter of the *Landlord and Tenant Acts 1967-2019* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978:* premises at 42 Patrick Street in the city and county of Cork**

In the matter of premises at 42 Patrick Street in the city and county of Cork, which premises were demised by lease made on or before 25 March 1785 from unknown and unascertained person(s) to the applicants' predecessors in title for a term of 990 years from an unknown date on or before 25 March 1785: an application by David Porter and Stanley Porter.

Take notice any person having any superior interest (whether by way of freehold interest or otherwise) in the following property or who owns any encumbrance on the following property: the premises at 42 Patrick Street in the city and county of Cork, the subject of a lease made on or before 25 March 1985 from unknown and unascertained persons to the applicants' predecessors in title for a term of 990 years from an unknown date on or before 25 March 1785.

Take notice that David Porter and Stanley Porter, who now hold the lessee's interest in the said property, intend to submit an application to the county registrar for the county of Cork for the acquisition of the freehold interest and any intermediate interest and any superior interest in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid premises (or any of them), including but not limited to any person claiming to be entitled to the lessor's interest

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## APPOINTMENTS TO THE SOLICITORS DISCIPLINARY TRIBUNAL

LAW SOCIETY OF IRELAND

The Solicitors Disciplinary Tribunal is an independent statutory tribunal appointed by the President of the High Court to consider complaints of misconduct against solicitors. The Tribunal consists of 20 solicitor members and 10 lay members. It sits in divisions of three comprising two solicitor members and one lay member. The website for the Solicitors Disciplinary Tribunal may be accessed at www.distrib.ie.

The Society is inviting expressions of interest from suitably qualified solicitors for appointment as a solicitor member to the Solicitors Disciplinary Tribunal. The appointments will be for a period not exceeding five years. In order to be eligible for appointment to the Solicitors Disciplinary Tribunal, practising solicitors must have no less than 10 years good standing. A daily fee will be paid to the successful appointees.

**Solicitors who meet the criteria and are interested in seeking appointment to the Solicitors Disciplinary Tribunal should send a CV of no more than 600 words by email to regulation@lawsociety.ie with the subject line of the email clearly stating "Application for appointment to the Solicitors Disciplinary Tribunal".**

*Applications should be received on or before close of business on 22 March 2024.*

## APPOINTMENTS TO THE COMPLAINTS COMMITTEE OF THE LEGAL SERVICES REGULATORY AUTHORITY

LAW SOCIETY OF IRELAND

The Complaints Committee of the Legal Services Regulatory Authority was established to consider complaints of misconduct against solicitors. The Complaints Committee consists of 27 members who sit in divisions of 3 or 5 to investigate each individual complaint. Each divisional committee that considers a complaint made against a solicitor will have at least one solicitor in that division.

The Society is inviting expressions of interest from suitably qualified solicitors for appointment as a solicitor member to the Complaints Committee. The appointments will be for a period not exceeding four years. In order to be eligible for appointment to the Complaints Committee, practising solicitors must have no less than 10 years good standing. A daily fee will be paid to the successful appointees.

**Solicitors who meet the criteria and are interested in seeking appointment to the Complaints Committee should send a CV of no more than 600 words by email to regulation@lawsociety.ie with the subject line of the email clearly stating "Application for appointment to the Complaints Committee".**

*Applications should be received on or before close of business on 22 March 2024.*

## APPOINTMENTS TO THE LEGAL PRACTITIONERS DISCIPLINARY TRIBUNAL

LAW SOCIETY OF IRELAND

The Legal Practitioners Disciplinary Tribunal is an independent statutory tribunal appointed by the President of the High Court to consider complaints of misconduct against solicitors.The Tribunal consists of 33 members consisting of 6 nominees from the Law Society, 6 nominees from the Bar Council with the remainder being lay persons. It sits in divisions of at least three members comprising one solicitor member and two lay members.

The Society is inviting expressions of interest from suitably qualified solicitors for appointment as a solicitor member to the Legal Practitioners Disciplinary Tribunal. The appointments will be for a period not exceeding five years. In order to be eligible for appointment to the Legal Practitioners Tribunal, practising solicitors must have no less than 10 years good standing. A daily fee will be paid to the successful appointees.

**Solicitors who meet the criteria and are interested in seeking appointment to the Legal Practitioners Disciplinary Tribunal should send a CV of no more than 600 words by email to regulation@lawsociety.ie with the subject line of the email clearly stating "Application for appointment to the Legal Practitioners Disciplinary Tribunal".**

*Applications should be received on or before close of business on 22 March 2024.*

in the lease made on or before 25 March 1785 from unknown and unascertained persons to the applicants' predecessors in title for a term of 990 years from an unknown date on or before 25 March 1785, are called upon to give notice of their said claim and furnish evidence of their title to the aforementioned premises to the below named within 21 days from the date of this notice.

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

*Date: 1 March 2024*

*Signed: Doherty Solicitors (solicitors for the applicant), Seville House, New Dock Street, Galway*

**In the matter of the *Landlord and Tenant Acts 1967-2019* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* (as amended) and in the matter of hereditaments and premises 12-16 (inclusive) Annamoe Road, Cabra, Dublin 7: an application by For Much Needed Housing Limited (company number 740580)**

Take notice any person having any interest in the freehold estate or intermediate interest(s) of the hereditaments and premises at 12-16 Annamoe Road, Cabra, Dublin 7 (the 'property'), the leasehold title to which is registered in Tailte Éireann as part of the lands comprised Folio 172607L of the register of leaseholders, county Dublin, being part of the property demised by an indenture of lease dated 17 July 1930 and made between (1) Mary Mooney, Jessie Mary Doyle, Julia Gray, Rev John Cassidy, Joseph Dunne Mooney, James O'Connor, Joseph John Mooney, Edward Joseph Doyle, William Francis Gray, and Timothy Alexander Kavanagh and (2) James McGauran (the 1930 lease) for a term of 300 years from 17 June 1928, and under a supplemental lease dated 31 July 1933 (the 1933 lease) made between the same parties to the 1930 lease, and also subject to a further supplemental lease dated 30 November 1962 and made between (1) Clare Dunne, Judith Darling, Edward J Doyle, Charles Harte and Eileen Gray and (2) James McGauran (together, 'the leases'), and subject to the yearly rent and to the covenants and conditions contained in the leases.

Take notice that the applicant, For Much Needed Housing Limited (company number 740580), being the person entitled to the lessee's interest under the leases insofar as they affect the property, intends to apply to the county registrar for the county of Dublin for the acquisition of the freehold and intermediate interest(s) in the property, and any party or parties asserting that they hold a superior interest in the premises are called upon to furnish evidence of title to the premises and to the below named within 21 days from the date of this notice.

In default of any such notice being received, For Much Needed Housing Limited (company number 740580) 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 such orders or directions as may be appropriate on the basis that persons entitled to superior interest(s) in the premises are unknown or unascertained.

*Date: 1 March 2024*

*Signed: McGroddy Brennan LLP (solicitors for the applicant), 33 Merrion Street Upper, Dublin 2*

PRO BONOBO

# The 'spy pigeon' who loved me

● Indian police have finally cleared a suspected 'Chinese spy pigeon' and released it into the wild after eight months in detention, CNN reports.

The pigeon's pernicious persecution began in May when it was captured near a port in Mumbai with two rings tied to its legs, carrying a message that was said to look like it was in Chinese, local media said. Police suspected it was involved in espionage and locked it up, eventually sending it to a veterinary hospital.

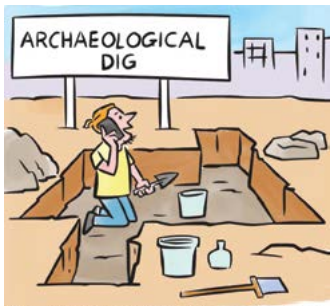
However, it turned out that the apparent stool-pigeon was simply a a racing bird from Taiwan.


# Delenda est Carthago

● Hogan Lovells' planned office move could be delayed after an "incredibly rare" Roman funeral bed and associated artefacts were unearthed at the location of its future building in London, rollonfriday.com reports.

Archaeologists discovered the first complete funeral bed to be found in Britain, which they described as "incredibly rare". The find included five oak coffins, skeletal remains, a glass vial, "high-status" jewellery, and a decorated lamp.

The site was used as a cemetery during the Roman period between 43 to 410AD, and again in the 16th century.



"I'm working from Rome today."

# One lump or two?

● The Solicitors Regulation Authority (SRA) in has taken action against an office manager who withdrew £1,450 from her law firm's office account for 'tea and coffee expenses', according to Legalcheek.com.

The manager had worked at the Sunderland firm for over 30 years, and acquired the cash through seven pre-signed office cheques between October 2022 and January 2023. She claimed that this was to cover expenses for tea, coffee, milk, and sugar, although she did not retain receipts or inform her bosses.

She also didn't tell them she was reimbursing herself using the cheques. In any event, the SRA said that the firm expected such items to be purchased using the petty cash, and a record to be kept of all expenditure.

The SRA noted that it was common practice for the firm's employees to bring their own refreshments but, even if this were not the case, the size of the office "would not warrant such high expenditure on these items".

# Henry the Ate

● The family of an elderly woman killed by an alligator as she walked her dog is suing the retirement community where she lived for wrongful death, *The Guardian* reports.

Gloria Serge (85) died in February 2023 after the 11ft alligator – known to residents as Henry – leaped from a pond at the 435-acre Spanish Lakes Fairways in Fort Pierce and dragged her into the water.

The lawsuit contends that Henry was a "known nuisance" to the owner and operator of the retirement community and that the reptile should have been removed.

EU & INTERNATIONAL AFFAIRS COMMITTEE

# STAGE INTERNATIONAL À PARIS 2024

## OCTOBER – NOVEMBER 2024

LAW SOCIETY OF IRELAND

ORDRE DES AVOCATS DE PARIS

Every year, the Paris Bar organises an International *Stage* in Paris and invites a limited number of lawyers from each jurisdiction to participate. The *stage* is a fantastic opportunity for lawyers to discover and practise French law in the heart of Paris.

The *stage* takes place during the months of October and November and entails: one month attending classes at the *l'Ecole de Formation du Barreau*, and one month of work experience in a law firm in Paris. The programme also includes a visit to Brussels to the European institutions.

The Irish participant will be selected by the EU & International Affairs Committee of the Law Society of Ireland. Candidates must:

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- Have a good knowledge of French,
- Be under 40 years old,
- Have insurance cover (for accidents and damages).

Tuition is fully covered by the Paris Bar; candidates must be willing to cover other expenses (such as, travel, accommodation, meals)[1].

*Pour plus d'informations* – https://www.avocatparis.org/stage-international

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**Application deadline:** Friday, 15 March 2024

[1] The EU & IA Committee will sponsor the participant with €3,500.

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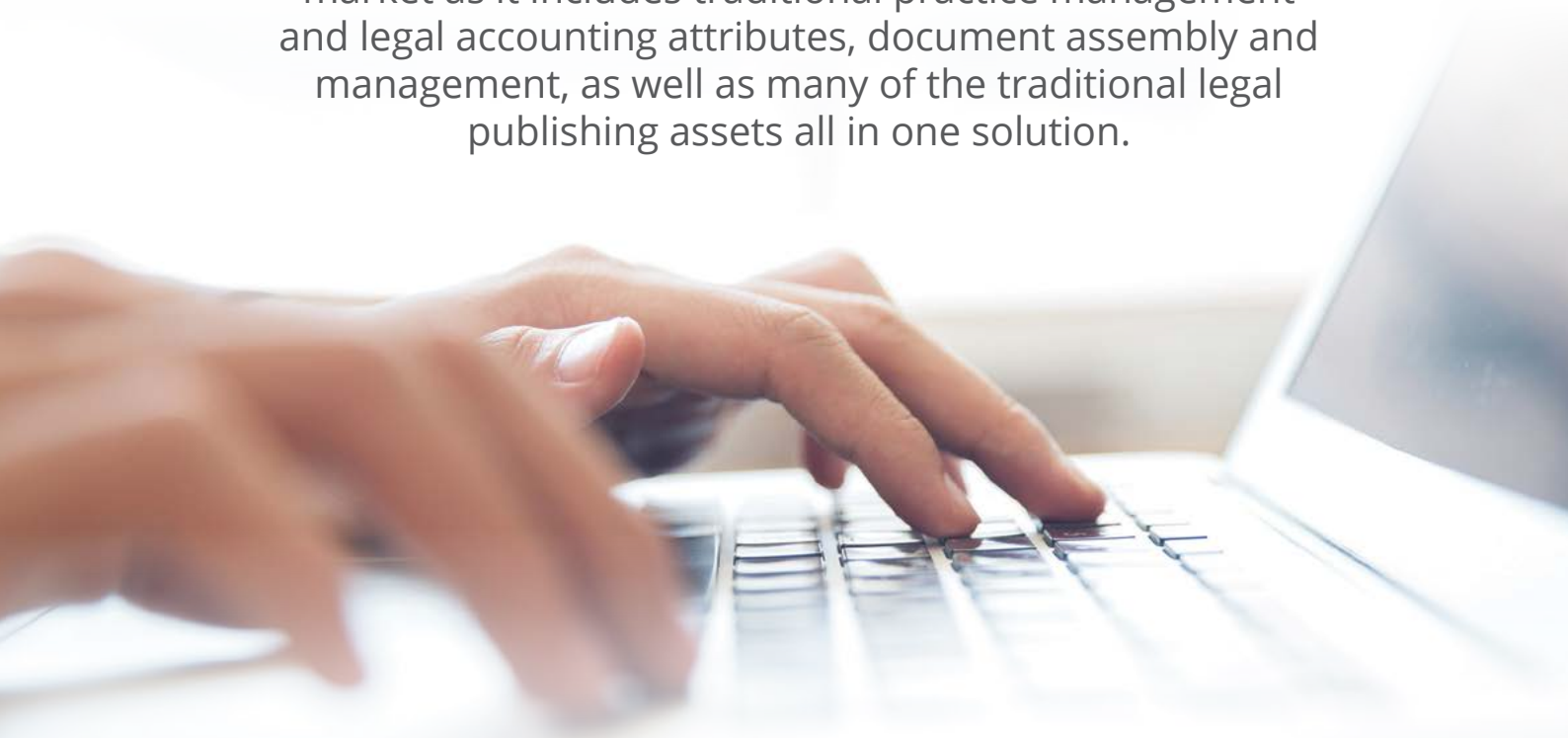

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