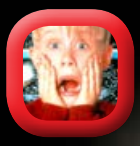

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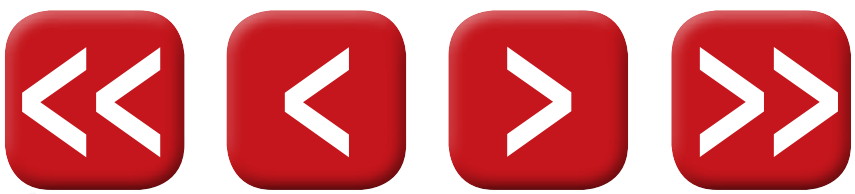

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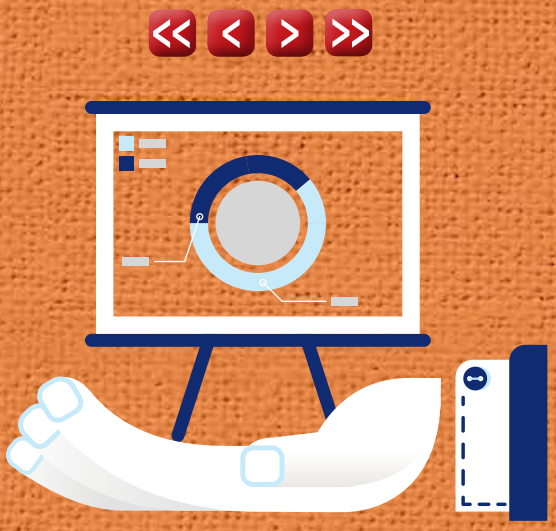

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JUSTIFIED STANCE

So here I am, on the last lap of my presidential year. Although not a phrase I'm mad about, I'll quote it anyway: "A lot done, more to do!"

In the marriage equality referendum, the Law Society, following the direction of its Council, took a leadership position. It did so because it felt it to be the right thing to do. Similarly, when it came to the plight of the 1,700 claimants (many with undischarged judgements) left high and dry, arising from an ineffectively regulated foreign insurance company with a shamefully deceptive Irish name becoming hopelessly insolvent, we also took a stand.

In the *Setanta* case (*Law Society v MIBI*), there was a denial to those claimants of the usual remedy of bringing a claim against the Motor Insurers' Bureau of Ireland (MIBI). Following directions from the President of the High Court, the Law Society challenged the position of MIBI as a matter of justice and fairness to plaintiffs, where the overall quantum of claims was estimated at €90 million. I'm proud to say that your Law Society's stance in seeking to vindicate the rights of those claimants – and in standing for justice, equity and fairness – was entirely vindicated in the 55-page judgment of Hedigan J in the High Court (as comprehensively covered elsewhere in this *Gazette*).

As the judge remarked (and with reference to an ECJ decision heavily relied upon by MIBI): "It may well be that developments in the insurance market on a European level have now altered the parameters of risk contemplated by the MIBI agreements. That cannot, however, affect the meaning of those agreements as understood until quite recently. It may well result in their alteration to limit such liability."

Society guidance

The lead-in to autumn has also seen the coming into effect of the new lobbying legislation. The *Regulation of Lobbying Act 2015* will affect those of us who interact with the political classes and Government. An excellent guide is available on the Law Society website, and practitioners are encouraged to read the article in this *Gazette* (p20). If this is an area that concerns you, then these resources will prove an excellent starting point.

Similarly, a newly published guide on the *Companies Act 2014* was launched recently by the Law Society's Business Law Committee, in collaboration with Chambers Ireland. I would like, again, to pay tribute to the immense work done by Paul Keane and other members of that committee. Their enthusiastic evangelisation of the legislation is something from which our profession should take a lead – and not leave it up to other non-lawyer professions to fill the vacuum. The Law Society has equipped solicitors throughout the country with the know-how to assist companies to take advantage of the legislative changes, and the excellent guide is available now for download at www.lawsociety.ie.

Autumn, of course, also brings with it the tremors that we have long associated with the professional indemnity insurance season. We dare to contemplate that the anxieties of recent years are but a memory, a bad dream that is well behind us as the market settles down and colleagues reap the dividends of better practice management procedures. A rather apt quote often attributed to Helen Keller is called for: "Keep your face to the sunshine and you cannot see the shadow." Hopefully, we will all have a good outcome.

Kevin O'Higgins
President

LAW SOCIETY OF IRELAND

> Your Law Society's stance in seeking to vindicate the rights of those claimants was entirely vindicated

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Volume 109, number 8
Subscriptions: €60 (€90 overseas)

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nationwide

News from around the country

Keith Walsh is principal of Keith Walsh Solicitors, where he works on civil litigation and family law cases

DUBLIN

Then we take Berlin

President Aaron McKenna, accompanied by his wife Deirdre, led the charge of more than 100 delegates who occupied Berlin from 18-20 September for the Dublin Solicitors' Bar Association annual conference.

Local lawyer Klaus Jankowski (managing partner of SKW Shwarz) addressed the conference on real estate law in Germany and the challenges and opportunities faced by property lawyers and their investor clients. Dr Christian Gross (Bereich Recht) spoke on the promotion of German law internationally, which is an initiative launched by the German Federal Bar, the German Bar Association, and the Association of German Chambers of Commerce and Industry.

Your humble correspondent brought matters closer to home, with an update on the *Legal Services Regulation Bill*. In a very lively question-and-answer session afterwards, the benefits of the common law system versus the certainties of the civil law codified system were debated and, in true European style, a compromise was reached.

As with all the best events, this one will be back next year – same time, different place – with rumours abounding that next year's president, Eamonn Shannon, will bring the DSBA across the pond, in a reversal of Leonard Cohen's famous song 'First we take Manhattan, then we take Berlin'.

WEST CORK

Paying a visit to Skibbereen Courthouse

At Skibbereen Courthouse on 12 May were *(front, l to r)*: Colette McCarthy (solicitor and West Cork Bar Association president), Kevin O'Higgins (Law Society president), Judge James McNulty, Ken Murphy (director general) and Helen Collins (solicitor); *(back, l to r)*: Susan Moore (solicitor), Siuin Hurley (solicitor and WCBA secretary), Breda Hennessey (District Court clerk), Laetitia Baker (solicitor) and Liam O'Donovan (solicitor)

KILDARE

Glory days?

The Kildare Bar Association kicked off its autumn schedule of seminars in the salubrious surroundings of Carton House on 15 September.

The seminar was addressed by Karl Dowling BL, who gave a very useful and practical talk on will-drafting and how to avoid posthumous problems and litigation.

Kevin Houlihan, a solicitor based in Blessington, Co Wicklow, presented an interesting talk on the aspects of human behaviour that lead to mistakes, both in his field of expertise in aviation accidents and in legal practice.

The only disappointment for attendees was that they just missed out on greeting the Irish rugby team, who had left their training ground at Carton House that same afternoon, on their way to World Cup glory, we hope!

GALWAY

CPD sessions in the City of the Tribes

The Galway Solicitors' Bar Association (GSBA) has organised another 14 hours of CPD between now and the end of the year – and ten of those hours are free of charge to all GSBA members.

Since all seminars are free (except for the October event – see details below), the GSBA would appreciate it if those who have not yet paid the 2015 subscription fee of €50 might do so at their earliest convenience.

The first CPD event of the new term got off to a great start on 25 September at Galway Courthouse. Alice Harrison BL spoke on 'Slopping-out claims', while Michelle Moran (solicitor) looked at the procedural aspects from a solicitor's point of view.

Author and leading probate practitioner Karl Dowling BL made some very illuminating points on 'Will-drafting: avoiding posthumous problems and litigation', while Denise Waldron BL spoke on 'Marital breakdown and tax issues'. Catherine Duggan BL spoke on the rights of cohabitants in light of the recent decision of Baker J in *DC and DR* (5 May 2015).

CPD regulatory and management points are up for grabs in October. This seminar will feature one hour of regulatory and three hours of management points and takes place on Friday 16 October 2015 at 2pm at Galway Courthouse.

Speakers will include David Rowe (founder, Outsource), Bank of Ireland's regional business manager, regional PII director at O'Leary Insurances, Bernard Doherty (tax partner, Grant Thornton), and local property directors Colliers, Jordan Auctioneers, and Power & Associates.

In order to attend, cheques must be sent in advance to Outsource, Hambelden House, 9-26 Lower Pembroke Street, Dublin 2. The costs are as follows: one delegate €110; two delegates (same firm) €190; three delegates (same firm) €250.

For further details, tel: 01 678 8490, fax: 01 678 8491 or email: reception@outsource-finance.com.

representation

News from the Law Society's committees and task forces

YOUNGER MEMBERS COMMITTEE

A call to engage!

Wishing the Law Society to become more relevant to younger members, the newly re-established Younger Members Committee has chosen 'engagement' as its theme for 2015.

With approximately 44% of the Society's members aged 39 or under, the committee has set itself quite a task to reach out to such a large body of the membership. However, it is certainly an achievable task, given the broad range of experience, dedication and enthusiasm that the committee members bring.

Know your committee

Having cut her teeth with DSBA's Young Dublin Solicitors' Committee (YDS), William Fry's Carol Eager was the driving force behind the successful motion to re-establish the Younger Members Committee at the Law Society's 2014 AGM. Carol is now chair of the committee, and her vision to have the committee reflect the broad spectrum of the Society's younger membership is mirrored in the profiles of her fellow committee members.

Emer O'Connor and Donal Hamilton have been actively involved with the *Hibernian Law Journal*, both of them having served as editor-in-chief for various editions. Similar to the majority of younger solicitors, Emer and Donal are Dublin-based and employed by Beauchamps and ByrneWallace, respectively.

Ciara O'Callaghan is an experienced conveyancing and probate solicitor, based in Galway, and regularly tutors in the Law Society.

Representing the southern region are Jennifer Dorgan (Coakley Moloney Solicitors), Aoife Hennessy (Sweeney McGann), and Frank Halley (MM Halley & Son). Jennifer qualified in 2013 and works in her native Cork. Aoife is based in Limerick and is a respected commercial solicitor. Frank qualified in 2011 and is a popular member in the Waterford area.

John Costello (Orpen Franks) brings to the table his experience as a past-president of the Law Society and former Council member.

Popping the questions

The committee wants to hear from members qualified for less than 15 years on what they would like the Law Society to do for them. This October, the committee will survey all members qualified since 2000. The results will inform the committee's work over the next two years.

The early and developmental years of a solicitor's career present many challenges, and it is important that members are supported in meeting those challenges and issues. Do you believe the Law Society could do more to assist you? Would you like to attend CPD events specifically for younger members? Do you want to see a networking element to those CPD events so that you can make contacts among your peers? If so, let the committee know and it will seek to act on your suggestions.

The survey will be sent by email, so you should ensure that the Law Society has your correct email address if you wish to take part. Members can check their details or update their profiles by logging on to the Law Society website and clicking on 'profile' in the top-right-hand corner of the page.

Any queries in relation to the survey, or the committee, can be directed to Sinead Travers (committee secretary) at s.travers@lawsociety.ie.

HUMAN RIGHTS COMMITTEE

Annual Human Rights Conference 2015

'Human rights and the media: balancing public and private interests' is the theme of the 13th annual Human Rights Conference, which will take place on Saturday 10 October at the Law Society's headquarters, Blackhall Place, Dublin 7.

Organised by the Human Rights Committee, this year's conference is a collaborative event with the Dublin Solicitors' Bar Association, in partnership with Law Society Professional Training.

The conference will examine the interplay between the right to freedom of expression and the individual's right to privacy in light of human rights law. Topics will include the potential conflict between the public interest in

unrestricted press freedom and the individual's right to privacy. It will offer a unique perspective on the potential impact of unrestricted press reporting upon the rights of prisoners.

This event will also offer an important opportunity to consider some of the emerging and increasingly compelling concerns around issues such as digital privacy, data retention and online surveillance.

Speakers will include Mr Justice Donald Binchy, Olivia O'Kane (media defence lawyer), Judge Michael Reilly (inspector of prisons), Dr TJ McIntyre (lecturer in law and chairman of Digital Rights Ireland), and Karlin Lillington (technology journalist, *The Irish Times*).

The conference will be chaired by Michael Kealey (in-house counsel, Associated Newspapers) and Michael McDowell SC. Registration is free and 3.5 CPD hours (by group study) are available. For further details and to book a place, see www.lawsociety.ie/Courses--Events/cpd.

ALTERNATIVE DISPUTE RESOLUTION COMMITTEE

New *ADR Guide 2015* launched

A new guide to alternative dispute resolution (ADR) has been launched for solicitors by the Law Society.

The *ADR Guide 2015* provides a practical summary of the wide range of dispute-resolution methods available. It covers mediation, arbitration, expert determination, adjudication, conciliation, and other forms of ADR.

The pros and cons of each of the various ADR methods are identified, and the differences between the various methods are explained. Importantly, the role of practitioners in each of the methods is also identified.

It is hoped that it will serve as a quick and practical guide for solicitors to assist in ensuring that their clients are advised, not just of the availability of ADR methods, but also to help choose the most appropriate method in particular situations.

An electronic version of the guide is available for download on the Law Society website at www.lawsociety.ie/ADR. The guide was produced by the ADR Committee, led by its chair James Kinch.

IN-HOUSE AND PUBLIC SECTOR COMMITTEE

How to manage risk and protect your organisation

The role of in-house counsel in managing risk and protecting their organisation will be examined at the annual conference of the In-house and Public Sector Committee on 12 November. The event will take place at Blackhall Place from 2pm until 5.30pm and is being organised with Law Society Professional Training.

This management-based seminar will deal with the role of in-house counsel in identifying and managing legal risk, protecting the employer's reputation, and keeping them out of court. It will cover the following topics.

PIC: ISTOCK

Effective identification and management of legal risk:

- Identifying, assessing and prioritising legal risk (probability and impact),
- Highlighting the benefits and positive results to the business from effective management of legal risk,
- Grappling with the compliance challenge.

Organisational reputation protection:

- Encourage ethical and responsible communications,
- Understanding the agenda of detractors, and
- Being ready for the media spotlight.

Dispute avoidance and dispute resolution management:

- How to keep your client out of court from an in-house perspective.

The speakers will include James Kinch (Dublin City Council), Mark Prebble (Falconbury Ltd and Lawyers in Business, England), and Roddy Bourke (McCann FitzGerald).

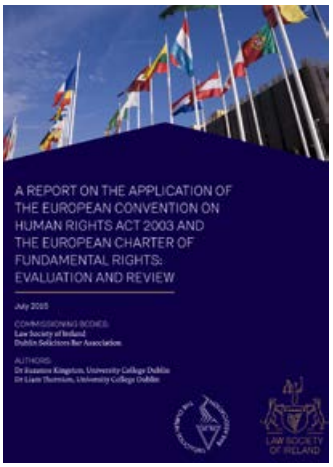
In-house solicitors working in the private or public sectors who would like to explore these issues in more detail are invited to attend. The price is €176 (or €150 for Skillnet members). The following CPD hours will apply: one regulatory matters, and two management and professional development skills (by group study). The brochure and booking form can be found at www.lawsociety.ie. Additional queries should be emailed to lspt@lawsociety.ie.

Report on *ECHR Act 2003* and EUCFR in Irish case law

A specially commissioned report on the impact of the *European Convention on Human Rights Act 2003* and the *Charter of Fundamental Rights of the European Union* on Irish case law will be launched at the Annual Human Rights Conference on 10 October 2015. The report has been commissioned by the Law Society and the Dublin Solicitors' Bar Association.

Authored by Dr Suzanne Kingston and Dr Liam Thornton (both of UCD's Sutherland School of Law), the report has been available online since July 2015. It aims to raise awareness of the human rights that are protected by the *ECHR Act* and the charter, and their application and development by the Irish courts.

The report will assist practitioners in using these cases in a range of areas of legal practice. It outlines emerging trends that should be of considerable assistance to practitioners interested in using the *ECHR Act 2003* and the charter in litigation.



In addition, the project has created an extensive list of decided cases in which the convention, the act or the charter have been pleaded. This will allow for a detailed exploration of the potential of both the *ECHR Act 2003* and the charter to be utilised in litigation.

To access the report, visit the 'resources' tab at www.lawsociety.ie/Solicitors/Representation/Committees/Human-Rights.

Gazette's 1916 centenary call-up

In preparation for the centenary of the 1916 Rising, the *Gazette* is inviting practitioners to send us any information that specifically relates to solicitors or apprentices who played a role, directly or indirectly, in the events of 1916 – on either side. Information could be about law firms or might relate to family histories.

The *Gazette* is aware already of the role played by solicitor William Corrigan, 3 St Andrew's Street, who was a volunteer section leader in 1916 and who featured in some of the witness statements published online on the Bureau of Military History website.

Please email any information that might be of interest to gazette@lawsociety.ie and we'll follow up with you.

Easter Rising 1916: the trials

The Courts' Centenary Commemoration Committee continues its lecture series with a talk titled 'Easter Rising 1916: the trials'. It will take place at 5pm on Thursday 12 November 2015 in the newly refurbished Round Hall, Four Courts, Inns Quay, Dublin.

The speaker will be Judge Seán Enright of the English Circuit Court.

The lecture is based on Judge Enright's book of the same title, which is a pioneering study of the military trials in May 1916 and includes previously unpublished trial records.

Free entry with ticket. Apply by email to courtscentenaryevents@courts.ie.

Criminal Legal Aid Panel – tax clearance cert deadline

Solicitors wishing to have their name retained on the Criminal Legal Aid Panel beyond 30 November 2015, for the year commencing 1 December 2015, must submit to the relevant county registrar a tax clearance certificate with an expiry date later than 30 November 2015.

For further information, please see the Department of Justice notice to practitioners at www.lawsociety.ie/news.

Irish alumnus appointed co-chair of ABA committee

TCD alumnus Alan B Rabkin, has been appointed co-chair of the International Financial Products and Services Committee of the American Bar Association. Mr Rabkin served as the vice-chair of this same committee from 2009-2015. He who works as a counsel in the office of Holland & Hart LLP in Reno, Nevada, USA.

The committee has over 500 members from around the world. It focuses on international and comparative legal, regulatory and supervisory issues related to financial institutions, including investment funds and firms that provide banking, capital markets, investment, and insurance products and services.

Mr Rabkin received both an LLM and a PhD in law from Trinity College Dublin, and has lectured on European financial institutions at Trinity College. He is enrolled as a solicitor with the Law Society of Ireland, England and Wales, and Scotland.

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Joining forces to launch *Companies Act* guide

The Law Society and Chambers Ireland joined forces to launch a new guide to the *Companies Act 2014* on 8 September 2015.

The *Companies Act* is the largest piece of legislation ever to come into effect in Ireland and substantially changes the legal environment in which businesses operate.

The aim of the guide is to highlight the most important pieces of information for companies in a clear and concise manner.

Paul Keane, chair of the Law Society's Business Law Committee, says: "The changes made will allow businesses to operate more efficiently. The Law Society has equipped solicitors throughout the country with the know-how to assist companies to take advantage of these changes.

"The bulk of the legislation came into effect on 1 June. However, private companies will have 18 months to decide which form of company they will choose to be in the future."

(Clockwise, from centre): Emma Kerins (project officer, Chambers Ireland) Ken Murphy (director general, Law Society), Ian Talbot (CEO, Chambers Ireland), Philip Daly (solicitor, LK Shields) and Paul Keane (chair, Law Society Business Law Committee)

Mr Keane said that the Society had partnered with Chambers Ireland "to guide businesses on the changes and to let companies know that if they are in doubt as to how the act might affect them, they should talk to their solicitor".

Chief executive of Chambers Ireland, Ian Talbot, said: "It is vital that businesses know what is required of them. Understanding the implications of the act could pose difficulties for many businesses, particularly SMEs, given the sheer quantity and complexity of the legislation. We are delighted to partner with the Law Society to provide this concise and business-friendly guide to the *Companies Act*."

The guide is available for download on the Law Society website (search for 'Company law guide').

REFERENCE POINT

companies act: an overview of changes

The new act requires all existing private companies with shares to choose to become either a company limited by shares (CLS or a LTD type-company), a 'designated activity company' (DAC), or another type or company such as a PLC. These decisions must be made within an 18-month transition period after the law comes into effect.

Consolidating 30 pieces of legislation – dating from 1963 to 2013 – into one act, the concentration is on private companies, to reflect the way business is actually done in Ireland.

Those operating small private companies who opt to convert to a LTD type – through which the majority of business in Ireland is conducted – will benefit from a number of changes, including:

- **A simplified constitution, comprising a single document instead of a memorandum of association and articles of association,**
- **Only one director will be required,**
- **May avoid holding annual general meetings,**
- **Unlimited capacity – removal of the *ultra vires* rule, whereby companies cannot operate outside of the activities laid out in the objects clause, and**
- **Codification of directors' duties into eight rules.**

There are also new rules to consider, including:

- **The requirement that a company secretary must have the skills and resources for the role,**
- **Directors' loans will be treated adversely; it will be important that proper loan agreements and board resolutions are in place,**
- **Directors will be required to confirm that all relevant audit information of which they are aware, having made reasonable enquiries, has been conveyed to the auditors,**
- **Directors will also need to consider what basic steps they should take to demonstrate compliance, and**
- **Compliance statements and audit committees for larger companies – directors have new obligations for securing compliance with certain company law provisions and tax law, and to consider whether to appoint an audit committee.**

FOCUS ON MEMBER SERVICES

Career Support by Skype

The Law Society is now offering career consultations via Skype to accommodate solicitors who would like to talk to a career counsellor, but are unable to attend a meeting in Blackhall Place.

One-to-one career consultations are provided free of charge, and are an important first step when exploring your career options. Career Support can offer guidance on issues such as change in career direction, achieving promotion, returning to work after an absence, and job loss.

Career Support also offers many other services to help members who are job searching. For example, you can email your CV to us for review and feedback. In addition, the Law Society's CV register allows you to upload your CV for potential employers to view.

Career Support sends 'opportunity update' emails twice weekly to members who sign up to the service. These contain a summary of current solicitor positions advertised on the Law Society's legal vacancies web page, as well as information about relevant career events.

You will find more information about Career Support and you can access the CV register at www.lawsociety.ie/careers.

You can arrange a one-to-one consultation, register for opportunity updates, and organise a CV review by emailing careers@lawsociety.ie, or tel: 01 881 5766.

Advocating for your employment law clients

The practice and procedure of employment law is about to undergo significant changes this autumn following the introduction of the *Workplace Relations Act 2015*.

If you are involved in this area of law, the Diploma Centre Certificate in Employment Advocacy and Skills beginning on Wednesday 14 October will examine this important legislation and will provide practitioners with confidence in their advocacy skills.

This certificate course will analyse the latest reforms in order to assist practitioners to further develop and to enhance the key skills required when representing clients in employment-related disputes.

The course will focus on developing, practising and honing advocacy skills in an informed and supportive environment. Participants will be required to take part in various role-plays and present a range of employment-related applications before seasoned employment law practitioners.

The certificate will satisfy the full CPD requirements for 2015. Further information is available at www.lawsociety.ie/diplomacentre.

Launch of new LLM Advanced Legal Studies

Pictured at the open evening for the inaugural LLM Advanced Legal Studies were Paul Ryan, Roisin Hickey and Orlaith Traynor, with TP Kennedy (director of education), Freda Grealy (head of Diploma Centre), Rory O'Boyle (programme co-ordinator), Gabriel Brennan (course manager) and Cormac Ó Culáin (public affairs executive)

At the open evening for the inaugural LLM Advanced Legal Studies were solicitors Richard Lee, Bill Holohan and David Curran

New diploma aims to equip solicitors for judicial roles

The Diploma Centre has launched a new Diploma in Litigation Management Skills. The course will begin on Thursday 12 November 2015 in the Education Centre at Blackhall Place.

This course will be of interest to colleagues considering moving their career towards a judicial or quasi-judicial role. At its core, the diploma is designed to equip solicitors with the proficiencies and aptitudes required to act as judges, adjudicators or chairpersons.

At the Law Society's annual dinner recently, President Kevin O'Higgins commented that it was "a matter of regret" that only a tiny number of recent judicial appointments had been from the solicitors' branch of the profession. "There is a genuine public interest at stake here," he said.

As a result, the president is strongly recommending this new diploma, which he believes will provide practitioners with the expansive breadth of skills and competencies required to act in judicial or quasi-judicial roles.

The course will present a basic understanding of court management, rules of evidence and the procedures applicable to the various forms of alternative dispute resolution procedures available.

One module will specifically address the skills required to ensure that judges and adjudicators respond appropriately to cultural diversity. This will help participants to develop suitable sensitivity and skill when dealing with vulnerable witnesses, thus ensuring fairness and impartiality when administering justice.

Other core skills – often overlooked in more procedural orientated training – include those required when drafting written judgments and ensuring independence and accountability.

The course will also be of interest to practitioners who, while not necessarily currently contemplating judicial or quasi-judicial roles, are engaged in high-profile litigation and leadership roles and who would benefit from reflecting on the skill-set required when acting in this capacity.

Lectures will be webcast, with onsite workshops scheduled for Saturdays. The fee for the course is €2,400. For further information, contact Deirdre Flynn or Rory O'Boyle (course leaders) at d.flynn@lawsociety.ie or r.oboyle@LawSociety.ie, or tel: 01 672 4802.

THERE'S AN APP FOR THAT

Ghost in the machine

APP: LOOKOUT **PRICE:** FREE (€2.99 PER MONTH FOR PREMIUM)

Apple products have long had a reputation for being less prone to virus and malware attacks. But given the proliferation of mobile Apple devices these days, that had to change sometime. Luckily, there's a popular security app called *Lookout*. Available for both iOS and Android, *Lookout* has said that potentially hundreds of millions of Apple aficionados may have been affected by malware.

Researchers recently discovered a piece of iOS malware (malicious code) that has affected a number of apps using the Apple operating system. Apple is now working to remove these apps.

Called 'XcodeGhost', it sneaks malicious code into apps at development stage – without the developers' knowledge. Affected apps include the very popular *WeChat* and *CamCard*. The malware can steal data and potentially trick people into providing personally identifiable information. The creators behind XcodeGhost were able to repackage a tool used by legitimate iOS and OSX developers to create apps.

How might it affect you? Well, it can remove information from your Apple device, such as its name, country and unique identifiers. It may also have the ability to push dialogue boxes to your iPhone or iPad's screen. Theoretically, one of these dialogues could be used to steal your username and password, or other personal information.

***Lookout* says that the malware might also be able to open websites in your mobile browser, which could be used for a variety of malicious purposes, including phishing and installing other potentially malicious software.**

The following steps are recommended:

- **If you have one of the listed apps, update them if possible or delete them immediately and wait until the developer releases a new version,**
- **If one of these apps is running on your device, change your Apple ID password and be wary of any suspicious emails or push notifications to your device,**
- **In general, be wary of apps pushing dialogue boxes to your screen asking for personal information without first being aware of who is asking for it,**
- **If you have used your Apple ID password on any other accounts, you should change the password for those accounts, too.**

The affected apps are *LifeSmart*, *OPlayerHD Lite*, *WeChat*, *WinZip*, *10000+ Wallpapers*, *CamCard Business*, *CamScanner* and *CamScanner Free*. Hundreds more might be affected. See https://blog.lookout.com/blog/2015/09/21/xcodeghost-apps/ for details and advice.

Selfie monkey has copyright in monkey selfie, suit claims

The monkey who took the 'selfie' that graced the award-winning cover of the October 2014 *Gazette* should be declared the photo's owner and receive damages for copyright infringement, People for the Ethical Treatment of Animals (PETA) has argued in a federal lawsuit in the US. PETA has taken the case against a US book publisher and a photographer.

Naruto, a six-year-old macaque that lives free on the Indonesian island of Sulawesi, took the image and several others about four years ago using a camera left unattended by British photographer David Slater.

PETA argues that the 'monkey selfies' came from "a series of purposeful and voluntary actions by Naruto, unaided by Slater" and that "Naruto has the right to own and benefit from the copyright in the same manner and to the same extent as any other author".

The suit, filed in the US District Court in San Francisco, seeks a court order allowing PETA to administer all proceeds from the photos for the benefit of the monkey. PETA said it brought the action on the monkey's behalf because he could not, "due to inaccessibility and incapacity".

Slater had published a book with a San Francisco publisher that includes the selfies, and PETA argues that "the court had jurisdiction because of the book sales made in the United States".

The 1976 *Copyright Act* is "sufficiently broad to extend to any original work, including those created by Naruto," PETA says, and the act does not contain language limiting copyright to humans.

"The act grants copyright to authors of original works, with no limit on species," PETA lawyer Jeffrey Kerr said. "Copyright law is clear: it's not the person who owns the camera, it's the being who took the photograph."

David Favre, a Michigan State University law professor who often writes about animal rights, has said that the copyright issue raised by PETA is a cutting-edge legal question. "They have a fair argument," he wrote, "but I would have to say it is an uphill battle."

Cheryl Dancey Balough, a Chicago lawyer who specialises in copyright law, said a key question – if the lawsuit moves forward – is whether Slater's creative contribution to the selfies rises to a level that warrants a copyright.

The photos have been widely distributed by outlets, including Wikipedia, which contend that no one owns the copyright to the images because they were taken by an animal, not a person.

A walk through history

The Law Society opened its Blackhall Place headquarters (the former Blue Coat School) for three tours during National Heritage Week in late August.

Across the three days, over 160 members of the public took part in the tours, which covered the history of Oxmanstown Green, the local landscape throughout the centuries, the original Blue Coat School, and the majestic Thomas Ivory building that is Blackhall Place.

The Society also opened its doors to the public on Culture Night on 18 September 2015, when there were guided tours of the building by the Society's architect, from 6pm-10pm.

Collaborative seminar on technology in litigation

A 'Technology in litigation' collaborative seminar took place from 14-17 July 2015 between Law Society Professional Training and Stetson University College of Law, Florida, USA. *(Front row, l to r)*: Mercy Roberg (director, Office of Professional Education, Stetson University College of Law), Attracta O'Regan (head, Law Society Professional Training), Kevin O'Higgins (president, Law Society), Dr Susan Demers (dean, College of Policy Ethics and Legal Studies, St Petersburg College) and Judge Anthony Porcelli (US magistrate judge, Middle District of Florida). Delegates included *(back, l to r)*: Jill McDonald, Judge David A Demers, Hugo O'Higgins, William Clarke, Elizabeth Murphy, Henry Matthew, Ursula Mulvaney, Sarah Lennon (in-house regional counsel UK and Ireland, Google), Sinead MacBride, Simon Carty, Patrick McMyler, Kelly Hilmes, Erika Murphy, Peter Mullan, Cynzia Duncan, Mark Dunne, Michelle Nolan (Law Society Professional Training manager) and Helen Collins

The implications and obligations of the *Regulation of Lobbying Act*

Cormac Ó Culáin is the Law Society's representative on the advisory group to the act. Pictured at the recent seminar on the new legislation, which discussed the implications and obligations on the solicitor, were *(l to r)*: Bríd Munnelly (partner, head of dispute resolution, Matheson), Cormac Ó Culáin (public affairs executive, Law Society), Sherry Perreault (head of lobbying regulation, Standards in Public Office Commission) and Michelle Nolan (manager, Law Society Professional Training)

Obligations under the *Regulation of Lobbying Act 2015* commenced on 1 September and will have an impact on solicitors and their clients, or employers, in certain circumstances (see p20).

The first reporting period runs from September to December. Members are urged to familiarise themselves with their obligations at www.lobbying.ie and to put in place the necessary internal protocols to ensure effective compliance.

Tipperary's court services success

The Courts Service has recently confirmed its agreement to implement key recommendations following a review of court services in Co Tipperary, *writes Cormac Ó Culáin*. The announcement has been cautiously welcomed, as the implementation is subject to resources being made available and a future review.

The original terms of reference of the review were contested by the Tipperary Solicitors' Bar Association (TSBA) and the Society on the basis that non-replacement of staff, expanding jurisdiction of the courts, and the geographical considerations of Co Tipperary were not properly taken into account.

The Society argued that an increasingly rationalised court service would gravely restrict access to justice. "Increased demand for services must be matched by adequate funding and investment. Part of that investment and safeguarding of access to justice must be a courts network attached to the community it serves," it said.

The TSBA's submissions and efforts in raising the issue with public representatives, the Courts Service and the media were comprehensive and effective.

The Courts Service has now committed to:

- **The restoration of the Probate Office in Clonmel, which should greatly assist practitioners and their clients who have been relying on the Dublin Probate office,**
- **Additional resources and staffing for the Nenagh Office, to accommodate Circuit criminal, civil and family law matters.**
- **An additional review within two years after implementation.**

While the commitment is welcome, it is contingent on resources being made available by the Department of Justice and Equality in its budget allocation for 2016. Furthermore, the transfer of some of the Carrick-on-Suir catchment area to Waterford District Court area will be closely watched, as fears exist of an incremental downgrading. In addition, further details of Cashel and Tipperary courthouses are awaited.

The Society continues to monitor developments in Tipperary and West Cork.

LEITRIM BAR ASSOCIATION

The Leitrim Bar Association welcomed Law Society President Kevin O'Higgins and director general Ken Murphy to Carrick-on-Shannon on 30 June 2015. The meeting, held at the Landmark Hotel, included a discussion on the updates on taxation of costs, and the collapse of Setanta Insurance and the resultant litigation. Attending the meeting were *(front, l to r)*: Padraig Gleeson, John Paul Feeley, Aoife McDermott (secretary, Leitrim Bar Association), Kevin O'Higgins (president, Law Society), Kieran Ryan (president, Leitrim Bar Association), Ken Murphy (director general), John McGuinness, Martin Burke and Carol Ní Chormaic. *(Back, l to r)*: Paula Scollan, Conor Maguire, Claire Moran, Noel Quinn, Emma Brennan, Donal Scanlon, Colm Conway, Emma Egan, Elaine O'Toole and Matthew Browne

Judge Carroll Moran is guest of honour at Killarney gathering

Killarney solicitors held a summer barbecue on 26 June in the Malton Hotel. The guest of honour was Judge Carroll Moran, who was elevated recently from the Circuit Court (where he served on the south-western circuit for over 12 years) to the High Court.

Judge Moran spoke of his affinity for Kerry, even though he's from Dublin (wonder who he was shouting for on All-Ireland Day?). He commented that he particularly enjoyed sitting in Killarney during race week. He was presented with a Waterford Crystal bowl from the group.

On behalf of the Killarney solicitors, Pat F O'Connor spoke of Mr Justice Moran's obvious love for Kerry. He praised the judge for the respect and dignity accorded to all who appeared before him, and the fair and equitable manner in which he dispensed justice. He lauded him for his forbearance when faced with provocative behaviour on the part of certain practitioners!

Judge Carroll Moran (guest of honour) with *(middle, l to r)*: Leonie Hussey O'Brien, Lorna Larkin, Liam Coghlan, Tim O'Leary, Jane O'Halloran, Clare O'Donoghue and John Cronin. *(Back, l to r):* Mary Twomey, Eleanor Leane, Conor Myles, Andrew O'Connell, Coman Larkin, Pat F O'Connor, Jim O'Sullivan and Michael Hickey

A warm West Cork welcome for Dublin visitors!

The West Cork Bar Association (WCBA) welcomed special guests, Law Society President Kevin O'Higgins and director general Ken Murphy, to its meeting on 12 May 2015 at Liss Ard, Skibbereen, Co Cork. *(Front, l to r)*: Anthony Coomey (communications officer, WCBA), Veronica Neville (vice-president, WCBA), Siuin Hurley (secretary, WCBA), Kevin O'Higgins (Law Society president), Colette McCarthy (president, WCBA), Ken Murphy (director general) and Liam Crowley (treasurer, WCBA). *(Second row, l to r)*: Mary Jo Crowley, Margaret Collins, Carmel Keane, Leah Kelly, Kate Hallissey, Lorna Brooks, Jane O'Sullivan, Kevin O'Donovan, Donna Wilson, David O'Reilly, Siobhan Daly, Barbara Daly and Susan Moore. *(Third row, l to r)*: Frank Purcell, Joseph McCarthy, Tomás Nyhan, Mary O'Leary, Shane McCarthy, Ted Hallissey, Maeve O'Driscoll, Cormac O'Regan, Flor McCarthy, Flor Murphy, Dermot O'Flaherty, Plunkett Taaffe and Michael Purcell. *(Fourth row, l to r)*: John McCarthy, Tony Greenway, PJ Feeney, Roni Collins, John Collins, Vivienne Ring, Eamonn Fleming, Macarie Adams and David Ryan

Kevin O'Higgins (Law Society president), Michael Purcell, Ted Hallissey, Ken Murphy (director general) and Plunkett Taaffe

We've all heard of benchers... but not like this. Kevin O'Higgins and Ken Murphy – never ones to miss a photo opportunity!

Plunkett Taaffe, Colette McCarthy, Liam Crowley and Roni Collins

David O'Reilly, Veronica Neville (vice-president, WCBA) and Eamonn Fleming

President O'Higgins visits Yeats' Country

PIC: JAMES CONNOLLY PHOTOGRAPHY

The Sligo Bar Association welcomed Law Society President Kevin O'Higgins on Monday 29 June, together with director general Ken Murphy. The president outlined his work programme for the year to date, while the director general dealt with topical issues. Incoming president Michael Monahan welcomed the visitors in the absence of Maurice Galvin. At the meeting in the Glass House Hotel in Sligo were *(front, l to r)*: Dervilla O'Boyle, Elaine Coghill, Sinead Maguire, Michael Monahan, Kevin O'Higgins, Ken Murphy, Michele O'Boyle and Laura Reid. *(Back, l to r)*: Carena Boyle, Lorraine Murphy, Laura Spellman, Fergal Kelly, Roger Murray, Hugh Sheridan (state solicitor), Noel Kelly, Eamon MacGowan, Melvin Smyth, Tom Martyn, Caroline McLoughlin and Eamonn Creed

PIC: GARRETT FITZGERALD PHOTOGRAPHY

At the Waterford Law Society summer night out in The Munster Bar on 28 August were *(front, l to r)*: Finola Cronin, Bernadette Cahill, Leona McDonald, Fiona FitzGerald, Nicholas Walsh (president, Waterford Law Society), Judge Kevin Staunton, Pat Newell, Edel Morrissey and Danny Morrissey. *(Back, l to r)*: Gerard O'Herlihy, Sharon Kennedy (Probation Service), Rosa Eivers, Orm Kenny, John O'Donoghue, Jim Hally, Paddy Newell, Emmett Halley, Marie Dennehy and Eoin O'Herlihy

Aquatic adventures

A historic splash for the inaugural Solicitors' Aquathlon Championships off Bull Island, Dublin

Rachel Eager (chairperson, Pulse Triathlon Club) and Helena Walsh (Gore and Grimes)

Ian Devlin (Eversheds) and Shane King (race director, Pulse Triathlon Club)

The inaugural Solicitors' Aquathlon Championships got off to a successfully start on 24 August at Bull Island, Dublin, *writes Shane King*. The field comprised 21 solicitors competing among a total of 94 competitors, in the last of the Bull Wall Aquathlon Series of races in 2015.

The field included some seasoned competitors with aquathlon and triathlon backgrounds, as well as some adventurous solicitors racing in their first aquathlon.

The first solicitor out of the water after the 750-metre swim was Helena Walsh (Gore and Grimes) followed by Ian Devlin (Eversheds), with times of 12.55 minutes and 13.40 minutes respectively.

The first veteran solicitor out of the water and through transition was Kate O'Connor (Beauchamps) in 17.38 minutes, followed by the first male veteran solicitor, Hugh Hannigan (News UK & Ireland Ltd), in a time of 18.40 minutes.

Ian put in a strong performance in the last phase of the race, the 5km beach run, to cross the finish line as the first male solicitor in a time of 33.31 minutes, followed by Helena Walsh as the first female solicitor with a time of 35.07 minutes. Helena was also the second-placed female in the overall race. All being well, Helena will be keeping an eye out next year for Rachel Hayes (currently training with William Fry), who was the first female winner in the overall race. Hugh Hannigan finished as the first male veteran solicitor in a time of 40.50 minutes, with Kate O'Connor finishing as the first female veteran solicitor in an equally impressive time of 42.08 minutes.

There were no relay entries for the inaugural race, so that category remains open for some takers next year. Further details of the race can be accessed at www.pulsetri.com.

On the move

McCann FitzGerald has named Iain Ferguson as a partner in its investment management group. Iain trained and qualified in McCann FitzGerald and recently practised in a leading international asset management business. Iain *(left)* is pictured with Mark White (head of the investment management group)

Philip Lee has appointed Clare Cashin as a partner in the firm's construction group. Clare will practice in both contentious and non-contentious law, advising employers, contractors, designers, public authorities and private entities. She specialises in dispute resolution, and health and safety law

Mason Hayes & Curran has appointed Natasha McKenna as a partner in its public and administrative law team. Natasha, pictured with Edward Gleeson (head of public and administrative law), works with clients in the areas of administrative law, health care law and civil litigation matters

Orpen Franks has announced that John Costello (past-president of the Law Society) has joined the firm. John has almost 30 years of experience in relation to wills, administration of estates, tax planning, wards of court, and powers of attorney. John *(right)* is seen here with Peter Walsh (managing partner)

Ten new partners have been appointed at Mason Hayes & Curran *(front, l to r)*: David Mangan, Adrian Lennon, Jamie Fitzmaurice, Neil Campbell and Daniel Kiely; *(back, l to r)*: Natasha McKenna, Maura Dineen, Declan Black (managing partner), Rowena Fitzgerald and Keelin Cowhey

news in depth

SETANTA SUCCESS 'A ROUTE TO JUSTICE' FOR VICTIMS

The Law Society has welcomed the recent High Court judgment confirming that MIBI is liable for claims against the policyholders of the insolvent insurance company Setanta

The Motor Insurers' Bureau of Ireland (MIBI) has been found by the High Court to be liable for claims against the policyholders of the insolvent insurance company Setanta.

As a consequence, MIBI has a potential liability to pay compensation and legal costs to some 1,750 claimants. The full amount of the liability, resulting from this judgment, is estimated to be in the region of €93 million.

A preliminary issue of law

The President of the High Court had directed that the Law Society should act as claimant, with MIBI as respondent and the accountant of the courts of justice adopting a neutral position, to determine a preliminary issue of law – whether MIBI had a liability or potential liability to pay out in respect of claims against persons who were insured with Setanta, a Maltese-registered insurance company, at the time of its entering into liquidation in April 2014.

The Law Society, in correspondence, had alleged that MIBI had such a liability. However, this had been denied both by MIBI and the Minister for Transport, on the advice of the attorney general. This left claimants and their legal advisors 'in limbo'. It was viewed by the Law Society as both wrong in law and unjust. The Society decided to pursue the issue at law and accepted the proposal that it would act as *legitimus contradictor* in proceedings to determine the issue.

Judgment

The case was heard over three days by the High Court, sitting in Kilkenny in mid-July, and Mr Justice Hedigan gave his 55-page judgment on 4 September 2015.

The Society had submitted that the fundamental question was whether or not the 2009 MIBI agreement with the

FOCAL POINT

a practitioner comments

"With the Minister for Transport clearly not battling for those who suffered massive harm from Setanta, the courts accepted an application from the Law Society of Ireland to argue a case on behalf of those adversely affected.

"The Law Society is my professional body and regulator. Having your 'trade union' acting as your regulator is not an entirely satisfactory situation – and I am no stranger to criticising them – but, in this case, I was both proud and confident of the absolute correctness of their stance.

"We are at our very best as solicitors when we stand up for the rights of a minority facing opposition – if not oppression. Each solicitor in Ireland, through their registration fees, funds the Law Society, and so we all paid for this case, as so many important cases before, and were opposed by the might of the State and the insurance industry.

"Mr Justice Hedigan ruled in favour of the Law Society argument and held that there was no difference between a person injured by a person uninsured by choice, and one uninsured because their insurer had gone into liquidation.

"I think the minister should explain his willingness to abandon so many injured persons and seek to leave them to either a futile and expensive action against the liquidator of Setanta, or to seek redress from a separate body called the Insurance Compensation Fund, which is only responsible for paying a maximum of 65% of any claim."

This is an extract from an article by solicitor Cian O'Carroll, Cashel, Co Tipperary, published in the* Nationalist and Munster Advertiser *on 24 September 2015.

Law Society pummels premium hikes on *Prime Time*

RTÉ's *Prime Time* aired a special investigation on 22 September, focused on the massive increases in car insurance costs this year. The insurance industry has blamed spiralling claims costs and new rules for the amount of money they have to hold in reserve. The cost of insurance policies has risen by a whopping 24% this year – and this looks set to jump by a further 20% next year.

Kevin Thomnpson, CEO of Insurance Ireland, said that the spike in costs was "due to the high level of awards that are coming through and the high costs of claims – we are seeing premiums having to catch up".

The Law Society's Ken Murphy was having none of it: "The cause of this entire mess is the insurance industry – and they now seem determined to blame everybody but themselves for it."

Somewhat surprisingly, the Injuries Board also expressed its dissatisfaction with the insurance industry. Its interim CEO, Maurice Priestly, said that the volume of claims had gone up by 8% during the past 18 months, which was not unexpected, given the increase in the economy and the growth in road traffic. "We would welcome any information that is available that would explain the increase in the cost of insurance," he said.

Ken Murphy: 'The insurance industry now seem determined to blame everybody but themselves for the mess they have caused'

Kevin Thompson: 'The spike in insurance costs is due to the high levels of awards and of legal costs'

Putting the lie to claims that legal costs were to blame for the large increases in costs by the insurance industry, Murphy insisted: "On our analysis of the Courts Service figures, there has been an increase of 7% since 2010 to date in Circuit Court awards. But, in fact, the changes in terms of jurisdiction and awards have been pretty consistent over the years. There's been some increase in awards, but nothing – nothing – that would justify the increase of 20%-plus to 30%-plus in insurance premiums."

Accusations

***Prime Time* reporter Eithne O'Brien cited accusations that some lawyers were frustrating the work of the Injuries Board by encouraging clients not to furnish medical reports for assessment.**

Asked to comment, Maurice Priestly disagreed: "To be fair, the majority of solicitors are working with the board and there are no issues."

O'Brien pressed Murphy about the 40% of recommendations from the board that were being rejected, with claimants opting to go to court instead.

The director general explained: "That is because the courts would, in those cases, make better – and more appropriate – awards than those offered by the Injuries Board. The number of cases where Injuries Board recommendations are not accepted has been pretty consistent for the last ten years. It is not a factor in the increase in premiums, which the insurers are imposing and taking out of people's pockets now."

State obliged MIBI to pay out in respect of claims against persons who were insured with an insurer that had become insolvent – not merely where the party causing the accident was either uninsured or untraced.

Lengthy argument

The MIBI submitted in response that cases involving insolvent insurers are not the same as 'uninsured' cases or cases of 'ineffective' insurance, as the policy does have a value and the holder of such a policy was in compliance with the law on the day of the accident. Therefore, such 'insured' drivers do not come within the scope of the 2009 agreement.

Having heard lengthy and detailed argument, Mr Justice Hedigan found "that the wording of the 2009 agreement means that the MIBI have a liability to pay out in respect of claims against persons who were insured by an insurer that has become insolvent".

> **The full amount of the liability, resulting from this judgment, is estimated to be in the region of €93 million**

Welcoming the judgment as "providing a route to justice for people who have suffered injury and loss, often life-changing, through the fault of others", Law Society President Kevin O'Higgins paid tribute to those who had helped to secure this outcome.

Specifically, he praised the leadership on this issue within the Society given by his predecessor John P Shaw, chair of the Finance Committee Stuart Gilhooly, director general Ken Murphy, and secretary to the Litigation Committee Colette Reid.

He also thanked the Society's legal team in the case, namely Brian Murray SC, Francis Kieran BL and Claire Callanan of Beauchamps.

MIBI has indicted in the media that it intends to appeal this judgment to the Court of Appeal.

news in depth

A WORD IN YOUR EAR

The *Regulation of Lobbying Act* has been commenced. Cormac Ó Culáin provides a roundup of the issues likely to affect members of the profession

Cormac Ó Culáin is public affairs executive at the Law Society

Whether you are working in private practice or in-house, in the public sector or within civil society organisations, the *Regulation of Lobbying Act* may apply to your work where the relevant provisions are satisfied.

The act provides that the following are 'lobbyists' when making a relevant communication to a relevant official:

- A company with more than ten full-time employees,
- Representative and advocacy bodies with at least one full-time employee, and
- Any person communicating in relation to planning and development that is not related to their principal private residence.

You are advised to update your clients or – in the case of in-house practitioners, your employer and colleagues – as to their obligations under the act.

> **Where activities relate to a niche area of law and are registrable, it conveys a message to the market and other parties that your firm has an expertise in that matter**

Does every communication to a senior public official have to be registered?

No. The act seeks to capture the existence of a communication, to *relevant public officials* in certain public bodies, and where those communications relate to *certain relevant matters*. Be mindful that:

- 'Communications' include written and oral, direct and indirect.
- Section 5(5) sets out a number of 'excepted communications', which are in essence carve-outs that exempt you/client/employer from having to register. Examples include where the client has less than ten full-time employees, where it relates to a private matter (not including matters under *Planning and Development Acts*, apart from planning permission for your principal residence) or, for example, in the case of factual information being sought or provided on request by an official.
- Section 5(9) defines the scope of 'relevant matter'. Any matter relating to the initiation, development or modification of policy, or to the preparation of an enactment, may be registerable. However, if it relates only to implementation of policy or of a technical nature, it may avoid registration.
- Section 6 sets out the classes of 'designated public officials', communication with whom may trigger a registration obligation. The minister has also signed an SI that expands that list of prescribed officials and it is now available on lobbying.ie.

What is registrable?

It will be of limited comfort to practitioners to be aware that the actual communication is not registrable, but merely the fact of it being made in a general manner must be notified.

Practitioners are advised to immediately familiarise themselves with the act, the register and the (non-binding) guidance and resources available at lobbying.ie. An overview of what is registrable (sections 11 and 12) includes:

- Your firm's details. Whether a solicitor's firm, employer, and so on, you must set up a profile with your details in advance of making a registration. It is possible now to set up your profile in advance of registration.
- Your clients' details particular to the registered lobbying activity.
- The type or extent of the lobbying activities carried on.
- The subject matter of those communications and the results they were intended to achieve.

Practitioners are reminded that a generalised statement regarding the objective is required, not specific details of the correspondence.

Under section 12(4)d, registrants are obliged to identify the type and extent of lobbying. The actual online register requires you to tick the frequency of communications, with obligatory fields marked by a red asterisk.

What provisions in the act might assist in not having to register or publicly declare a lobbying activity, or the full extent?

Notwithstanding full compliance with the act, there may be instances where an immediate registration might hamper you/your client's/your employer's business affairs.

Have you applied a careful analysis of section 5 ('exempted communications' and 'relevant matter') and section 6 (designated public official)?

If publication is warranted under the act, you should then consider section 14, which relates to 'delayed publication'. Essentially, a delay in the public availability of the information may be sought, in certain circumstances, for six months, and is renewable. Where the Standards in Public Office Commission declines an application, an appeal may be sought pursuant to section 23. An application for delayed discharge is made online and at the time of registering the lobbying activity. Once the 'veil' of delayed publication is lifted, the public may then see within which reporting periods the lobbying activities took place.

BIG STOCK/GAZETTE STUDIO

Should a lobbying activity still be registrable, there remains a limited and incomplete provision under section 10(4), which permits a restriction on the publication of any personal data in the case of misuse, or to protect the safety of any person, or the security of the State. Unsatisfactorily, the wording of the provision bestows the right to this restriction solely on the Commission, with no right of appeal on the part of the lobbyist or client. Additional guidance on this provision is expected from the Commission.

FOCAL POINT

as an example

A petition on behalf of a major hotel to the Minister for Tourism on retaining a VAT rate for the tourism sector may be registrable. The same petition for a small operator with less than ten full-time employees may not be.

If the hotel with less than ten full-time employees makes the contact themselves, they may avoid the registration requirement. With more than ten full-time employees, they may have to register.

However, the same petition to Fáilte Ireland, which is not a 'designated public official' for the purposes of section 6 (and where it is not an indirect communication), will avoid registration.

I'm communicating with public officials in a number of public bodies. Can you confirm how the act applies?

The issue of 'public service bodies' may cause some confusion.

If you are communicating with a public official, you must have regard to section 6 of the act (secretary general, ministers, elected officials, special advisors, and so on) and the SI published on foot of 6(2). This extensive list will be reviewed from time to time by the department and can be found at lobbying.ie – the list of departments and agencies with designated public officials (not to be confused with the list of public bodies for the purposes of section 7) can be found under the 'help and resources' tab. The minister may expand this list from time to time, so you should be familiar with the up-to-date list.

If you are communicating with an entity in the schedule to the act, it appears that you do not need to register that activity, as it is not a public service body.

If you are an employee of a public service body or 'body corporate', section 5(5)(j), (k), (l) and (m) provide an exemption from registering a communication, insofar as it relates to the functions of the public service body. A definition of public sector bodies is provided at section 7, and a list of such bodies is available at lobbying.ie, titled 'list of public sector bodies' (under the 'help and resources' tab). The Commission

has advised that this can be added to and amended over time.

If you are employed by an entity stated in the schedule to the act (such as Bórd na Móna, RTÉ, and so on, or a subsidiary of such a body), the regime applying to your communications is equal to that applying to the general public and business community. The schedule is titled 'bodies that are not public service bodies'.

A guide has been prepared by the commission for public and elected officials and is available online. Notwithstanding the fact that there is no formal reporting obligation on public officials under the act, they have been advised – where applicable – to amend their email signature to include the notation that they are a designated public official for the purposes of the act. Logistically, for practitioners, the task of identifying officials will become even more difficult and burdensome when the list is extended to include principal officers.

What should I be doing now to comply with obligations under the act?

While the enforcement provisions under part 4 have yet to commence, effective compliance with the act will be determined by the procedures and culture put in place now, both as they relate to your client and to your internal processes.

Client care issues:

- Consider an amendment to your terms of engagement in light of the act.
- In addition, on a case-by-case basis, advise your client in advance of a communication, that it is or is not registrable, and record their confirmation.
- Confirm that the person you correspond with is, in fact, the correct official and whether they are a designated public official. In some cases, an alternative official may be more appropriate.
- If the communication is registrable and is in written format (email, letter, and so on), bear in mind that its existence may be pursued through the freedom of information process and that its existence may be made known to competitors, other stakeholders, the media, and so on.
- If the communication is in written format, be mindful of its content when drafting. Does it relate to 'implementation' or is it 'of a technical nature' (section 5(5)9) and thus not registrable? Has it been requested by the official and is factual in nature? Is it a private matter? Practitioners should be familiar with the excepted communication clauses in advance of dispatch. Unnecessary registration may not be welcomed by your client.
- If the communication is in written format, carefully consider references within to other private citizens or entities, in light of the fact that the correspondence may be sought.
- If the communication is in oral form (meeting, breakfast briefing, conference, and so on), it is recommended that you confirm the status of the engagement from the outset.
- Should you fail to register a communication and an investigation is commenced (section 19), there may be negative reputational issues for both your firm/employer and client.
- It also may be prudent to agree a communications plan in advance with your client to respond to queries that might arise, once registered.

Internal processes and procedures:

- Provide training to colleagues, both legal and non-legal, as to their obligations under the act.
- Place the matter as a standing agenda item on your weekly/management/departmental meetings.
- Consider an internal recording sheet so that each activity can be properly evaluated.
- Nominate a staff member with central reporting responsibilities. Remember that firms/employers/clients are required to register their activities, where applicable, by 21 January 2016, and each four-month period thereafter. It is advised to collate the communications internally, and perform a 'bulk upload' before the deadline, rather than a piecemeal approach,
- Practitioners are strongly urged to re-familiarise themselves with the tenets of legal advice privilege, litigation privilege, and solicitor/client confidentiality.

> **Practitioners are strongly urged to re-familiarise themselves with the tenets of legal advice privilege, litigation privilege, and solicitor/client confidentiality**

Other matters

The following is a non-exhaustive list of other aspects of the act that practitioners, their employers and clients should be aware of.

Extraterritoriality: Lobbying activities conducted from outside Ireland and directed at officials overseas or based in Ireland are recommended by the department as being registrable, but are not enforceable. The department has advised that this issue will be kept under review and that abuse of this lacuna may result in reputational issues between the communicator and the official. A note has been prepared on this issue on lobbying.ie.

Elected officials: Apart from elected members of the European Parliament for Ireland, other members of the European Parliament or any other legislature do not fall within the act

***Transparency Code*:** If you or colleagues are nominees and members of an advisory/working group, as per the definition of 'relevant body' under section 5(n), be mindful that your group is likely to adopt the *Transparency Code* (see lobbying.ie), which provides for the publication of agendas, minutes and other details. Consideration of this in advance of accepting membership of such a group (or your ongoing participation) is advised.

Issues of interpretation: Registrants are obliged to interpret key provisions of the act, such as 'indirect', 'private matters', 'technical nature' and others.

Solicitor/client confidentiality: While it does appear that disclosure of clients' details under section 12 violates solicitor/client confidentiality, this is strictly not the case. Members are urged to re-familiarise themselves with the *Guide to Good Professional Conduct* on this matter.

Some positives

Perhaps it's in the automatic nature of legal professionals, working on behalf of clients or an employer, to see how certain provisions can be applied strictly. This is acutely so, considering the interests we serve and the possible impact of publication or disclosure.

But despite this tension, there are some positives contained within the act for the profession. For example, where activities relate to a niche area of law and are registrable, it conveys a message to the market and other parties that your firm has an expertise in that matter. Similarly, where a firm actively publishes activities, this may be interpreted as a quality mark and as having a strong grasp of the reporting regime. In the case of civil society organisations, registered activities may denote a degree of activism and representation on their particular area of interest and, depending on the matter, may be interpreted favourably by their membership base.

Between now and the expansion of the act's reach, both the Commission and the Society have an important continuing role to play in educating and guiding our members.

news in depth

CHILDREN OF THE REVOLUTION

The Law Society has plans to introduce a new membership, education management and engagement system called 'System 360'. Teri Kelly discusses what's at stake

Teri Kelly is director of representation and member services at the Law Society

Have you ever told the Law Society's office at the Four Courts that your contact details had changed, and then received a letter from the Law School with your old details? Did you ever wish you could check your CPD record at the click of a button? Would you like to receive Law Society information only about your area of practice? Would you like to be able to create a copy of your practising certificate at will? Do you want to check the progress of all the trainees in your firm?

At the AGM on 5 November, members will be asked to vote on a motion to approve a Law Society capital investment of approximately €3 million for a new membership, education management and engagement system, called 'System 360'. Given the significance of the investment, and in accordance with the Society's bye-laws, this expenditure – which is being recommended by the Finance Committee and your Council – must be approved by members at the AGM.

The cost will be funded entirely from existing Law Society resources and will not require any addition to the practising certificate fee. The Law Society has committed to maintaining, insofar as is possible, the PC fee at its current level for the foreseeable future – this will not change if System 360 is approved.

> **We simply can no longer put our trust in a system that is 25 years old to protect sensitive solicitor, firm and student data**

The times they are a-changin'

Cast your mind back to the technology of 1990. There were no smartphones, no Google, and no iPads. It was the year that the term 'World Wide Web' was coined, and the first line of HTML code was written. Some of us had mobile phones, but they were too big to fit in our pockets. Many of us had computers, but we only used them for word processing, playing games and maybe doing accounts.

The year 1990 was also when the Law Society began work on its current membership data management system, Ingres. There have been a few software upgrades since then, but it is still the same workhorse that continues to store Law Society membership data today.

Beyond basic data storage and processing, there's little else Ingres can do. There are no direct connections to the internet, so there is no way that members can access their information directly. Also, there is little that the Law Society can do with the data stored in Ingres beyond very basic reporting. In fact, the reporting capabilities are so poor, we are unable to truly understand the make-up of the solicitors' profession and the ways in which it is changing. With Ingres, we are also unable to personalise the way we communicate with our members, so that a conveyancing solicitor and an in-house solicitor receive the same messages. Following the *Future of the Law Society Task Force Report* in 2013, which encouraged the Society to strengthen its representative functions, this is no longer acceptable.

While the quality of the membership data stored in Ingres is high, the integrity of the system as a whole is under threat due to the age of the system. There are fewer organisations using the Ingres programming language, which means there is a falling level of investment in its upkeep from the software provider. We simply can no longer put our trust in a system that is 25 years old to protect sensitive solicitor, firm and student data.

It's time for a change.

The appliance of science

For just over a year, director of finance and administration Cillian MacDomhnaill and IT manager Tom Blennerhassett have worked with Mazars, a leading professional services firm, to identify the best available membership-management system for the Law Society. Mazars' role is to minimise the risks inherent in a project of this size and to ensure the best possible outcome for the Law Society and our members. The Finance Committee, director general Ken Murphy, and the rest of the management team have been closely involved throughout this process.

The project began with a business

REFERENCE POINT

system 360 at a glance

- **Update your personal details instantly,**
- **Opt in or opt out of newsletters through the website, and manage email addresses,**
- **Complete your CPD record card online to record all Law Society attended courses and add non-Law Society attended courses,**
- **Record instant attendance at Law Society events using your mobile phone,**
- **Use the online chat option for queries,**
- **Participate in online member forums on specialised areas of law and other relevant topics,**
- **View personalised notifications online – for example, to alert you about upcoming events or *Law Directory* updates,**
- **Allow online access for firms – for example, for bulk payment of practising certificates and managing solicitor and trainee details,**
- **Pay for more services online, and**
- **Manage your membership profile on mobile devices.**

case analysis, identifying the risks, benefits and costs associated with strategic options – from 'do nothing', to 'do it all'. This was followed by an intensive period of requirements gathering, which identified over 2,200 individual system needs. This formed the basis of a 'request for proposal' document, which was sent to potential vendors.

The System 360 request for proposal generated three complete responses. These three companies then presented their proposed solutions to staff of the Law Society over six days in August. From these presentations, two front runners have emerged – ASI and Aptify. Both of these companies are American and provide membership management systems to non-profit organisations around the world, including Chartered Accountants Ireland (Aptify), the Law Society of Scotland, the Law Society of Upper Canada, and the New York Bar Association.

Both ASI and Aptify offer exceptional member engagement solutions and would serve the needs of the Law Society and our members very well. A final selection will be made before the AGM, once final proposals are received.

Anytime, anyplace, anywhere

In August, we sent members a poll in order to understand what features they would most like to see in a new member management system: 76% of respondents said they wanted the new system to enable them to update their personal details instantly; 75% said that having the ability to complete their CPD record card online was important to them; 62% would like to be able to view personalised notifications online, such as upcoming events that are specifically of interest to them.

These responses told us we're on the right track. System 360 will be an integrated system for education, membership, and regulation, and will enable us to serve our members better by creating a more personalised experience with a greater level of self-service and convenience.

For example, solicitors will be able to update their business and personal details at any time from any device, including their mobile phone or tablet. Currently, if you wish to make a change, such as to details of your firm or company, it can take up to five days to update across Law Society systems, including the Society's webpage and its 'Find a Solicitor' facility. Given that solicitors change firms more often than they once did, this is no longer adequate. With System 360, changes will be instantly updated across all systems, including on the website.

Management of your CPD record card will also be a snap under System 360. Attendance at Law

Society events will be recorded automatically, while attendance at non-Law Society courses can be recorded online. Again, you will be able to view your up-to-date CPD record at any time, on any device.

Likewise, management of the emails and notices you receive from the Law Society can be completely customised. For example, you can choose to be alerted to upcoming events that are of interest to you, such as CPD events in your local area. You can also customise where information is sent and choose to direct the *eZine* to one email address (for example, your personal account) and other Law Society business to another email address, such as your firm address.

Come together

System 360 will enable online collaboration like never before. Members will be able to participate in online member forums on specialised areas of law to share news, ideas, experiences, or anything else they want to discuss as colleagues. Members of Law Society committees will be able to discuss committee business and share documents using this feature. Members will also have the option of asking a query of a member of Law Society staff using online chat. In addition, bar associations will be able to use these forums to collaborate with their members.

Firms will benefit from the efficiencies created by System 360, by reducing the amount of administration necessary for practising certificate renewal, CPD records management at firm level, tracking trainee progress, and reporting accountants' report filing. For example, in relation to PC renewal, firms will be able to submit applications in bulk for all solicitors in their firm, including the processing of payments. For larger firms, this should save several days of administration.

So much of the activity of our day-to-day business lives are now online and, in the future, more and more legal functions will be brought online. System 360 will be designed to link into future online systems, including e-conveyancing, e-licensing, e-probate, a digital certification system, and any future Legal Services Regulatory Authority system.

> **The cost will be funded entirely from existing Law Society resources and will not require any addition to the practising certificate fee**

Pay it back

The total cost to introduce System 360 will be in the range of €3 million. Implementation will take about two years. The cost includes everything necessary to bring the system live, including software customisation specific to Law Society needs, implementation of the new system, payment of license fees to the vendor, and purchasing of necessary hardware upgrades.

When live, System 360 will deliver efficiencies in system processes equivalent to €400,000 per year in saved person-hours, maintenance and service costs, and savings on otherwise necessary upgrades to both the current membership and education systems, as well as to hardware. It also means that, as the Law Society's membership and students grow in the coming years, the need to increase staff numbers will be obviated. The total payback period for the project is eight years, but we hope to get double this life out of the new system.

One example of an efficiency gain for the Law Society with System 360 is the PC renewal process. Currently, this process is completely manual and takes 300 person-days of management and administration. System 360 will reduce this amount to 150 person-days. The time savings will enable staff to work on higher-value output that more directly benefits members, particularly in relation to increased services and representation. Increased automation of processes will also lead to improved security of Law Society membership data.

It is important that our members come out and vote for the approval of the investment for System 360 at the AGM on 5 November. While a spend of this size cannot be taken lightly, the benefits in terms of increased security, member service, and Law Society efficiency makes System 360 an easy decision to support.

Presentations on the costs, benefits and need for System 360 have been made at Council and to the Finance Committee, and have been met with total support. However, because of the size of investment involved, this is not a decision that the Council or the Finance Committee can make – it needs the support of you, our members.

If the world had not changed in 2008, we would have brought this proposal to you then. We are bringing it to you now, and yet again the world has changed – this time for the better, as the Law Society continues to strive to be a truly representative body. System 360 is an essential tool in delivering that ambition.

E-cigarettes present employers with several difficulties in the workplace. While the law is clear in relation to tobacco-smoking at work, no legislation yet exists in Ireland on 'vaping'. Employers should seriously consider introducing procedures on the use of e-cigarettes – since legislation could be some way off. Catherine O'Flynn lights up

Catherine O'Flynn is a partner in the employment and benefits department in William Fry and is a member of the Law Society's Employment and Equality Law Committee. She wishes to acknowledge the assistance of Paul McNamara, trainee solicitor, in the drafting of this article

Something in the AIR

> To date, there has been no published decision relating to the use of e-cigarettes in Ireland, but the recent decision in *Insley v Accent Catering* in Britain offers some guidance as to the difficulties facing employers

at a glance

- There are an estimated 134,000 e-cigarette users in Ireland
- The *Tobacco Smoking (Prohibition) Regulations 2003* do not extend to e-cigarettes – the act relates only to 'tobacco products'
- There is no legislation currently governing the distribution or licensing of e-cigarettes in Ireland
- Other common law jurisdictions have either taken positive steps, or relied upon existing laws, to provide some form of regulation for e-cigarettes
- Employers are advised to consider their position as to the possible impact of e-cigarettes within their own workplace and to implement policies if required

PIC: ISTOCK

In recent years, electronic cigarettes (e-cigarettes) have become widely popular devices among smokers around the world. E-cigarettes are battery-powered vaporizers that simulate the feeling of smoking – hence the term 'vaping'. E-cigarettes are used to inhale nicotine, and this can be done with or without a variety of flavours. The e-cigarette industry is estimated to be valued at over €3 billion globally per year. In Ireland, there are an estimated 134,000 e-cigarette users. These figures are expected to grow. The lack of Irish regulation in the area makes it considerably easier for a variety of businesses to attempt to vie for a piece of this lucrative industry.

There are widely divergent views as to how e-cigarettes should be regulated. While e-cigarettes are being promoted as a healthier alternative to smoking, a key issue is the lack of research into the long-term physiological effects. It is this issue that the Irish Cancer Society points to in recommending that e-cigarettes be regulated in a similar manner to cigarettes.

The view of the National Health Service (NHS) in Britain is in stark contrast. While the NHS acknowledges that there is a lack of long-term research into these devices, it points out that small studies undertaken to date indicate that e-cigarettes are well tolerated by users and are associated only with mild adverse effects. The NHS, in fact, recommends the use of e-cigarettes alongside other therapies in assisting individuals to quit smoking.

Cigarettes and chocolate milk

The *Tobacco Smoking (Prohibition) Regulations 2003* outlawed smoking in enclosed public places and the workplace in Ireland. However, the 2003 regulations do not extend to e-cigarettes, as the definition of 'smoking'

PIC: iSTOCK

FOCAL POINT

issues for employees

As e-cigarettes are currently unregulated in this jurisdiction, it would follow that employees are free to smoke them in the workplace. It is, accordingly, necessary for employers to take positive steps to restrict their use in the workplace.

Employee challenge

The lack of regulation in Ireland does not prevent employers from prohibiting the use of them within the workplace. Employers are free to draft a workplace policy prohibiting their use in certain or all places within the work environment. In the absence of such steps being taken, it would seem that disciplining an employee for using e-cigarettes would be open to challenge.

A policy implementing a workplace ban should specify that the use of e-cigarettes is prohibited in the workplace, in company vehicles, and at any client or other location where an employee is working.

Alternatively, employers could contemplate allocating specific areas for the use of e-cigarettes. Consideration should be given as to whether the allocated space should be the same as is used for regular smokers.

It would be considered best practice to consult with employees prior to introducing any such policy, particularly if individuals have been using e-cigarettes within the workplace.

The policy should then be brought to the attention of employees to put them on notice of the new policy – again, particularly where employees have been using e-cigarettes within the work place. This can be done by emailing the policy to them, placing it on a noticeboard, or uploading it to the employer's intranet.

If such a policy is implemented, the employer should also consider ancillary issues relating to e-cigarettes. E-cigarettes can be charged using a USB port, which could potentially breach an employer's IT policy. In addition, some of these devices have been known to ignite when charging, which could be concerning from a fire-safety perspective.

Health and safety?

A further potential issue arises for employers, in that the use of e-cigarettes in the workplace may fall within the scope of an employer's statutory duties as set out in section 8 of the *Safety, Health and Welfare at Work Act 2005*. Pursuant to this section, employers have a duty, so far as it is reasonably practicable, to ensure that employees are not exposed to any physical agent that might affect the health and safety of employees. It is not clear that this argument would, as yet, stand up to scrutiny, given the lack of medical evidence as to the possible second-hand effects, if any, of e-cigarettes. However, this may change in the future.

(set out in the *Public Health (Tobacco) Act 2002*) relates only to 'tobacco products' – and an e-cigarette's lack of tobacco is, in fact, its main marketing point.

Accordingly, the legal impediment preventing employees from smoking in the workplace does not extend to the use of e-cigarettes. It would appear, therefore, that employees are free to use them in the absence of any workplace policy to the contrary.

In addition, there is no legislation currently governing the distribution or licensing of e-cigarettes in Ireland. The 2015 legislative programme indicates that there are plans to introduce a licensing system, but a bill has not yet been published.

Earlier this year, Senator Averil Power and independent senator and consultant oncologist John Crown introduced a private members bill, the *Public Health (Regulation of Electronic Cigarettes and Protection of Children) Bill 2015*, in the Seanad. The bill has passed the first stage and is currently awaiting progression to the second stage. The purpose of the bill is to regulate e-cigarettes in the same manner as normal cigarettes, by prohibiting their use in the workplace (and other enclosed public places) and making it illegal to sell e-cigarettes to minors.

In the midst of this complete lack of regulation, Irish employers are faced with a host of questions as to how they should treat these devices. Should employees be allowed to use these devices in the workplace? Should employers treat e-cigarettes as they do normal cigarettes and restrict their use to certain areas? Should employers be supportive of employees using e-cigarettes if they are using them in an attempt to quit smoking?

Smokin' in the boys' room

Public sector employers have led the way in taking a stance on e-cigarette use. Irish Rail, Dublin Bus and Bus Éireann all prohibit the use of e-cigarettes on board transport services. Dublin City Council has banned their use – both by staff and members of the public – in all workplaces. The Health Service Executive has also prohibited the use of e-cigarettes within HSE facilities or campuses as part of its national tobacco-free campus policy.

Some private sector employers have also restricted the use of e-cigarettes in the absence of Irish regulation. Starbucks has reportedly, in a global move, prohibited the use of e-cigarettes in all cafés, apparently for the benefit of customers. The Irish music festival, Electric Picnic, has prohibited the use of e-cigarettes in enclosed public spaces.

REFERENCE POINT

new asai code and e-cigarettes

The Advertising Standards Authority for Ireland (ASAI) has unveiled its new *Code of Standards for Advertising and Marketing in Ireland* (7th edition). It specifically addresses the issue of the advertising of e-cigarettes in section 17 (consisting of 11 subsections).

Section 17.3 states: "Marketing communications for e-cigarettes should be socially responsible and should contain nothing which promotes the use of a tobacco product or shows the use of a tobacco product in a positive light. This rule is not intended to prevent cigarette-like products being shown."

The code was launched on 18 September 2015 and comes into force in March 2016. ASAI members are required to abide by the code and not to publish an advertisement or conduct a promotion that contravenes the code's rules.

It covers commercial marketing communications and sales promotions in all media in Ireland. This includes digital (online banners, websites and social platforms), print, outdoor, radio, TV, leaflets/brochures and direct marketing.

The new code is at www.asai.ie.

The position that has been taken in other jurisdictions is worth noting. Other common law jurisdictions have either taken positive steps, or relied upon existing laws, to provide some form of regulation for e-cigarettes.

Legislation has been introduced in England and Wales that will outlaw the sale of e-cigarettes to minors from 1 October 2015. The devolved Welsh government is seeking to go a step further, as it views e-cigarettes as a gateway to minors becoming smokers, and is pressing ahead with plans to restrict the use of e-cigarettes in enclosed public places and workplaces.

Australia operates a different system. Nicotine is classified as a 'schedule 7 dangerous poison' and thus possession or use of e-cigarettes is unlawful, unless specifically approved, authorised or licensed.

In Canada, up to a few months ago, there was no regulation by the provinces on e-cigarettes. However, regulation is now coming thick and fast. Nova Scotia has placed restrictions on the sale of e-cigarettes to minors and on packaging. In addition, it has also banned the use of e-cigarettes in indoor public places. Other provinces are following suit, such as British Columbia and Quebec, but the federal government has yet to put overarching regulations in place.

The US is the only common law country whose stance is somewhat close to that of Ireland. Federal regulation is yet to be passed, but some states (such as North Dakota and Arkansas) and cities (such as New York and Chicago) have already prohibited the use of e-cigarettes in the workplace.

> **Employers would be well advised to consider their position as to the possible impact of e-cigarettes within their own workplace and to implement policies if required**

Been smoking too long

To date, there has been no published decision relating to the use of e-cigarettes in Ireland, but a recent Employment Tribunal decision in Britain does offer some guidance as to the difficulties facing employers.

In *Insley v Accent Catering*, the claimant, Mrs Insley, worked for a catering company that provided catering services to a school. Mrs Insley was seen smoking an e-cigarette on the school's premises. Her employer viewed this as gross misconduct. Mrs Insley was suspended pending a disciplinary hearing. At the disciplinary hearing, Mrs Insley resigned from her position and subsequently brought a claim for constructive. The tribunal found that Mrs Insley had not been constructively dismissed in this instance, as there was no repudiation of the contract by the employer.

The tribunal did, however, make an interesting remark in relation to e-cigarettes, noting that it was not clear that smoking e-cigarettes was a breach of any of the employer's policies. They further stated that, had Mrs Insley not resigned, and in due course been dismissed, then her dismissal may have been unfair.

The uncertainty surrounding the regulation of e-cigarettes will continue for some time. The progress of Averil Power's bill will likely be slow. Employers would be well advised to consider their position as to the possible impact of e-cigarettes within their own workplace and to implement policies if required, as it is only a matter of time before a case similar to *Insley v Accent Catering* arises in this jurisdiction.

look it up

Cases:

- *Insley v Accent Catering* ET/3200687/2014

Legislation:

- *Public Health (Regulation of Electronic Cigarettes and Protection of Children) Bill 2015*
- *Public Health (Tobacco) Act 2002*
- *Safety Health and Welfare at Work Act 2005*
- *Tobacco Smoking (Prohibition) Regulations 2003*

Literature:

- Irish Cancer Society, *Position Paper on Electronic Cigarettes* (December 2014)

MAD men

Patrick Ambrose is author of The Law of Advertising in Ireland, *which was published in July 2015 by Bloomsbury Professional*

Not even creative types can eschew the rules that apply to advertising. Specific legislation, common law, and regulatory codes overlap with other areas of law, and failure to comply can lead to financial and reputational damage. Patrick Ambrose is the ideas man

The final episode of *Mad Men* aired in May this year. A drama set in the 1960s, the TV show follows the lives of enigmatic protagonist Don Draper and the high-powered executives at fictional advertising agency Sterling Cooper, while simultaneously reflecting the darker side of the American dream. Back then, it really was a (mad) man's world: a simpler time, when men were men and women fetched them coffee – and even whiskey – at their desks. But the world has evolved significantly since then and with it the world of advertising.

The rules that apply to advertising in Ireland are found in a range of legislation, common law, and regulatory codes that overlap with other, more general, areas of law – and failure to comply can bring financial and reputational damage.

Lucky Strike-branded cigarettes dominate *Mad Men's* fictional universe. In the early episodes, the brand is the agency's most important client and, throughout, smoking Lucky Strike cigarettes is positioned as an 'anytime' activity. In the real world, sales of Lucky Strike have increased by nearly 50% since the show first aired in 2007 and, given that overall industry sales grew just over 2% over the same period, it is difficult to explain the remarkable sales growth in Lucky Strike without

at a glance

- The variety of applicable law and regulation results in a variety of definitions as to what constitutes an advertisement
- Modern advertising practice relies on user data to target marketing at individual consumers based on what is known about them and past online behaviour
- The scope of the ASAI code was extended to include advertising on commercial websites in 2009 and further extended in 2013 to include marketing communications appearing on advertisers' profile pages on social networking sites and other non-paid-for space online under advertisers' control

> Given the prevalence of the Lucky Strike brand on the show, it has been argued whether the show itself could constitute an advertisement for Lucky Strike

Mad Men. Given the prevalence of the Lucky Strike brand on the show, it has been argued whether the show itself could constitute an advertisement for Lucky Strike.

In Ireland, the variety of applicable law and regulation results in a variety of definitions as to what constitutes an advertisement. By way of example, under the 2006 *Misleading and Comparative Advertising Directive*, the term 'advertising' means the making of a representation in any form in connection with a trade, business, craft or profession in order to promote the supply of goods or services. The Supreme Court has found that notices required by law would not meet the 'promotional' aspect of this definition of advertising. Separately, the High Court has declined to grant an injunction under section 71 of the 2007 and 2014 *Competition and Consumer Protection Acts*, on the basis that what the defendant had done in relation to the design of its packaging was not considered to be a commercial practice "involving marketing or advertising" in order to bring the action within the definition of a "prohibited act or practice".

So fresh, it's famous

The opening credits of *Mad Men* feature an animation of a businessman falling slowly through the air and, as he falls, iconic images from 1950s and early '60s advertisements appear on surrounding buildings. One of these images, taken from a 1960s Revlon ad, featured model Gita Hall-May. Although she had no claim over the copyright in the image, Ms Hall-May sued the show's creators for exploiting her image without her consent. The show's creators opted to settle, most likely to avoid a public dispute with a 79-year-old woman who felt she had been harmed.

The issue of personality rights is topical in Ireland, given Roy Keane's recent legal action against bookmaker Paddy Power, claiming that their advertisement, which depicted Keane as Scottish warrior William Wallace, infringed his image rights.

Although US law provides that individuals can, in certain circumstances, protect against unauthorised use of their identities, there is no judicial recognition of any tortious right to personality in Irish case law.

However, in some common law jurisdictions, the appropriation of aspects of a human personality, such as an image, voice, name or other indicia of identity, may be actionable under the tort of appropriation of personality, which is an extended form of the tort of passing off.

The English courts have recognised this expanded form of passing off, and the Australian courts have also been willing to find in favour of the plaintiff where a 'commercial connection' can be established between the plaintiff and defendant by virtue of the defendant's use of the plaintiff's image. Depending on the specific facts, these views may be persuasive before the Irish courts. Separately, the *Code of Standards for Advertising, Promotional and Direct Marketing in Ireland* (ASAI code), issued by the Advertising Standards Authority for Ireland, provides that advertisers should obtain written consent in advance from living persons portrayed or referred to in marketing communications and should not exploit the public reputation of persons in a manner that is humiliating or offensive.

Ideas for life

In one episode of *Mad Men*, Draper is struggling to understand youth culture and is given a copy of the newly released Beatles' album *Revolver*. Draper skips to its final, more experimental track 'Tomorrow never knows', contemplating it for a few puzzled moments before he shuts it off. The Beatles are known to be very protective of how the band's recordings are used – such that, aside from live performances, the license granted to *Mad Men* is considered to be the only time a Beatles' song has featured in a television show. It is rumoured that, after several rejections and a long, drawn-out process that involved sharing story lines and scripts, the show succeeded in obtaining license to use the song at a cost close to US$250,000.

Ireland's *Copyright and Related Rights Act 2000* offers extensive copyright protection. Copyright arises spontaneously on the creation of a work with no formal registration requirements and protects a wide range of works. The copyright owner is legally entitled to prevent any third party from reproducing the work, making the work available to the public, or making an adaptation of the work. In addition to these 'economic' rights, the 2000 act provides that all creators of copyright material enjoy 'moral' rights, such as the right to be identified as the author of the work and the right to object to modification of the work that is prejudicial to the author's reputation.

> Although she had no claim over the copyright in the image, Ms Hall-May sued the show's creators for exploiting her image without her consent. The show's creators opted to settle, most likely to avoid a public dispute with a 79-year-old woman who felt she had been harmed

Copyright protection in literary, dramatic, musical and artistic works lasts for the life of the creator and 70 years thereafter. For sound recordings, film and broadcasts, the term of protection is 50 years from the year of creation. While the law permits some use of protected works without permission of the copyright owner (for example, 'incidental' use), copyright infringement carries both civil and criminal remedies.

Because we're worth it

Mad Men has never been shy about casting Sterling Cooper's major rival, McCann Erickson, in an unsympathetic light, particularly in later episodes when McCann Erikson is essentially portrayed as a villain. Curiously, while Sterling Cooper is a fictional agency, McCann Erickson is a real-life ad agency still in business today, and it has been responsible for some of the best known ad campaigns of the 20th century, such as Coca-Cola's 'I'd like to teach the world to sing'. Given its treatment, McCann Erikson would appear to have grounds for an action in defamation.

The *Defamation Act 2009* defines a 'defamatory statement' as one that "tends to injure a person's reputation in the eyes of reasonable members of society". The provisions of the 2009 act apply to a body corporate as they apply to a natural person, and a body corporate may bring a defamation action in respect of a statement concerning it that it claims is defamatory, whether or not it has incurred or is likely to incur financial loss as a result of the publication of that statement. Several defences are provided by the 2009 act, and the defence of 'innocent publication' is likely to be of particular interest to publishers who have not knowingly contributed to the publication of an advertisement containing a defamatory statement. Where defamation is

FOCAL POINT

vorsprung durch technik

Modern advertising practice relies on user data to target marketing at individual consumers based on what is known about them and past online behaviour. Consequently, the selling of digital media space for advertising is becoming increasingly automated. Individual slots on webpages relating to individual consumers are sold with automated, programmatic algorithms, the outcome of each ad is monitored and, based on the observed outcomes, the agency can adjust its strategy for purchasing further ad slots based on whether the consumer clicked on or ignored the ad.

Data protection governs the way organisations may, and should, treat personal information. The primary legislation in Ireland is the *Data Protection Act 1988* and *Data Protection (Amendment) Act 2003*, which are supplemented by further secondary legislation and considerable guidance and case studies from the Data Protection Commissioner (DPC). In tandem with the *Data Protection Acts*, the *E-Privacy Regulations* govern the use of personal data for direct marketing by electronic email, and the DPC has clarified that that the regulations apply not only to electronic communications companies (telecommunications companies and internet service providers) but also "to any entity using such communications and electronic networks to communicate with a customer via phone, web, e-mail, etc".

The *E-Privacy Regulations* also provide that an electronic communications network may be used to store information, such as a 'cookie', or gain access to information stored in a user's device where consent has been given, but an opinion issued by the Article 29 Data Protection Working Party suggests that the matter of 'consent' is more complicated that the *E-Privacy Regulations* would suggest. Separate consent must be obtained where it is proposed to use interception technology to analyse browsing data and track users' activity.

proven, the primary remedy is damages that, traditionally, are at least nominal but can be considerable.

The future's bright, the future's Orange

Draper recommends that his client, fruit juice brand Sunkist, moves away from exclusively running print advertising and exploits the growing impact of colour TV because "oranges are orange". Although colour television had been around for decades, it didn't reach critical mass until 1965, when the big networks moved into colour programming. As the use of colour TV commercials was not yet mainstream, they were more costly to produce – but advertisers swiftly embraced the innovation, with 75% of advertising spend shifting to colour commercials by 1970.

A 2014 digital ad spend study by IAB Ireland and PricewaterhouseCoopers records a spend of €263 million in the Irish digital ads market, with mobile ad spend accounting for €1 in every €3 spent. While the rules governing online advertising are generally the same as those governing traditional advertising, the regulatory regime has adapted to accommodate online media. The scope of the ASAI code was extended to include advertising on commercial websites in 2009 and further extended in 2013 to include marketing communications appearing on advertisers' profile pages on social networking sites and other non-paid-for space online under advertisers' control. Separately, a guidance note issued by the Central Bank of Ireland in 2013 clarifies online advertising requirements under the *Consumer Protection Code*. Advertisers should also be aware that most social media platforms have their own terms of use, statements of rights and responsibilities, or community standards that need to be adhered to.

Exactly what it says on the tin

In real life, the relationship between the US public and the advertising industry began to sour in the 1970s, as public opinion of consumer marketing turned negative. A widespread crackdown on false and misleading ads ensued, with the US Federal Trade Commission (FTC) inspecting marketing materials to assess the validity of advertised claims. Legislative changes in the early '70s further shifted the onus of accountability to advertisers and strengthened the FTC's enforcement powers.

The main legislation concerning advertisements to consumers in Ireland is the *Consumer Protection Act*. Section 71 of the act enables any person to apply to court for an order prohibiting a trader from engaging in advertising that is misleading or likely to deceive the average consumer, while under the 2006 *Misleading and Comparative Advertising Directive*, an application may be made for an order prohibiting a misleading or a prohibited comparative marketing communication.

More recently, supermarket chain Aldi succeeded on these grounds in an action against comparative advertisements by Dunnes Stores, and a similar challenge was made by Vodafone in relation to O2's advertising of its 'Freedom' pay-as-you-go mobile phone package.

Separately, the ASAI Code states that all advertisements must be legal, decent, honest and truthful, and additional rules apply to the advertisement of financial services under the *Consumer Protection Code*.

look it up

Cases:

- *Aldi Stores (Ireland) Ltd & anor v Dunnes Stores* [2015] IEHC 495
- *Vodafone Ireland Limited v Telefonica Ireland Limited* [2014] IEHC 283

Legislation:

- *Competition and Consumer Protection Acts 2007 and 2014*
- *Copyright and Related Rights Act 2000*
- *Data Protection Act 1988*
- *Data Protection (Amendment) Act 2003*
- *Defamation Act 2009*
- *E-Privacy Regulations* (SI 336/2011)
- *European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011* (SI 336/2011)
- *Misleading and Comparative Advertising Directive 2006*

Regulatory codes:

- *Code of Standards for Advertising, Promotional and Direct Marketing in Ireland*
- *Consumer Protection Code*

Buyer BEWARE

You can buy everything from books to boats, cars to cleaning services online, but what about buying and selling property at the click of a mouse? Is this progress – or the road to perdition? Joe Thomas plays devil's advocate

Joe Thomas is a partner in O'Reilly Thomas and vice-chair of the Law Society's Conveyancing Committee

For a significant majority of the younger population, the internet is simply part and parcel of everyday life. Most will have shopped online for items such as clothes, concert tickets, books, CDs and many other products. However, a relatively new development is the ability to sell and buy residential and commercial property online. Sellers and buyers are being offered the opportunity to buy and sell 'at the click of a mouse'. While to some commentators this may seem like progress, there are traps for the unwary. Buying a house is not like buying a book.

Traditionally, in private treaty sales (that is, sales other than by auction), the seller's solicitor drafts a contract and sends it to the buyer's solicitor. The contract contains details of the title that the seller is offering to the buyer – basically proving that the seller owns the property and whether it is freehold or leasehold or is subject to any restrictions as to its use, including rights of way, and so on. There is not, at this point in time, a binding contract between the parties. The solicitor for the buyer will carefully examine the title on offer, advise the client on matters such as survey, and what amendments (if any) should be sought in respect of the draft contract. The buyer will, with the assistance of the solicitor, seek to negotiate the terms of the contract to ensure that it meets the buyer's requirements.

The standard Law Society contract used in the vast majority of all sales of property in Ireland does not, except in very limited circumstances, impose on a seller any duty to disclose defects, either in the title or in the property to a buyer. The guiding principle is *caveat emptor* – 'buyer beware'. This is particularly so in the case of the physical condition of the property being sold. A seller is free to offer for sale a property that is derelict, dangerous or uninhabitable.

In the same way, there is no duty or obligation on a seller to offer for sale a title that would be regarded as 'good marketable title' as widely understood by conveyancing solicitors. A seller may, for example, offer for sale a property that is a leasehold title with only a few years of the lease left to run, or one where the seller or

at a glance

- Sellers and buyers are being offered the opportunity to buy and sell property online – a relatively new development
- Being able to buy at the 'click of a mouse' might seem like progress – but solicitors need to be fully aware of the potential traps for their clients
- A client's problems can tend to begin after they have bought a property online – and only then deciding to instruct their solicitor
- Top ten tips to avoid getting 'click sick'
- There are some advantages to buying online – but buyer beware!
- The net effect for a buyer who pays an online deposit for a property is that the buyer can then be deemed to have 'signed' a binding contract – with all that this entails

PIC: iSTOCK

> An online buyer may have assumed that they were buying a planning and building-control compliant, structurally sound property – only to discover, too late, that the opposite was true in relation to what they had bought


Take a leaf out of the beaver's book – don't fall prey to high-tech purchasing problems

a previous owner may not have constructed the building on the property in accordance with either planning or building regulations. Solicitors will frequently have acted for clients in the purchase and sale of properties with either physical or title defects: they will, therefore, have a general awareness of these possibilities, whereas the clients may not.

Think before you click

A key difference between the traditional private treaty sale arrangements and buying property online is that, in the case of online sales, a buyer might not instruct a solicitor until after the property has been bought 'at the click of a mouse'.

In order to buy a property online, a prospective buyer must have paid a deposit online. The net effect of this is that a buyer may have 'signed' a binding contract and paid a deposit online without having had a survey of the property carried out, without having any necessary loan funds put in place, and without having had the contract and title reviewed by a solicitor. At this point in time, unless there is a fundamental title defect 'going to the root of the title', the buyer may be legally bound by the contract and the deposit moneys paid may be at risk.

> **'The key issue is that any decision to bid and buy online is an informed decision, having taken legal advice'**

The provisions of the *European Communities (Unfair Terms in Consumer Contracts) Regulations* do not apply to contracts for the sale of land. Modern consumer habits now include the purchasing of goods and services online. The belief and the expectation of the modern consumer is that they are protected against defective goods or services if purchased online. However, this does not hold true of a contract for the purchase of property online.

When buying property online, the practice would appear to be that the title and draft contract containing the general and special conditions of sale are available to download from a data room. By clicking to purchase, a buyer is either deemed to have read the terms and conditions or may be required to tick a box confirming that he or she has done so – whether this has actually happened or not. It is therefore entirely possible that a buyer of property online has not seen or read the terms under which the property is being offered.

In circumstances where a buyer has purchased a residential property online with the benefit of a 'loan approval in principle' from a bank, the buyer is generally not aware that his or her solicitor will, as a requirement of the formal letter of loan offer, have to give a formal undertaking to the bank to

FOCAL POINT

top ten tips to avoid getting 'click sick'

Buyers' solicitors would usually be concerned to ensure that, at a minimum, clients are advised on matters such as:

1) **The importance of having a survey carried out by a suitably qualified professional,**
2) **The obligations under the contract – for example, the closing date and the liability to pay interest if the closing date is missed by the buyer,**
3) **The necessity of the buyer having loan finance in place, if required,**
4) **Confirmation that there is proper and adequate access to the property and that it is serviced with water, sewerage and other essential services,**
5) **The adequacy of the title, to include the planning title,**
6) **Who will hold the contract deposit and whether it is being held as stakeholder (for the benefit of both the seller and the buyer) or as the agent of the seller only,**
7) **The suitability of the property for the buyer's purposes, for example, that there are no restrictive covenants affecting it,**
8) **Whether there is an obligation on the buyer to pay VAT on the purchase price,**
9) **Whether there is a tenancy in place and, if so, what the terms of the tenancy are,**
10) **Whether the property is part of a managed structure. If so, have satisfactory replies to the *Multi-Unit Developments Act 2011* pre-contract enquiries been obtained?**

If these matters are not addressed and negotiated before the buyer clicks to purchase, it is usually too late to do so afterwards. If it comes to light, having taken legal advice after committing to the purchase online, that the contract is not in the buyer's interest, the buyer may be subject to a variety of legal liabilities in the event of deciding not to go ahead with the purchase, including but not limited to:

- **Liable to losing the deposit moneys paid online,**
- **Liable to being sued for specific performance and forced by a court to complete the contract,**
- **Liable to be sued for damages for breach of contract.**

certify the title to the property.

In circumstances where – as is invariably the case with online purchases – the standard contract has been extensively amended, particularly in receiver sale cases, the buyer's solicitor will not be able to give the standard certificate of title and will need to qualify the undertaking to the bank, because the property is not being acquired on foot of the standard Law Society contract. This, at a minimum, is likely to delay drawdown of the loan funds or, worse, may not be acceptable to the lender, with possible adverse fallout for the buyer if the loan cannot be drawn down as a result. Conveyancing solicitors will, of course, have had similar experiences in respect of clients who buy property at auction without having obtained prior legal advice.

Apart from its evidential value, a further aspect of physically signing a contract in the presence of a solicitor is that it highlights the importance of the act of entering into the contract. At a traditional auction, the successful bidder physically signs the contract. The online purchase can be completed by a buyer simply by clicking a button.

Ups and downs

A further issue of significance is the possible cost implication of properties being sold online when a potential buyer does everything right and consults a solicitor in advance of buying online. If such an online bidder has gone to the trouble and expense of obtaining legal advice and is ultimately unsuccessful in his or her bid, this is likely to lead to frustration on the part of the prospective buyer and increases the possibility of a decision not to go to the expense of obtaining legal advice in advance of further online bids – thereby increasing the instances of buyers entering into binding 'signed' contracts without having obtained legal advice.

The possible advantages in buying online include:

- The creation of a contract immediately the offer is accepted, so there is no delay between acceptance of an offer and exchange of binding contracts, thereby creating certainty,
- It removes the possibility for a seller to change his or her mind, particularly in a rising market,
- From a seller's point of view, it removes the possibility of a buyer seeking a price reduction because of matters disclosed on a survey,
- If prospective buyers have obtained the appropriate legal advice prior to bidding online, the system may offer a useful alternative method of buying property.

Property buyers are, of course, free to purchase a property in any condition and accept a less-than-perfect title if they so wish. Buyers of property are also free to ignore the advice of their solicitors. The key issue is that any decision to bid and buy online is an informed decision, having taken legal advice.

The reality of buying property online is that it is not solicitors who will be caught out, but rather the consumer. An online buyer may have assumed that they were buying a planning and building-control compliant, structurally sound property, with good marketable title, in a properly and well-managed development – only to discover, too late, that the opposite was true in relation to what they had bought.

Prospective buyers need to be warned of the risks associated with buying a property online without legal advice. One case of a buyer, who lost his deposit in circumstances where he could not obtain a loan that was required to complete the purchase, has already been brought to the attention of the Conveyancing Committee. The buyer in the case only consulted his solicitor after he had 'clicked to purchase'.

> **'The problem is that the possible, very serious consequences of a failure to obtain legal and other professional advice, as appropriate, is not spelled out for a buyer who has no real idea of the complexities associated with purchasing property'**

The various websites offering property for sale online do, in fairness, recommend that appropriate legal and other professional advice should be obtained. Some provide that "purchasers and bidders will be deemed to have received detailed legal advice relating to all documentation to be found in the data room". The problem is that the possible, very serious consequences of a failure to obtain legal and other professional advice, as appropriate, is not spelled out for a buyer who has no real idea of the complexities associated with purchasing property.

On a cautionary note for the profession, colleagues should be aware that the rules of one scheme provide that "each bidder will be considered to be personally liable on making an accepted bid during 'click to purchase', and both the purchaser and any bidder will be jointly and severally liable for the due performance of the conditions of sale and shall indemnify the vendor in respect of any loss the vendor incurs as a result of default".

A 'bidder' is defined in that scheme as including "a person acting on behalf of a purchaser". It is, however, a significant change to what the position would be under the standard Law Society conditions of sale.

look it up

Legislation:

- *European Communities (Unfair Terms in Consumer Contracts) Regulations* (SI 27/1995)
- *Multi-Unit Developments Act 2011*

What's the PASSWORD?

Ruth O'Toole is a solicitor working as legal counsel in Daon, an Irish company that provides identity software and services globally, including for border control systems for the US and Japan

Biometric technology is seen as a way to improve the security of online banking and payments. But what are the challenges and technology considerations? Ruth O'Toole enters her PIN

The European financial services market is becoming increasingly aware of the need for stronger customer authentication techniques to combat the rising levels of fraud in internet payments. Banks are also tuning into the experience of their customers, who are becoming increasingly frustrated by the need to remember multiple personal identification numbers (PINs) and passwords. Biometric technology is being advocated by the European legislative institutions as a way to improve security, and it is being chosen by customers as a way to improve their security experience.

The most recent European Central Bank figures show that fraud on card internet payments caused €794 million of losses across the EU in 2012 (up 21.2% from 2011). The latest draft of the *Payment Services Directive* (PSD2) introduces a number of measures to address this threat, including the concept of 'strong customer authentication' that includes the use of biometric characteristics as an approved method of authentication.

PSD2 requires payment service providers (PSPs), such as banks, to carry out strong customer authentication to verify customer identity before proceeding with electronic payment transactions (article 87). They must use two or more of the following elements:

- Knowledge – something only the user knows, for example, a password or PIN,
- Possession – something only the user has, for example, smart card or mobile phone, and
- Inherence – something the user 'is', for example, a biometric characteristic such as fingerprint, face or voice.

Just do it

Formal adoption of PSD2 is expected later in 2015, with implementation at national level within approximately two years. In the interim, pursuant to article 16 of the *European Banking Authority Regulation*, the European Banking Authority (EBA) issued *Guidelines on Security of Internet Payments* in December 2014. The guidelines set the minimum security requirements for PSPs across the EU. As one of the key measures to prevent internet fraud, the guidelines require PSPs to carry out strong customer authentication, in the same manner as PSD2, in order to verify customer identities before proceeding with an online payment. The guidelines are applicable from 1 August 2015 until the PSD2 requirements come into force. In accordance with article 16(3) of the *EBA Regulation*, competent authorities and financial institutions must make every effort to comply with the guidelines by incorporating them into their supervisory practices. The May 2015 table of compliance notifications compiled by

at a glance

- The level of fraud in internet payments is increasing
- The latest draft of the *Payment Services Directive* introduces a number of measures to address this threat, including the concept of 'strong customer authentication' that includes the use of biometric characteristics as an approved method of authentication
- There are challenges and technology considerations, but customers are demonstrating that they are ready for an alternative to passwords and PINs, which reflects the way that they use technology today

PIC: iSTOCK

the EBA shows that 24 national authorities, including the Central Bank of Ireland, intend to comply with the guidelines.

Let your fingers do the walking

In addition to improving security, biometric technology can be used to improve customers' experience. Customers are currently expected to remember numerous and complex PINs and passwords for an increasing number of online services. The challenge is compounded by the recommendation of service providers that each set of log-in details be unique and contain a variety of special characters. The Financial Conduct Authority in Britain has identified this as a particular challenge to vulnerable customers, such as the elderly, who have difficulty remembering passwords, and has recommended biometric authentication as a more user-friendly alternative. Instead of numerous PINs and passwords, customers can use their smartphones to authorise payments using their fingerprints, voice and face.

The use of biometric authentication, as provided for in PSD2 and the *EBA Guidelines*, is already a growing trend in the international banking sector. In July 2015, MasterCard announced that it is running a pilot of a service that will allow customers to approve online purchases using facial recognition on their smartphones. Also in 2015, a number of US financial service providers introduced biometric mobile banking apps. USAA Federal Savings Bank introduced a solution that includes face and voice recognition. The adoption figures for the USAA app currently stand at over 800,000. The USAA implementation demonstrates customers enthusiastically embracing a biometric alternative to multiple PINs and passwords. It is interesting to note that 50% of USAA members enrolled are 35 years of age and older and, of those in the older half of adoptees, 15% are over 65. This breakdown of adoptees by age appears to contradict a common assumption that the older generation does not trust, and cannot use, biometric technology. Customers who are now using smartphones and apps to navigate all areas of their lives have shown that, when given a choice, they are able and willing to use authentication techniques that reflect the way that they use technology today.

Challenge everything

There are some challenges associated with the use of strong customer authentication. Firstly, for strong customer authentication systems to be effective, strong customer authentication technologies must comply with recognised standards. The technology of one provider must have the ability to interoperate with the technology of other providers. Article 87 of PSD2 asserts that the EBA shall submit draft regulatory technical standards on the requirements of strong customer authentication to the European Commission within 12 months from the date of entry into force of PSD2. In the interim,

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Halt! Who goes there?

the *EBA Guidelines* state that, when assessing compliance with the guidelines, authorities may take into account compliance with the relevant international standards.

In this regard, it is interesting to note the work of the FIDO (Fast IDentity Online) Alliance. This industry consortium of global stakeholders was launched in 2013 to address the lack of interoperability among strong authentication technologies and reduce reliance on passwords. It has developed standards for open, interoperable mechanisms for online authentications. Members include MasterCard, PayPal and Visa, along with a variety of technology providers. In June 2015, it was announced that the US and Britain were the first governments to join the alliance to provide input into the FIDO standards.

Secondly, all security measures must be ready to meet the challenge of attack. Unlike passwords and PINs, biometric systems and technology have the ability to develop and respond to attacks. The security of a biometric authentication system can be increased by:

- Using multi-factor authentication – this combines a variety of biometric techniques such as face, voice and fingerprint in a single authentication, so that the breach of one factor does not compromise the reliability of the others,
- Not permanently storing raw biometrics, such as a photograph or a voice sample – only biometric templates are stored, that is, the raw data is converted into mathematical computer code,
- Encryption of the raw biometric data and biometric templates, and
- Linking the user's mobile device with their authentication to block unauthorised access requests from other devices and locations using GPS.

Biometric technology itself continues to develop. Improvements are made to the hardware used for capturing biometrics (such as cameras and fingerprint readers) and the underlying biometric algorithms (computer formulae). Methods are being developed to differentiate between a live person being authenticated and a picture, video or voice recording of that person being used by someone else to gain unauthorised access.

Here's the science bit

The use of strong customer authentication requires a variety of technology considerations. The following observations are made with particular focus on the definition of 'strong customer authentication' in PSD2.

Firstly, the definition contains the concept of 'privacy by design'. An authentication procedure should be "designed in such a way as to protect the confidentiality of the authentication data".

In this regard, it is interesting to note that biometric authentication may be performed either on a central server or on a user's mobile device. There are competing advantages to each method. When using a central server, biometric data will be stored on the server. The advantages are that the user is only required to enrol once, and that enrolment can be accessed from multiple devices, for example, in a bank branch and on a mobile device. Also, server algorithms tend to be more accurate.

The alternative is that the biometric data remains on the mobile device on which it is captured. The advantage of this method is that, by storing biometric data on the mobile device of the individual being authenticated, rather than in a central data base, the risk of a database breach is eliminated. Any compromise of authentication data on a device is limited to the owner of that device. It cannot lead to a systemic compromise of authentication data of other bank customers. Device-based processing might therefore be considered as a way in which privacy can be designed into the authentication process.

It is important to note, however, that compromise of authentication data on a mobile device would be restricted to accessing the biometric template on that device. This template or conversion of the raw data (such as a photograph) into mathematical code would contain less personally identifiable information than the 'selfies' most users have on their smart phones.

Secondly, the definition of strong customer authentication in PSD2 also contains the concept of mutually independent authentication factors. Authentication factors must be "independent, in that the breach of one does not compromise the reliability of the others".

The classic example in a banking context is 'chip and PIN'. The two authentication elements are possession (chip/smartcard) and knowledge (PIN). The breach or loss of the chip/card is not commonly thought to compromise the reliability of the PIN – that is, if you lose your bank card/chip, your account is not at risk, as no one else can use your card without your PIN. However, it is interesting to note that this banking standard has been challenged by a number of computer scientists, who claim to have identified a flaw in the PIN verification feature of the chip-and-PIN protocol that allows a card to be used without knowing its PIN. It is in this context that the third authentication element of inherence, and the use of biometric technology, may come increasingly to the fore.

> **'Unlike passwords and PINs, biometric systems and technology have the ability to develop and respond to attacks'**

Taking care of business

The level of fraud in internet payments is increasing. The European financial services sector is actively addressing this challenge. Biometric technology is being advocated as an authentication element of choice by the European legislative institutions and the EBA. There are challenges and technology consideration, but customers are demonstrating that they are ready for an alternative to passwords and PINs that reflects the way that they use technology today.

look it up

Legislation:

- *European Banking Authority Regulation* (Regulation (EU) no 1093/2010)
- *Payment Services Directive* (2013/0264/COD)

Literature:

- European Banking Authority, *Guidelines on Security of Internet Payments* (19 December 2014)
- European Central Bank, *Third Report on Card Fraud* (February 2014)

It's all in the MIND

Elaine Quinn is a senior freelance solicitor and meditation teacher. She is working as a consultant with Pinsent Masons LLP in London while undertaking a research project on the integration of contemplative practice in the practice of law. She is also admitted to practise at the State Bar of California

After attending a 'mindfulness' retreat for lawyers in the US, Elaine Quinn shares the benefits of experiencing "the fullness of what a lawyer is – a lawyer of both the head and the heart"

"Mindfulness is presence. Mindfulness practice opens our presence, expands it, makes it more spacious, more generous and more creative. It can then hold … more difficult emotions and situations," says Norman Fisher, a Zen Buddhist priest and mindfulness teacher.

This definition and explanation of the practice of mindfulness sank in deeply as I sat on a meditation cushion in the grand hall of the Garrison Institute in Garrison, upstate New York, with 74 other members of the legal profession. Fisher was one of the teachers at the 'Mindful lawyering retreat: a meditation retreat for law professionals and students', which took place last May at the institute, a not-for-profit, non-sectarian organisation that explores the intersection of contemplation and engaged action in the world.

at a glance

- Mindfulness meditation practice and its potential application for legal practitioners
- A potential way of dealing with job stress and dissatisfaction
- Could mindfulness assist lawyers in acquiring new skills of 'deep and open listening'?
- Answering the sceptics

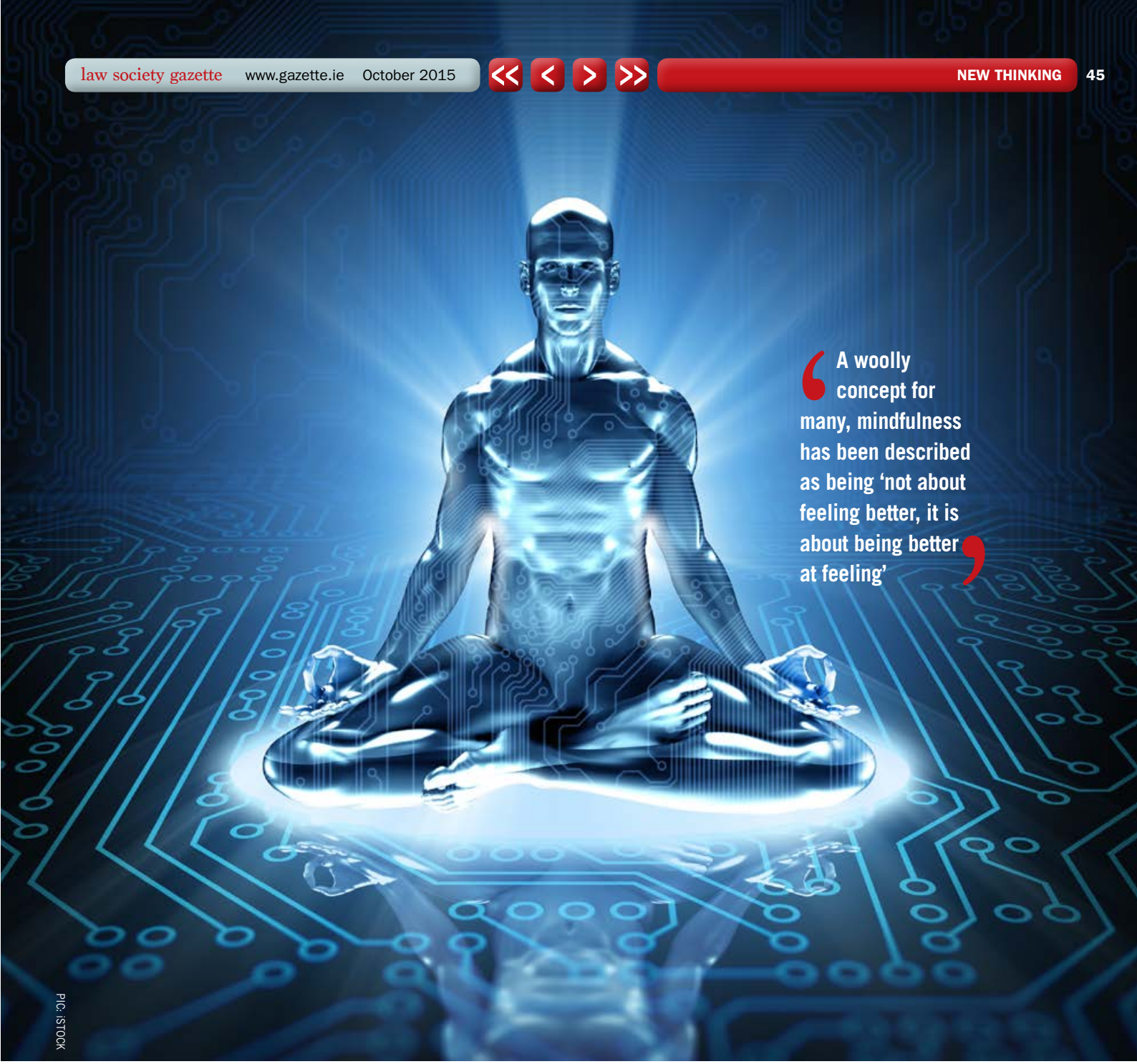
As participants, we had committed to spending three days sitting, eating, walking and generally cohabiting in relative silence and meditation. While most of the attendees were North Americans who had travelled from various states in the US (only three of us had travelled across the water from Europe), our backgrounds, though in law, were quite diverse. There were attorneys, senior judges, mediators, academics, and those who had left the profession (often in disillusionment) but who maintained a keen interest in the subject.

Fields of legal practice encompassed family, criminal, corporate litigation, environmental, public interest and elder abuse law, to name just some. Despite the multiplicity of backgrounds, we all shared a common interest in experiencing, as it was aptly put during the retreat, "the fullness of what a lawyer is – a lawyer of both the head and the heart". There seemed to be silent agreement that contemplative practice – mindfulness meditation in particular – was a path towards getting there.

What a feeling!

A woolly concept for many, mindfulness has been described as being "not about feeling better, it is about being better at feeling". The Oxford online dictionary describes mindfulness as "a mental state achieved by focusing one's awareness on the present moment, while calmly acknowledging and accepting one's feelings, thoughts, and bodily sensations, used as a therapeutic technique".

While it's a capacity inherent in every person, deepening that capacity and becoming more reliably and consistently 'present' requires systematic practice – usually through meditation.



> A woolly concept for many, mindfulness has been described as being 'not about feeling better, it is about being better at feeling'

PIC: iSTOCK

The reported benefits of mindfulness meditation practice are numerous and varied. These include reduced stress, improved well-being, increased immune functioning, boost to memory and focus, increased relationship satisfaction, and enhanced self-insight, morality and intuition.

Its effects on the brain are inspiring a burgeoning field of study. An article in the January 2015 *Harvard Business Review*, entitled 'Mindfulness can literally change your brain', brought together data from more than 20 studies and identified that at least eight regions of the brain were consistently affected by the practice of mindfulness meditation. These include the anterior cingulate cortex (associated with self-regulation) and the hippocampus (associated with emotion and memory). The article concludes that, while more research is needed to document these changes over time and to understand underlying mechanisms, the converging evidence is compelling.

All cried out

Charles Halpern, one of the retreat teachers, is founder of the Initiative for Mindfulness in Law, an innovative programme exploring the benefits of mindfulness to legal education and law practice at Berkley University, California. "Lawyers survive in a sea of interconnected relationships. Emotional intelligence (EQ) is absolutely necessary," he says.

Mindfulness builds the muscle of EQ." Halpern is adamant that the present time is fertile ground for the practice of mindfulness and that it is teachable and learnable.

It is useful to consider the benefits of mindfulness in the context of statistics about stress and dissatisfaction in the legal profession. A survey carried out in 2012 by LawCare in Britain and Ireland revealed that almost 75% of the 1,000 lawyers who responded were more stressed than they had been five years earlier. Lawyers operate and work within the context of complex human situations – predominantly situations of conflict and stress – and attempt to apply a

body of external laws, rules and practices to resolve those situations and conflicts. This is within a framework of time, financial and other external pressures.

Little is done to educate and train lawyers – whose work tends to focus on the external and to rely on 'thinking', 'judging' and 'action' – about the equal value and benefits of focusing on the internal, and relying on 'not thinking', 'not judging' and 'not acting'. This is exacerbated by the fact that analytical personality types, with a tendency to process information intellectually and look for guidance from external sources, are attracted to the field of law.

Teaching at the retreat, Halpern recounted how the experience of practising mindfulness meditation had transformed the experience of some of his students, who worked at a poverty law clinic as part of their studies. The students often found the experience of helping clients in desperate situations facing multiple crises in their lives – such as evictions, divorce, domestic abuse and drug-addicted children – overwhelming. The students were vulnerable to burnout, depression and fatigue but, through contemplative practices, they found the ability to deal with the situations in a different way. With an increased 'presence power', they were better able to simply sit and listen to the problems being recounted with full, non-judgemental attention.

The skill of deep and open listening is a cornerstone benefit of practising mindfulness, and it is a profound addition to any lawyer's skill set. There are often situations, the poverty law clinic being an example, when there are no, or very limited, legal solutions to the human dilemmas that people face. However, the act of providing a space for that human dilemma to be witnessed and listened to – with openness and without judgment – may have therapeutic benefits beyond those that can be measured in legal or financial terms.

Losing my religion

The fact that lawyers are more sceptical than most is perhaps the key reason why mindfulness has been slower to take off in the legal profession. Aside from the frustrating woolliness of the concept, and the challenge of finding appropriate language to describe it and its effects (a challenge that stems from the fact that mindfulness is essentially an experimental process and not an academic concept), there are wider concerns about the idea of introducing practices, traditionally seen as having a strong religious or spiritual association, into a secular setting. Norman Fisher says: "These teachings are those of humanity, even though they may have originated 2,600 years ago. They can be taught in secular settings."

> The skill of deep and open listening is a cornerstone benefit of practising mindfulness and it is a profound addition to any lawyer's skill set

Daniel J Siegel (clinical professor of psychiatry at the UCLA School of Medicine and founding co-director of the Mindful Awareness Research Centre) says: "Oftentimes, people hear the word 'mindfulness' and think 'religion', but the reality is that focusing our attention in this way is a biological process that promotes health as a form of 'brain hygiene' – not a religion. Various religions may encourage this health-promoting practice, but learning the skill of mindful awareness is simply a way of cultivating what we have defined as the integration of consciousness."

Writing in the year-end report for the Initiative for Mindfulness in Law, Halpern says: "Legal education and the legal profession, like society at large, are in a period of transition. Lawyers and law students today face unprecedented challenges, from upheaval in the legal market, to seismic shifts in health care, financial markets, the environment and other sectors. In order to thrive and effectively service their clients in this time of uncertainty, legal professionals need new skills, and I believe deeply that one of them is mindfulness, the ancient practice of moment-by-moment, non-judgemental awareness."

These words, written in the context of the American legal system, apply equally in a global context, because the difficulties and issues described by Halpern are faced by legal professionals in jurisdictions across the world, including Ireland.

After the retreat, there was a sense that Halpern, and others like him advocating the potentially transformative effect of mindfulness on the legal profession, are laying the foundation and paving the way for an urgently needed movement within the law that can, hopefully, only gain momentum.

FOCAL POINT

applications for the legal profession?

The impact of mindfulness is already widely recognised and appreciated in the fields of medicine, psychology, education and business, but the legal profession has been slower to accept and integrate its transformative effects.

Some benefits of mindfulness are obvious, but others, no less important, are less so because they are more subtle. Legal academics cite these additional potential benefits as follows:

- **Increasing the ability to transcend the dominating influence of the traditional adversarial mindset to allow awareness of other perspectives,**
- **Developing the skill of deep and open listening,**
- **Developing negotiation skills by training in maintaining a delicate balance in understanding, emotion and behaviour – all necessary for making wise decisions,**
- **Fostering the ability for calm deliberation, which promotes better decision-making in difficult situations,**
- **Cultivating trial advocacy skills by developing internal abilities to, for example, remain 'centred' in challenging moments in court and to retain authenticity,**
- **Enhancing the performance of traditional legal tasks, such as learning, understanding and manipulating rules of law, drafting documents and litigating cases,**
- **Enhancing ethical practice through, for example, developing the self-reflection skills important for judgement (mindfulness makes it more likely that one will adopt universal norms such as honesty and fairness),**
- **Making the practice of law more meaningful and satisfying generally,**
- **Expanding focus to include broader orientations towards lawyering (for example, restorative justice, therapeutic jurisprudence, collaborative law and other healing, peace-making perspectives).**

look it up

Literature:

- Congleton, Christina , Britta K Hölzel, and Sara W Lazar, 'Mindfulness can literally change your brain', *Harvard Business Review* (8 January 2015)

Corporate Transactions: Tax and Legal Issues

Bernard Doherty and Amanda-Jayne Comyn (editor).
Irish Tax Institute (2015), www.taxinstitute.ie. ISBN: 978-1-84260-363-5. Price: €58.

This book acts as a concise guide to the laws and taxes affecting companies in Ireland. It opens by explaining the varying Irish company and non-company structures and goes on to set out the changes introduced by the *Companies Act 2014*, providing an excellent summary of the main areas of change, assisted by the use of simple comparison tables.

It explains the existing regime for the administration of companies and goes through the practicalities of registering a company, as well as various filing obligations. Further discussed are the role and duties of directors vis-à-vis the company, prohibited transactions, and the consequences of breaching company legislation.

While this book deals with taxation issues arising in respect of corporate transactions, it does not over-complicate matters. The reader is left with a good idea as to the taxes that must be considered and where further information can be found, if necessary. It explains the concept of Irish tax residency and deals with applicable taxes, including but not limited to corporation tax, CGT, employer/employee taxes and VAT, identifying payment due dates and pay-and-file obligations, as well as discussing tax issues on debt restructuring and general anti-avoidance provisions.

For those with little or no experience in dealing with companies, it provides a very helpful analysis of company financing, comparing debt and equity financing and setting out the various merits of each. It further provides information on tax reliefs and grants available to start-up enterprises.

The book devotes a chapter to corporate restructuring, explaining warranties, disclosure letters and indemnities, including those relating to taxation, and further explores the issues of banking and security, detailing the main features of various types of security in an easy-to-navigate tabular format. Practitioners dealing with insolvency situations will find that this book provides a good summary of corporate insolvency mechanisms and their tax implications.

Overall, this book provides a practical guide for advisors and directors alike and would prove very useful when dealing with corporate transactions.

Dawn Carney is a solicitor and AITI chartered tax adviser at Sheehan & Co, Solicitors, St Augustine Street, Galway.

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Brian Conroy, BL, LLB (Ling. Fr.), LLM (Cantab.), AITI is a practising barrister. He is also a qualified tax consultant and a member of the Irish Society of Insolvency Practitioners.

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BUSINESS LAW COMMITTEE

Reporting obligation: *Criminal Justice Act 2011*, section 19

The purpose of this note is to remind practitioners of the provisions of the reporting obligation contained in section 19 of the *Criminal Justice Act 2011* (as amended). Information about section 19 is summarised below, together with recommendations as to good practice. This practice note does not constitute a legal interpretation of the act. Solicitors may need to obtain independent legal advice when considering this reporting obligation. As section 19 is based on a subjective test in each particular set of circumstances, the assessment as to whether the reporting obligations arise must be made by each solicitor.

The act contains a reporting obligation in relation to certain 'relevant offences'. Section 19 makes it an offence for a person to fail, without reasonable excuse, to disclose information to the gardaí that he knows or believes might be of material assistance in (a) preventing the commission of a relevant offence or (b) securing the apprehension, prosecution, or conviction of any other person for a relevant offence. The 'relevant offences' scheduled to the act are very broad and include company law, competition law, financial activities, fraud and theft. Examples of relevant offences include the provision of unlawful financial assistance and carrying on the business of a company with intent to defraud creditors. Examples of situations where solicitors may come across relevant offences and therefore need to consider the legislation include:

- When carrying out a due diligence investigation for a transaction,
- When considering the financial affairs of spouses in family law matters,
- When advising on the conduct of departing employees,
- When advising on internal investigations,
- When advising on competition law matters, and
- When acting in litigation matters.

The reach of the legislation is potentially very extensive and can be increased by ministerial order.

The obligation to make a report under section 19 is broad in scope, applying to any 'person' (which would include a solicitor). A person must disclose information that he "knows or believes might be of material assistance" to the gardaí in relation to the investigation of a relevant offence. The offence of failing to disclose information does not apply if a person has a "reasonable excuse" for the non-disclosure. By analogy with similar provisions in other legislation, the courts are likely to interpret 'reasonable excuse' restrictively, as relating only to a physical or practical difficulty in obtaining information.

It is important for solicitors to be aware that there is no statutory exemption for legal professional privilege in the act, although it may be that the legal professional privilege (legal advice privilege and litigation privilege) may not be drastically curtailed. If a document or communication is received by a legal advisor within the recognised circumstances of legal professional privilege, it may be protected and not required to be disclosed by a solicitor under section 19. Solicitors are reminded that the ambit of legal privilege is not absolute and is subject to a number of significant limitations. For example, legal professional privilege does not apply where communications are made for a fraudulent or illegal purpose, or where communications are made by a client to a solicitor before the commission of a crime for the purpose of being guided or helped in the commission of that crime.

Accordingly, when considering whether legal professional privilege prohibits the making of a report under section 19, solicitors need to carefully consider whether they are working in privileged circumstances when the particular information or matter comes to them. This is an important consideration, as a solicitor may be providing a variety of services to a client. Accordingly, it is suggested that a careful record is maintained of the origin of information considered when a decision is made on the applicability of legal privilege. The reasons for the conclusion reached as to whether legal privilege applies should also be carefully documented. Solicitors should refer to chapter 4 of the *Guide to Good Professional Conduct of Solicitors* for guidance on the ambit of privilege. For comprehensive information in relation to legal professional privilege, solicitors may wish to refer to Healy (2004), *Irish Laws of Evidence* (Round Hall), chapter 13, and McGrath (2005), *Evidence* (Round Hall), chapter 10.

If circumstances require a solicitor to make a report under section 19 about a client or a related person or body, the solicitor may be required to cease to represent the client. Clearly, once a solicitor makes a report to the authorities in relation to their client or the business of their client, the fundamental element of trust upon which the solicitor/client relationship is based is fatally affected. The Society recommends that a solicitor should carefully consider whether, upon forming a suspicion that a relevant offence is being or has been committed, it is appropriate to continue to act, whether or not a reporting obligation has arisen and regardless of the legal service being provided.

Solicitors should be aware of the ethical difficulties of acting in cases where it is possible that the solicitor will be called as a prosecution witness against their own client. The Society strongly recommends that a solicitor should exercise extreme caution before reaching a decision to so proceed and, in particular, having regard to the ethical difficulties referred to above. Even in circumstances where a report might be exempted by reason of legal professional privilege, the solicitor should consider whether they should continue to act.

The disclosure to the person affected of a report made, or to be made, is not dealt with in the act. However, the common law offence of perverting the course of justice could apply, meaning that 'tipping off' a person in relation to whom a disclosure was made could be an offence of obstructing An Garda Síochána. The Society recommends that a solicitor who has made a report should immediately cease to act for that client and should not maintain the solicitor/client relationship for any purpose, including any purpose that might be proposed by the authorities to whom the report is made. Accordingly, while it is unclear whether a solicitor can inform a person that a report has been made about them, solicitors can inform clients that they intend to cease to act for them.

Solicitors should amend their terms of engagement to reflect the possibility that the solicitor may be obliged to make a disclosure about the client to relevant authorities, and to set out the possible consequences of section 19.

Solicitors Disciplinary Tribunal

Reports of the outcomes of Solicitors Disciplinary Tribunal inquiries are published by the Law Society of Ireland as provided for in section 23 (as amended by section 17 of the *Solicitors (Amendment) Act 2002*) of the *Solicitors (Amendment) Act 1994*

In the matter of John F Condon, a solicitor practising as McMahon & Tweedy Solicitors, Merchant's House, 27-30 Merchant's Quay, Dublin 8, and in the matter of the *Solicitors Acts 1954-2011* [3127/DT190/13]
Law Society of Ireland (applicant)
John F Condon (respondent solicitor)

The Solicitors Disciplinary Tribunal sat on 12 February 2015, 16 April 2015, and 28 May 2015 and found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he failed to ensure there was furnished to the Society an accountant's report for the year ended 31 July 2012 within six months of that date, in breach of regulation 21(1) of the *Solicitors Accounts Regulations 2001*.

The tribunal ordered that the respondent solicitor:

1) Do stand censured,
2) Pay a sum of €750 to the compensation fund,
3) Pay a sum of €750 as a contribution towards the costs of the Society.

In the matter of John F Condon, a solicitor practising as McMahon & Tweedy Solicitors, Merchant's House, 27-30 Merchant's Quay, Dublin 8, and in the matter of the *Solicitors Acts 1954-2011* [3127/DT36/14]
Law Society of Ireland (applicant)
John F Condon (respondent solicitor)

The Solicitors Disciplinary Tribunal sat on 12 February 2015, 16 April 2015 and 28 May 2015 and found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he failed to ensure there was furnished to the Society an accountant's report for the year ended 31 July 2013 within six months of that date, in breach of regulation 21(1) of the *Solicitors Accounts Regulations 2001*.

The tribunal ordered that the respondent solicitor:

1) Do stand censured,
2) Pay a sum of €750 to the compensation fund,
3) Pay a sum of €750 as a contribution towards the costs of the Society.

In the matter of Christopher Lynch, a solicitor previously practising as Christopher Lynch Solicitors at 99 O'Connell Street, Limerick, and in the matter of the *Solicitors Acts 1954-2011* [8386/DT72/13 and High Court record 2014 no 85SA]
Law Society of Ireland (applicant)
Christopher Lynch (respondent solicitor)

On 25 March 2014 and 6 November 2014, the Solicitors Disciplinary Tribunal sat to consider this matter. They found the respondent solicitor guilty of misconduct in his practice as a solicitor in that, up to the date of the referral of the matter to the tribunal, he had:

1) Created debit balances totalling €55,256.66 on the client account, in breach of regulation 7(2)(a) of the *Solicitors Accounts Regulations*,
2) As of 7 August 2012, created a shortfall of €166,169.31 on the client account of the practice, by lodging client moneys to the office account and by failing to pay outlays out correctly from client funds received, in breach of regulations 7(1)(a)(iii), 8(ii) and 11(3) of the *Solicitors Accounts Regulations*.

The Solicitors Disciplinary Tribunal referred the matter forward to the President of the High Court and, on 7 July 2014, the president ordered that:

1) The respondent solicitor be suspended from practice for a period of 12 months,
2) The respondent solicitor, after the expiration of the suspension period, be restricted from practising in the area of civil litigation for such period as the court may provide,
3) The respondent solicitor, after the expiration of the suspension period, not be permitted to act as a sole practitioner or in partnership; that he be permitted only to practise as an assistant solicitor in the employment and under the direct control and supervision of another solicitor of at least ten years' standing, to be approved in advance by the Society,
4) That the respondent solicitor pay the whole of the costs of the Society, including witnesses' expenses, to be taxed by a taxing master of the High Court in default of agreement.

The order of the tribunal made on 25 March 2014 and the report of the tribunal were amended on 6 November 2014, and this amendment was noted by the High Court on 22 June 2015, and the order made on 7 July 2014 was confirmed. The amendments made did not affect the actual findings of misconduct or recommendations as to sanction.

eurlegal

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

THE REFUGEE CRISIS: A CHALLENGE FOR EUROPE

The history of Europe, marked by wars and its colonial past, is a history of migration. European people have moved from place to place for many different reasons: risk to their lives, political oppression, war and poverty, economic reasons, family reunification, environmental disasters, and education.

The first migration movements in 20th century Europe were mainly from south to north to provide cheap workforces, particularly after the devastation of World War II. At this point, migration did not constitute an issue of concern to the newly established European Community. The end of the Cold War and the spread of hunger in many countries around the globe caused a large influx of immigrants into Europe, resulting in member states becoming more aware of the economic, political and social consequences of migration.

For the past few years, Mediterranean countries have experienced a high inflow of people from Africa arriving on their coasts and have been struggling to manage this situation with little support from other EU member states. However, the tragedies of October 2013 at Lampedusa (where 350 people from Eritrea, Somalia and Ghana died) and of 18 April 2015 on the coast of Italy (where an estimated 1,200 people died) caught the attention of the international community.

During the summer of 2015, the situation worsened, as thousands of people have tried to enter the EU through the Balkan region, and many hundreds have remained in other places, like Calais and Lesbos. According to the International Organisation for Migration, between January and August 2015, more than 350,000 people were detected at the EU's borders.

These events have stressed the challenge that member states face in managing emergency situations like the present one, as well as the need for cooperation and policy coordination to establish the proper mechanisms to deal with the issue.

Migrants or refugees?

Until recently, and even under the extreme circumstances surrounding their arrival in Europe, states have referred to these migratory groups as 'illegal migrants'. However, there has been a change of terminology in the past few months, as it is now recognised that the term 'migrant' is not appropriate – and has been used as by governments as a tool to avoid their obligations under international law.

> Any solutions must include addressing the root causes of migration

A migrant is anyone who moves from one place to another to improve their living or working conditions; it implies a voluntary movement. A refugee, on the other hand, is someone fleeing from conflict or persecution.

In the current crisis, people arriving in Europe come primarily from Syria, Eritrea and Afghanistan, and additionally from other countries like Somalia, South Sudan, Libya or Yemen. These are countries marked by civil wars and terrorism (some are failed or fragile states), where large numbers of people are being persecuted or murdered every day. These displaced people are not migrants, but refugees.

The use of one or the other term determines the level of protection afforded. Refugees have rights under international law, and all state parties to the United Nations have an obligation to protect and assist them by facilitating integration, resettlement and by assuring non-refoulement. The status of migrants, on the contrary, is not protected by international law but is, instead, subject to national law.

Is migration an EU issue?

Sovereign states have traditionally had exclusive jurisdiction to deal with migration issues involving their national borders. This was the principle even after the creation of the European Community, since the founding treaties made no mention of migration from outside the community.

The *Single European Act 1987* constituted the first major review of the *Treaty of Rome*, but did not contain any reference to migration, despite being a legal instrument aimed at suppressing internal borders to achieve a full economic union (which would have a future impact on the free movement of persons).

In 1992, the *Maastricht Treaty* went further, creating a political union and establishing a policy area of justice and home affairs under the third pillar. This, however, was interpreted as a mere attempt to promote security and control of the territory of the union, rather than to deal with the core issue of migration.

It is not until the 1997 *Treaty of Amsterdam* that the area of migration as a European issue was addressed. The treaty introduced a new title on the free movement of people, asylum, and immigration within chapter II, related to the progressive establishment of an area of freedom, security and justice. This was incorporated to the first pillar (European Communities), thereby placing immigration within the communities framework, as opposed to being under the third pillar of intergovernmental cooperation.

Finally, the *Lisbon Treaty on the Functioning of the European Union 2007* confirmed, in article 79.1, the 'European' nature of the area of migration – it recognised the full jurisdiction of the Court of Justice of the European Union (CJEU) on this matter and created the urgent preliminary procedure (article 267.4).

Parallel to the main treaties, various instruments have been established to progress in the area of security and immigration:

- The *Schengen Agreement* of 1985 abolished internal borders, enabling passport-free movement between a large number of European countries (currently 26 countries). It also created a single external border and a single set of common rules to police it. *Schengen* cooperation has been incorporated into the EU legal framework.
- In 1990, the *Dublin Convention* was adopted as an act of intergovernmental cooperation, later replaced by the *Dublin II Regulation* (343/2003) and *Dublin III Regulation* (604/2013). The *Dublin Regulations* established a system to determine the state responsible for examining asylum applications lodged in one of the member states of the EU. By introducing a definite responsibility of a particular state, it aimed to avoid situations known as 'refugees in orbit' and 'asylum shopping'.
- The EU has also addressed migration in other instances, including the *European Council of*

Clashes between migrants and Hungarian riot police at a border crossing in September

Tampere (1999), the *Hague Convention* (2005) and the *Stockholm Programme* (2010).

EU response

From a legal point of view, despite progress in this area, there is still need for an appropriate and coordinated EU response. For instance, the *Dublin* system, by establishing the responsibility of the first-entry member state to process the request for international protection and to manage the stay of migrants, has placed substantial pressure on EU border countries that receive the largest amount of migrants.

The European Parliament and the Council adopted Directive 2008/115/EC (*Returns Directive*) on common standards and procedures in member states for returning illegally staying third-country nationals. However, the directive has been the subject of criticism, in particular with regard to article 15 on the detention of irregular migrants prior to their removal (see cases C357/09 *Kadzoev*, C-61/11 *El Dridi*, and C-329/11 *Achughbabian*).

Furthermore, although the *Lisbon Treaty* recognised migration as a 'European' issue, it establishes in article 4.2 that migration is subject to the principle of subsidiarity, by which the EU may only intervene if it is able to act more effectively than member states. This constitutes an obstacle to dealing with what is a community-wide issue of migration, since there is no consistency in the actions of member states, some of which have failed to transpose the directives in this area.

From a practical point of view, considering the scale and urgency of this matter, various agencies and initiatives have been established at European level to support member states' efforts in this area, including:

- Frontex, the European agency for the management of operational cooperation at the external borders of the member states of the EU, to reinforce and streamline cooperation between national border authorities.
- EASO (European Asylum Support Office), which assists member states in fulfilling their European and international obligations in the field of asylum.
- EUROSUR, a multi-purpose system for detecting, preventing and combating irregular migration and cross-border crime at the external borders. It provides a common framework for information exchange and cooperation among all authorities.
- The *Schengen* Information System II (SIS II), a large-scale EU database that facilitates the exchange of alerts, information and biometric data relating to wanted persons and general criminal activity between police, borders and customs authorities across *Schengen* member states.
- The EU's Regional Protection Programmes and joint resettlement programme, with the goal of improving the management of refugee flows and enhancing protection capacities in the regions from which many refugees originate.

In addition, the EU recently launched two joint operations in the Mediterranean, namely 'Tri-

ton' (to support Italy following the tragedy at Lampedusa, with a current budget of €120 million for 2015-2016) and 'Poseidon Sea' (covering the Greek territorial sea and adjacent seas at the Eastern Aegean Sea and the Ionian Sea).

Solidarity

In light of the ongoing refugee crisis, the EU faces a great challenge. Solidarity has traditionally been at the core of European values, a feeling linked to the respect for human rights, to sharing, and opening gates to those who most need help.

Solidarity must be understood in two ways:

- External solidarity towards the thousands of people seeking refuge in Europe – by ensuring humanitarian protection and assistance, and
- Internal solidarity among the member states – by assisting each other and taking common actions.

As an organisation with legal personality, the EU is often held responsible for not providing an adequate response to this crisis when, in fact, it has been struggling for years to harmonise asylum policy. It is for member states to approve policy and to put forward a joint action.

In May 2015, the European Commission presented its European Agenda on Migration and the first proposals to tackle this crisis situation, summarised into six concrete measures. These included an emergency relocation scheme applicable to asylum seekers, with a total of 40,000 people relocated from Italy and Greece to other member states, and the resettlement of 20,000 people from outside the EU over the next two years. This proposal was rejected by member states.

At the time of writing, the president of the European Commission has just presented a new package of proposals to help address the crisis. This includes:

- An emergency relocation for 120,000 refugees from Greece, Hungary and Italy,
- A temporary solidarity clause whereby, if a member state cannot temporarily participate totally or in part in a relocation decision, it will have to make a financial contribution to the EU budget of an amount of 0.002% of its GDP,
- A permanent relocation mechanism for all member states,
- A common European list of safe countries of origin, and
- The need to address the external dimension of the refugee crisis by supporting diplomatic initiatives and finding political solutions to the conflicts in Syria, Iraq and Libya.

While some member states, including Ireland, have already expressed their intention to receive and relocate a number of refugees, others are not willing to accept any. It remains to been seen whether the new proposals will be approved.

What next?

There is not an easy solution to this crisis and there are many questions yet unanswered. An urgent humanitarian response to the crisis is essential, but this will be only a short-term measure. This is an ongoing problem that is expected to continue and is likely to exacerbate over the next few years. What would the long term response be?

Relocation raises the issue of family reunification, since a number of displaced persons already have family members in an EU country different from the one they may have been allocated to. Will this cause further difficulties and the risk of further internal movements within the EU?

Many European countries are going through internal economic struggles in terms of unemployment or public debt. How realistic will it be to expect these countries to integrate a large amount of people into their labour market in the long term?

There are security concerns also, and a review of the *Schengen Agreement* has been proposed. Is there a risk of smugglers and other criminals being encouraged to enter the EU?

Any solutions must include addressing the root causes of migration, by way of dialogue with countries of origin or even through establishing embargoes or penalties for governments that do not act against the smuggling of migrants. In conversation, police inspector Jesús Montero (Frontex) highlighted the added difficulty in some cases, such as Eritrea or Libya: failed states or states with no stable central government, ruled by hundreds of small-town leaders with whom negotiation and dialogue is practically impossible.

Lawyers' concerns

The problem of migration is also at the centre of European lawyers' concerns. For this reason, in late 2014, the CCBE established a Working Group on Migration with the specific task of drafting a declaration and guidelines on migration. These guidelines refer, among other things, to legal aid, access to justice, interpreters and documentation, asylum (access to the asylum procedure at borders), training, and providing adequate information in the countries of origin and transit.

We have a moral responsibility towards our fellow human beings. In the words of Pope Francis after the Lampedusa tragedy: "The word disgrace comes to mind. It is a disgrace."

Eva Massa is a solicitor and secretary to the EU and International Affairs Committee.

Recent developments in European law

INSOLVENCY

On 20 May 2015, the revised *European Insolvency Regulation* (2015/848) was adopted. It replaces the previous Regulation 1346/2000. The intent of the revision is to improve the functioning of the regulation and to incorporate some of the decisions of the Court of Justice interpreting the former regulation. The new regulation has a broader scope than its predecessor.

LITIGATION

Case C-353/13, *Cartel Damage Claims (CDC) v Hydrogen Peroxide SA v Akzo Nobel NV and Others*, 21 May 2015

The dispute arose from a European Commission decision of 3 May 2006, by which the commission found that several companies supplying hydrogen peroxide and sodium perborate had participated in a cartel contrary to EU competition rules. Some of those companies were ordered to pay fines. CDC is a Belgian company, to which a number of the companies operating in the industrial pulp-and-paper-processing industry transferred their rights to damages suffered in connection with that cartel. In March 2009, it brought an action for damages before a court in Dortmund against six of the companies fined by the commission. CDC argued that the German courts had jurisdiction to rule in respect of all the defen-

dants, as one of them has its registered office in Germany. In September 2009, CDC withdrew its action against the German defendant, having reached an out-of-court settlement with it. The other defendants then challenged the jurisdiction of the German courts. They argued that the supply contracts concluded with the wronged companies contained jurisdiction clauses.

The court in Dortmund referred several questions to the CJEU concerning the interpretation of the *Brussels I Regulation*. The CJEU found that the commission decision did not determine the requirements for potentially holding the companies that participated in the cartel at issue liable in tort. This is to be determined by the national law of each member state. As various national laws may differ on that point, there is a risk of irreconcilable judgments if the victims of the cartel were to bring actions before the courts of various member states. In the event of such a risk, the regulation provides for an action to be brought in the courts of one single member state against several defendants domiciled in various member states. Companies that have participated in an unlawful cartel must expect to be sued in the courts of a member state in which one of them is domiciled. A person wronged by an unlawful cartel has the alternative of bringing its action for damages against the companies who participated in the infringement before the courts of the place where the cartel was concluded, or before the courts of the place where the loss arose. In the latter case, the action is limited to the harm suffered in that particular jurisdiction.

PROBATE

Regulation 550/2012 came into force in all EU member states (except for Ireland, Denmark and Britain) on 17 August. The new regulation sets down rules to be applied in cross-border probate cases for the applicable law, jurisdiction and the enforcement of decisions in such cases. It also creates a European certificate of succession, which will enable legatees, executors of wills, and administrators to prove their status and exercise their rights of powers in the contracting states.

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DATE	EVENT	DISCOUNTED FEE*	FULL FEE	CPD HOURS
8 Oct	Annual Litigation Update in collaboration with Litigation Committee	€150	€176	3 General (by Group Study)
10 Oct	Annual Human Rights conference presented in collaboration with the Human Rights Committee	Complimentary		3 General (by Group Study)
16 Oct	Law Society Skillnet North East CPD Day 2015 in association with Monaghan, Cavan, Drogheda and Louth Solicitors' Bar Associations – Glencarn Hotel, Castleblayney, Co Monaghan	n/a	€95	5 General plus 1 M & PD Skills plus 1 Regulatory Matters (by Group Study)
16 Oct	Blue Skies or Stormy Clouds? – Annual Technology Conference – in collaboration with the Technology Committee – Temple Gate Hotel, Ennis	€150	€176	1 Regulatory and 2 General (by Group Study)
21 Oct	Property Law Annual Conference 2015 – in collaboration with the Conveyancing Committee	€150	€176	3 General (by Group Study)
23 Oct	Law Society Skillnet Practice & Regulation Symposium 2015 in partnership with the Small Practice Network and DSBA – Mansion House, Dublin	n/a	€95	5 M & PD Skills plus 1 Regulatory Matters (by Group Study)
29 Oct	ADR Directive and Online Dispute Resolutions Regulation in collaboration with the ECC, the ADR Committee and the EU and International Affairs Committee	Complimentary		3 General (by Group Study)
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13 Nov	Law Society Skillnet Practitioner Update Cork 2015 in partnership with Southern Law Association and West Cork Bar Association – Clarion Hotel, Cork	n/a	€95	5 General plus 1 M & PD Skills (by Group Study)
13 & 14 Nov & 22 & 23 Jan & 5 & 6 Feb 2016	Property Transactions Master Classes Module 1: The Fundamentals of Property Transactions Module 2: Complex Property Transactions Module 3: Commercial property transactions	Fee per Module: €484	Fee per Module: €550	CPD Hours per Module: 8 General plus 2 M&PD (by Group Study) Attend 1, 2 or all 3 modules
18 Nov	Prison Law, Victims' Rights & Criminal Legal Aid Symposium in partnership with the Criminal Law Committee	€150	€176	4 General (by Group Study)
20 Nov	Law Society Skillnet General Practice Update 2015 in partnership with Carlow Bar Association, Kilkenny Bar Association, Waterford Law Society and Wexford bar Association – Hotel Kilkenny, Kilkenny	n/a	€95	3 General plus 3 M & PD Skills (by Group Study)
27 & 28 Nov and 15 & 16 Jan 2016	The Fundamentals of Technology & Intellectual Property Law Module 1: Intellectual Property Law Module 2: Technology Law	€800 *(Course fee includes an iPad Mini and interactive eBook on IP and Technology Law)*	€1,000 *(Course fee includes an iPad Mini and interactive eBook on IP and Technology Law)*	CPD Hours per Module: 10 Hours including 3 M & PD Skills
27 Nov	Annual Family & Child Law Conference 2015 in partnership with the Family & Child Law Committee	€150	€176	4.5 General (by Group Study)

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professional notices

WILLS

Behan, Margaret (deceased), late of 163 Upper Sheriff Street, Dublin 1. Would any solicitor holding or having knowledge of a will made by the above-named deceased, who died on 26 January 2015, please contact Kent Carty, Solicitors, 47/48 Parnell Square, Dublin 1; ref: JOH/LK/DFO/DAR/16/1; tel: 01 865 8800, email: jimohiggins@kentcarty.com

Brody, Patricia (deceased), late of 93 Orwell Gardens, Churchtown, Dublin 14, who died on 20 August 2015. Would any person having knowledge of the whereabouts of any will executed by the above-named deceased please contact Brian Woodcock of Woodcock Solicitors, 16 Clanwilliam Terrace, Grand Canal Quay, Dublin 2, tel: 01 676 0808, email: brian@woodcocksolicitors.ie

Burke Campbell, Kathleen (otherwise Kay) (deceased), who died on 26 January 2014, late of 56 Ballyroan Road, Templeogue, Co Dublin. Would any person having knowledge of the last will made by the above-named deceased, or its whereabouts, please contact Regina O'Brien, O'Scanaill & Company, Solicitors, Columba House, Airside, Swords, Co Dublin; tel: 01 813 7500, email: rob@scanlaw.ie

Byrne, Kathleen (deceased), late of 59 Sea View Avenue, East Wall, Dublin 3, who died on 18 August 2015. Would any person having knowledge of the whereabouts of any wills executed by the above-named deceased please contact Lawlor Partners, Solicitors, 4/5 Arran Square, Arran Quay, Dublin 7; tel: 01 872 5255, email: info@lawpartners.ie

Davoren, Kate (deceased), late of Clooniffe, Moycullen, Co Galway. Would any person having knowledge of any will made by the above-named deceased, who died on 5 February 2015, please contact Russell & O'Malley, Solicitors, Unit 1, Garraí Mhé, Mountain Road, Moycullen, Co Galway; tel: 091 556 356/7, email: romlaw@eircom.net

Gallagher, Brigid (deceased), late of 3 Hillsbrook Avenue, Perrystown, Dublin 12, who died on 4 June 2014. Would any person having knowledge of a will executed by the above-named deceased, or if any firm is holding same, please contact Jason McGoey, JA McGoey Solicitors, 105 Ranelagh, Dublin 6; tel: 01 497 9864, fax: 01 497 0303, email: info@jamcgoey.ie

Griffin, Eileen (Ellen) (formerly O'Keeffe) (née Bohane) (deceased), late of Killeentierna, Currow, Killarney, Co Kerry, and

RATES

professional notice rates

RATES IN THE PROFESSIONAL NOTICES SECTION ARE AS FOLLOWS:

- **Wills** – €147 (incl VAT at 23%)
- **Title deeds** – €294 per deed (incl VAT at 23%)
- **Employment/miscellaneous** – €147 (incl VAT at 23%)

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

professional notices

formerly of Kilderry East, Skibbereen, Co Cork, who died on 27 March 2015. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact O'Leary Carter & Co, Solicitors, Kanturk, Co Cork; tel: 029 51889, email: mmolc@eircom.net

Hall, Suzanne (deceased), late of Cherry Orchard Hospital, Aspen Unit, Cherry Orchard, Dublin 6, and formerly of 19 Mount Drummond Court, Harolds Cross, Dublin 6. Would any person having any information with regard to the whereabouts of a will of the above-named deceased please contact Paul Boyce & Company, Solicitors, 4 Dublin Street, Monaghan, Co Monaghan; tel: 047 77107, fax: 047 77108, email: info@paulboyce.ie

Hyland, Richard (deceased), who died on 18 August 2015, and **Hyland, Martha (deceased),** who died on 3 August 2015, both late of 52 Beaufield Park, Stillorgan, Co Dublin. Would any person having knowledge of the whereabouts of any will executed by the above-named deceased please contact Philip Clarke, Philip Clarke Solicitors, 22 Crofton Road, Dun Laoghaire, Co Dublin; tel: 01 280 8088, email: info@philipclarke.ie

Keenan, Patrick (deceased), late of Ropefield, Ballinacarrow, Ballymote, Co Sligo, who died on 29 July 2015. Would any person having knowledge of the whereabouts of any wills made by the above-named deceased please contact William Henry, William G Henry & Co, Solicitors, Emmett Street, Ballymote, Co Sligo; tel: 071 918 9962, fax: 071 918 9970, email: wghreception@gmail.com

Lyons, Padraig (deceased), late of Apartment 14, Ashbrook, off Navan Road, Dublin 7. Would any person having knowledge of a will made by the above-named deceased, who died on 19 March 2015, please contact FG MacCarthy, Solicitors, Loughrea, Co Galway; DX 86002; tel: 091 841 841, fax: 091 842 180, email: law@fgmaccarthy.com

Nolan, Teresa (deceased), late of 18 Charlemont Court, Dublin 2. Would any person having knowledge of the whereabouts of a will executed by the above-named deceased, who died on 2 April 2015, please contact Alan T Power, solicitor, Coughlan White & Partners, Moorefield Road, Newbridge, Co Kildare; DX 50 007 Newbridge; tel: 045 433 332, fax: 045 433 096, email: apower@coughlansolicitors.ie

Nugent, Sheila (deceased), late of Glebe House, Glebe Road, Kilternan, in the county of Dublin, and formerly of 30 Orwell Woods, Rathgar, Dublin 6. Would any person having knowledge of the whereabouts of a will executed by the above-named deceased, who died on 23 December 2014, please contact Avril Gallagher & Company, Solicitors, 5 Ranelagh Village, Dublin 6; tel: 01 497 1530, fax: 01 491 0015, email: gallagherandco@eircom.net

O'Donnell, Frank, (deceased), late of Collistown, Kilcloon, Co Meath, who died on 10 November 2014. Would any person having knowledge of a will made by the above-named deceased, or its whereabouts, please contact Patrick Neligan, Solicitor, Main Street, Maynooth, Co Kildare; tel: 01 628 5322, email: info@neligansolicitors.ie

O'Toole, Denis (deceased), late of Shanbally, Rearcross, Newport, Co Tipperary, who died on 21 June 2015. Would any person having knowledge of a will executed by the above-named deceased, or if any firm is holding same, please contact James O'Brien & Co, Solicitors, 30 Castle Street, Nenagh, Co Tipperary; tel: 067 31218, email: phil.ryan@jamesobrien.ie

Sarzynski, Mariusz Daniel (deceased), late of Apartment 1, Bective House, Beaufort Place, Navan, Co Meath, date of birth 9 June 1977 and date of death 26 August 2014. Would any person having knowledge of the whereabouts of any will executed by the above-named deceased please contact Cora Higgins or Annie Walsh of Regan McEntee & Partners, High Street, Trim, Co Meath; tel: 046 943 1202, fax: 046 943 1932, email: chiggins@reganmcentee.ie

Tramp, Edgar (deceased), late of 1 St Laurence's Road, Clontarf, Dublin 3; 33 Innishmaan Road, Dublin 9; and The TLC Centre, Northbrook Park, Santry Demesne, Dublin 9, who died on 2 March 2013. Would any person having knowledge or possession of any will executed by the above-named deceased please contact Brennan & Co, Solicitors, Denshaw House, 121 Lower Baggot Street, Dublin 2; tel: 01 659 9464, email: bk@brennanandco.ie

Williams, Robert John (deceased), late of Barryscourt Castle, Carrigtwohill, Cork. Would any person having knowledge of a will executed by the above-named deceased, who died on 7 August 2015, please contact PCL Halpenny & Son, Solicitors, 96 Upper George's Street, Dun Laoghaire, Co Dublin; tel: 01 280 1315, email: shalpenny@pclhalpenny.ie

TITLE DEEDS

In the matter of the *Landlord and Tenant (Ground Rents) 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 Seamus Cummins: notice of intention to acquire the fee simple pursuant to section 4 of the *Landlord and Tenant (Ground Rents) Act 1967* – 17 Main Street, Cashel, in the county of Tipperary

Any person having an interest in the freehold or any estate in the above property, take notice that Seamus Cummins intends to submit an application to the county registrar of the county of Tipperary for the acquisition of the freehold interest and all intermediate interests in the aforesaid property, and any person asserting that they hold a superior interest in the property are called upon to furnish evidence of title to the premises to the below named within 21 days from the date of this notice.

In particular, any person having an interest in the lessors' interest in a lease of 15 June 1917 between Francis Russell Mulcahy, Margaret Ann Butler and Thomas Power of the one part, and Michael O'Grady of the other part, in respect of premises described therein as the dwellinghouse, shop, yard, and premises situate at Main Street, Cashel, in the parish of St John Baptist, barony of Middlethird, and county of Tipperary, for a term of 99 years from 1 November 1916, subject to the yearly rent in the amount of £12, should provide evidence of title to the below named.

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

Date: 2 October 2015

Signed: Gore & Grimes (solicitors for the applicant), Cavendish House, Smithfield, Dublin 7

professional notices

In the matter of the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (No 2) (Ground Rents) Act 1978* (as amended) and in the matter of an application by St Patrick's Credit Union (ESB Staff) Limited and in the matter of the premises 22 Upper Erne Street in the parish of St Mark and city of Dublin

Take notice that any person having an interest in the freehold estate or any intermediate interest in the property being 22 Upper Erne Street in the parish of St Mark and city of Dublin held, with other premises, under indenture of lease dated 26 August 1871 and made between Sir William Carroll of Upper Fitzwilliam Street in the county of the city of Dublin, knight, of the first part; Mary McGarry of North Great Georges Street in the county of the city of Dublin, spinster; Letitia McGarry of Bray in the county of Wicklow, spinster; Edward Fottrell of Fleet Street in the county of the city of Dublin, merchant; John O'Hagan of Upper Fitzwilliam Street in the county of the city of Dublin, one of her majesty's counsel of law; Reverend Walter Murphy of Marleborough Street in the county of the city of Dublin, Roman Catholic clergyman, of the second part, and therein described as "all that and those that lot or piece of ground situate, lying and being on the east side of Erne Street in the parish of Saint Mark, being part of the south lots in the county of the city of Dublin, meaning and bounding as follows, that is to say, on the east by the old sea wall which divides the said hereby demised premises from ground formerly belonging to the late Lord Mountjoy and the late John Bowes Benson Esquire and now in the possession of Mr Thomas Hodgens, on the south by Great Brunswick Street, on the south partly by a party wall which divides the said hereby demised premises from ground fronting Erne Street aforesaid, belonging to Mr Henry Richardson, and partly by flanks of houses in Erne Place, and on the west by Erne Street aforesaid together, with all and singular the rights, members and appurtenances thereunto belonging" – saving and reserving out of this demise such portions thereof as have been taken by the Dublin and Kingstown Railway Company, held for the term of 271 years from 3 July 1871, subject, with other property, to the yearly ground rent of £34.10s.

The property the subject matter of this notice is part of the property comprised in the aforementioned lease and now known as 22 Upper Erne Street in the city of Dublin.

Take notice that St Patrick's Credit Union (ESB Staff) Limited intends to submit an application to the county registrar for the city of Dublin at Áras Uí Dhálaigh, Inns Quay, Dublin 7, for the acquisition of the freehold interest and all intermediate interest in the property, and that any party asserting that they hold the said freehold interest or any intermediate interest in the property are hereby called upon to furnish evidence of title to the property to the under-mentioned solicitors 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 this notice and will apply to the said 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 all superior interests and all intermediate interests in the property up to and including the fee simple in the said property are unknown or unascertained.

Date: 2 October 2015

Signed: Donal T McAuliffe & Co (solicitor for St Patrick's Credit Union (ESB Staff) Limited, 127 Lower Baggot Street, Dublin 2

In the matter of the *Landlord and Tenant (Ground Rents) 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 Kaylon Management Limited and Formal Property Management Limited and in the matter of property situate at Milltown Hill and Milltown Court, Milltown Road, Dublin 6

Take notice that any person having an interest in the freehold estate of the following property: all that and those the premises demised by lease dated 29 October 1898 between Francis B Montague, Richard Lorenzo Nunne, Edith Louisa Skipton, Louisa Letitia Sweetman, Fanny Blanche Clay, Mary Jane Nunne, Ellen Augusta Nunn, Joshua Nunn and Reverend William Ward of the one part, and John Wilmer of the other part, therein described as "all that and those the dwellinghouse and offices with the garden known as Geraldine House and the four cottages at rear containing about one acre, one rood, and 11 perches statute, as formerly demised by lease dated 5 March 1868 made by Patrick Ward and others to Marie Troy, together with the unenclosed plot of ground to the south thereof containing about one acre and 14 perches, situate as formerly demised by lease dated 16 June 1768 by William Cole to John Barker, all forming part of the lands of Milltown in the barony of Upper Cross in the county of Dublin and bounded on the northeast by ground held by Mr John Somers under fee farm grant dated 18 March 1878, on the west partly by Milltown Road and partly by a laneway leading therefrom to River Dodder, and on the southeast by the said River Dodder, as delineated on the map in the fold hereof, saving and reserving unto the lessors all royalties, mines and minerals and all quarries and

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lots of stone, sand and gravel, and saving and reserving to the Rathmines Commissioners and all other person or persons (if any) as are entitled thereto such rights of way and entry and other rights and easements as now exist now in through or in connection with the demised premises or any part thereof' and thereunder held for a term of 200 years from 1 November 1898, subject to the yearly rent of £54 and to the covenants on the lessee's part and conditions therein contained.

Take notice that Kaylon Management Limited and Formal Property Management Limited intend to submit an application to the county registrar for the county/city of Dublin for the acquisition of the freehold interest in the aforesaid property, and any party or parties asserting that they hold superior interest in the aforesaid property are called upon to furnish evidence of title to the aforementioned property to the below named within 21 days of the date of this notice. In default of any such notice being received, Kaylon Management Limited and Formal Property Management Limited intend to proceed with the application before the county registrar at the end of 21 days from the date of the notice and will apply to the county registrar for the county/city of Dublin for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest including the freehold reversion in the property aforesaid are unknown or unascertained.

Date: 2 October 2015

Signed: Gerald Griffin (solicitor for the applicants), St Paul's Church, North King Street, Dublin 7

In the matter of the *Landlord and Tenant (Ground Rents) Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of Melmore, 4 Abbey Street, Howth, Co Dublin, and on the application of Bryan F Lynch, Gregory A Lynch, Ann Lynch, Darren McMahon and Mark Lynch (applicants)

Any person having a freehold interest or any intermediate interest in all that and those the premises Melmore, 4 Abbey Street, Howth, in the county of Dublin, being part of the premises demised by lease dated 27 October 1888 and made between Mary Farren of the one part and William and Ellen Kiernan of the other part, for the term of 150 years from 1 May 1965, subject to the yearly rent of IRL£2.50 per annum.

Take notice that the applicants intend submitting an application to the county registrar for the county of Dublin for the acquisition of the freehold interest in the aforesaid property, and any party asserting that they hold a superior interest in the said property are called upon to furnish evidence of title to the below signed within 21 days from the date of this notice.

In default of any notice as referred to above being received, the applicants intend to proceed with the application before the county registrar at the expiry of the said period of 21 days and will then apply to the county registrar for the county of Dublin for such direction as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest including the freehold reversion in the said premises are unknown or unascertained.

Date: 2 October 2015

Signed: Marcus Lynch (solicitors for the applicant), 12 Lower Ormond Quay, Dublin 1

offensa cujus nominatio crimen est

Dog gone!

Social media appeared to be the last resort for a Texas woman, who went on Facebook to ask her friends to shoot her dog, US TV station KHOU.com reports.

"I need someone to come shoot my dog. No one here has the heart to do it. We will provide the gun," the woman wrote about her three-year-old dog Cinnamon, a St Bernard/bulldog mix.

The woman told animal control officers who eventually picked up the dog that she could no longer care for the animal and that it "kept getting into the rubbish".

The dog owner, who was not identified, was not charged with a crime, even though the Facebook post was regarded as a criminal act. She evaded being charged due to the fact that she handed over the dog to animal control before any harm was done, following a backlash on social media.

She was working as a waitress in a cocktail bar

A New Jersey state appeals court has ruled that a local casino can regulate the weight of its cocktail waitresses, but added that a court should decide if managers erred in how they enforced those standards, Foxnews.com reports.

The appeals court said the Borgata Casino's personal appearance policy was lawful. The policy prohibits waitresses from gaining or losing more than 7% of their body weight.

The court decided, however, that part of the lawsuit brought by 21 waitresses should be returned to a lower court to determine whether 11 of them had been subjected to a hostile workplace over the enforcement of standards. The ruling overturned part of a 2013 lower court decision, throwing out the lawsuit by former and current cocktail servers.

The casino said that it was pleased its policy had been upheld, adding that it had been disclosed and agreed to by all female and male 'costumed beverage servers' when they were hired as 'Borgata Babes' (waitresses wear tight-fitting corsets, high heels and stockings).

Deborah Mains, an attorney for the waitresses, called the ruling frustrating and disappointing. "Sexual objectification has been institutionalised and is being allowed to stand," she said. "It's difficult to separate the harassment claims that the court is recognising from the overall theory that the working environment is hostile because of the personal appearance standards."

Mains said the servers had been subjected to comments from supervisors asking whether they were pregnant or getting fat, and other co-workers snorting at them like pigs.

Sheikh, rattle and roll out of town

A Middle Eastern sheikh, who allegedly said he owned a Ferrari that was caught on film speeding through a Beverly Hills neighbourhood, has raced out of town, Foxnews.com reports.

It was reported that Khalid bin Hamad Al Thani of Qatar had left the country and that the car had gone, police said. Al Thani owns a drag-racing team and is a member of the ruling family of Qatar.

The bright yellow, $1.4 million 12-cylinder LaFerrari was spotted along with a white Porsche zooming down narrow streets and ignoring stop signs until they finally pulled into a driveway, with the Ferrari's engine reported to be smoking.

Answering reports of reckless driving, officers found both cars parked in a driveway. A man told the officers that the cars belonged to him and denied speeding or driving recklessly, police said. The man claimed to have diplomatic immunity, though police reported that to be unlikely.

Police Chief Dominick Rivetti said the Ferrari was connected to Al Thani. However, investigators had failed to confirm whether the Qatari had been driving either car. The drivers weren't visible on the videos or photographs and investigators were unable to find anyone who was willing to identify them.

The city had passed along its outrage over the incident to the Qatari consulate via the US State Department, Chief Rivetti said.

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For further information on this or other legal roles, please contact Fionntán Gamble in strict confidence on 028 90 325 325 or email at f.gamble@brightwaterNI.com

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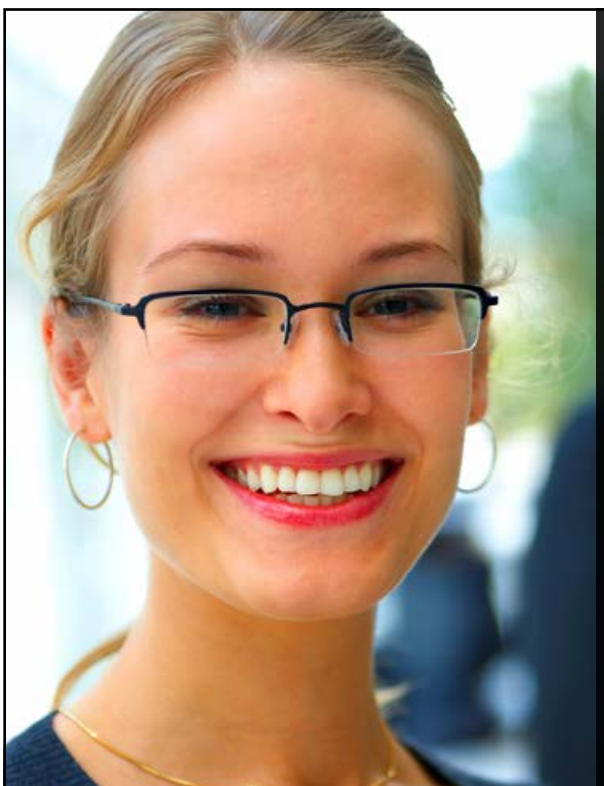

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Commercial Property Solicitor, Junior – Associate Level, Dublin
A Top Tier Law Firm is seeking to recruit a number of commercial Property Solicitors. This Law Firm boasts a wide range of clients including private equity funds, developers, investors and financial institutions. This position is suitable for candidates currently working within a top 10 firm or someone in a smaller practice with extensive property experience looking to make the jump.

Funds Solicitor, Associate Level, Dublin
This international funds team is going through an aggressive growth stage and is looking to expand their funds practice further. The successful appointment will report directly to a Global Partner and have an opportunity to work on domestic and international work. This position will offer excellent remuneration.

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To apply for any of the above vacancies or for a strictly confidential discussion, please contact Seán Fitzpatrick on +353 1 5005916 or sean.fitzpatrick@cpl.ie or Tony Glynn on +353 1 500 5918 or tony.glynn@cpl.ie

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Pensions Lawyer – Junior level

One of Ireland's leading commercial firms is seeking to hire a pensions lawyer to join their dedicated team. The role involves advising employers and trustees in relation to all aspects of pension law, including client's duties and responsibilities under pension scheme documentation, pensions legislation and trust law generally.

Newly Qualified Solicitors

Many firms are now looking at trainee solicitors that are due to qualify at the end of the year. We currently have a number of vacancies in various firms and in various departments. Please contact us for further details.

Corporate Lawyers – Multiple Firms

We have multiple requirements for Corporate Lawyers of all levels in Top-Tier and Mid-Tier firms. Salaries dependent on experience and on the demands of the particular firm.

Commercial Litigation
Junior-Senior Associate level

We have new opportunities for Commercial Litigators for multiple clients at multiple levels of professional experience. If you have experience working on large commercial disputes, please get in touch with us.

Head of Legal – In House
Financial Services

This Head of Legal role is a highly unique opportunity to join a leading international asset servicing group structure and have a direct tangible impact on the development and productivity of the group's expanding legal function.

Funds Lawyers - Multiple Firms

We currently have a number of vacancies for Funds Lawyers in both private practice and in in-house positions. Please contact us for further details.

Interested candidates should contact John Macklin, Legal Director on 01 661 0444 for a confidential discussion.

John Macklin
LL.B, LL.M, MBA, Attorney-at-Law
Director Legal Division
jmacklin@lincoln.ie

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Commercial Property – Assistant to Associate – PP0313
Our client is searching for an experienced commercial property lawyer to advise both domestic and international clients on the full range of property matters including multi-jurisdiction sales and acquisitions, sale and leasebacks, re-financings and investments.

Conveyancing solicitor – Associate to Senior Associate – PP0228
Our client is a successful and dynamic practice seeking a highly competent practitioner who will take on a broad range of transactions to include commercial developments and acquisitions as well as commercial landlord & tenant matters.

Commercial Litigation – Associate to Senior Associate
A leading Dublin firm is seeking a commercial litigation practitioner to deal with high caliber commercial court work. You will be working with a highly regarded team dealing with challenging and often complex cases.

Corporate/Commercial Lawyer – Newly Qualified to Associate – J00471
This Dublin based firm is seeking a solicitor to join their Corporate/ Commercial team. This is a role for an ambitious practitioner with experience gained either in private practice or in house. You will ideally have dealt with M&A, Investments Agreements as well as general commercial law matters.

Corporate Finance Solicitor – Assistant to Associate – J00424
Advising financial institutions, government bodies and regulators as well as domestic and international companies, the successful candidate will have exposure to a broad range of financial services including asset finance, insolvency, regulation and secured/ unsecured loans.

Environmental – Assistant – J00375
A leading Dublin firm seeks an ambitious practitioner with experience of providing environmental advice. The role will involve, inter alia: Provision of environmental due diligence advice on property; Corporate and banking transactions; Advising on environmental infrastructure projects; Stand-alone environmental compliance advice.

Financial Regulatory – Assistant – J00505
A top flight firm requires an ambitious assistant solicitor to join its financial regulatory team. The role will involve: Advising clients on practical implications of new regulatory developments; Consumer based financing; Sanctions regimes; Insurance regulation.

Intellectual Property Specialist – Associate to Senior Associate
An excellent opportunity has arisen for a specialist intellectual property practitioner to join a leading Irish law firm. You will have experience of acting for a blue chip client base dealing with complex matters. You will also be a team player with strong technical skills. This represents a significant opportunity for career advancement for the right candidate.

Pensions – Newly Qualified to Associate
Top flight firm requires candidates with a strong academic background and an interest in pensions law and practice to join its well established team with a first rate client base.

Tax Lawyer – Associate to Senior Associate – J00337
A Top 5 Dublin law firm is looking to recruit a Senior Tax Assistant with solid general tax experience to slot into a fast growing partner led team. You will advise Irish and European clients on structuring transactions, such as complex cross-border acquisitions, real-estate investment, private equity public offerings of debt and equity securities and joint ventures.

For more information on these and other vacancies, please visit our website or contact Michael Benson bcl solr. in strict confidence at: Benson & Associates, Suite 113, The Capel Building, St. Mary's Abbey, Dublin 7.
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